



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, JANUARY 12, 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 Board approval and signature of Iris Telehealth contract renewal, Document Number 2021-970.
- [2.](#) Consideration of Resolution No. 2022-003 Increasing 0.5 Limited Duration FTE within the District Attorney's Office and the 2021-2022 Deschutes County Budget.
- [3.](#) Consideration of Resolution No. 2022-004 Increasing 0.5 Regular FTE within Health Services and the 2021-2022 Deschutes County Budget.
- [4.](#) SunWest Builders Contract for remodel of the Facilities/IT Warehouse

ACTION ITEMS

- [5.](#) **9:05 am** American Rescue Plan Funding Update
- [6.](#) **9:50 am** Preparation for Public Hearing: Central Oregon Irrigation District (COID) Plan Amendment and Zone Change
- [7.](#) **10:30 am** Transient Room Tax Project Proposals
- [8.](#) **11:30 am** Skanska USA Building, Inc. Construction Manager/General Contractor Contract Amendment for Adult Parole & Probation Expansion Project
- [9.](#) **11:45 am** Thornburgh Destination Resort, Board consider whether to hear appeals 247-21-001115-A and 1116-A

LUNCH RECESS

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: January 12, 2022

SUBJECT: Consideration of Board approval and signature of Iris Telehealth contract renewal, Document Number 2021-970.

RECOMMENDED MOTION:

Move approval of Iris Telehealth contract renewal, Document Number 2021-970.

BACKGROUND AND POLICY IMPLICATIONS:

Iris Telehealth provides Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations.

Iris Telehealth provides services as a Licensed Medical Provider (LMP) and document medical services using Deschutes County's electronic medical record, in a manner consistent with professional and community standards of care. Services include:

Tele-psychiatric services which may include psychiatric evaluations, medication management services, and client consultation or client therapy. Each client contact may include evaluations, service notes, service conclusion summaries, and chart notes. Iris Telehealth maintains all requirements to perform Tele-psychiatric services which includes maintaining applicable insurance and licenses as a physician within the state of Oregon.

County shall pay Iris Telehealth, on a fee-for-service basis at \$137 per hour for services provided by a Psychiatric Nurse Practitioner.

BUDGET IMPACTS:

\$306,000

ATTENDANCE:

Molly Wells Darling, Program Manager



REVIEWED
LEGAL COUNSEL

01/12/2022 Item #1.

For Recording Stamp Only

**DESCHUTES COUNTY SERVICES CONTRACT
CONTRACT NO. 2021-970**

This Contract is made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, acting by and through the Deschutes County Health Services Department, Behavioral Health Division, hereinafter referred to as "County", and Iris Telehealth Medical Group, PA, hereinafter referred to as "Contractor", collectively referred to as "Party" or "Parties". The Parties agree as follows:

This Contract supersedes and replaces Deschutes County Health Services Contract No. 2021-314, effective date December 1, 2021, which shall terminate upon signature and execution of this Contract No. 2021-970.

Effective Date and Termination Date. The effective date of this Contract shall be retroactively effective December 1, 2021. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance or on June 30, 2022, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured. This Contract may be renewed or extended only upon written agreement of the Parties.

Contract Documents. This Contract includes Page 1-12 and Exhibits A-J.

CONTRACTOR DATA AND SIGNATURE

A Federal tax ID number or Social Security number is required to be provided by the Contractor and shall be used for the administration of state, federal and local tax laws. Payment information shall be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

I have read this Contract including the attached Exhibits. I understand this Contract and agree to be bound by its terms. NOTE: Contractor shall also sign Exhibits D, E and G.

Signature: 
Email: tom.milam@iristelehealth.com
Title: CMO & President
Company: Iris Telehealth, Inc

DESCHUTES COUNTY SIGNATURE

Contracts with a maximum consideration of not greater than \$50,000 are not valid and not binding on the County until signed by the appropriate Deschutes County Department Head. Additionally, Contracts with a maximum consideration greater than \$50,000 but less than \$150,000 are not valid and not binding on the County until signed by the County Administrator.

DATED this _____ day of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DeBONE, Vice Chair

PHIL CHANG, Commissioner

ATTEST:

Recording Secretary

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: Personal Services Contract

Goods and/or Services: Iris Telehealth provides Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations.

Background & History: Iris Telehealth provides services as a Licensed Medical Provider (LMP) and document medical services using Deschutes County’s electronic medical record, in a manner consistent with professional and community standards of care. Services include:

Tele-psychiatric services which may include psychiatric evaluations, medication management services, and client consultation or client therapy. Each client contact may include evaluations, service notes, service conclusion summaries, and chart notes. Iris Telehealth maintains all requirements to perform Tele-psychiatric services which includes maintaining applicable insurance and licenses as a physician within the state of Oregon.

County shall pay Iris Telehealth, on a fee-for-service basis at \$137 per hour for services provided by a Psychiatric Nurse Practitioner.

Agreement Starting Date:

Ending Date:

Annual Value or 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) 2.37.050, Paragraph M; 2.37.070, Paragraph B. 14.

Funding Source:

Pass Through General Fund Other: _____
Project Code HSMEDICAL-HS2OTHER
Project Code HSMEDICAL-HS2COHCOA - (\$1,500 per month effective January 1)

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:

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:
Phone #:

Deputy Director Approval:

Department Director Approval:

Signature: Janice Garceau
Janice Garceau (Dec 27, 2021 09:23 PST)

Signature: Janice Garceau
Janice Garceau (Dec 27, 2021 14:01 PST)

Email: janice.garceau@deschutes.org

Email: Janice.garceau@deschutes.org

Title: Behavioral Health Director

Title: Behavioral Health Director

Company: Deschutes County Health Services

Company: Deschutes County Health Services

Distribution of Document: Grace Justice Evans, Health Services Department.

Official Review:

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

Legal Review _____ Date _____

Document Number 2021-970



CERTIFICATE OF LIABILITY INSURANCE

01/12/2022 Item #1.

07/21

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Professional Risk Management Services 1401 Wilson Blvd., Suite 700 Arlington, VA 22209	CONTACT NAME: Group Services		FAX (A/C, No):	
	PHONE (A/C, No, Ext): 800-245-3333	E-MAIL ADDRESS: groupservices@prms.com		
INSURED Iris Telehealth Medical Group, PA 114 W 7th Street, Suite 900 Austin, TX 78701	INSURER(S) AFFORDING COVERAGE			NAIC #
	INSURER A : Fair American Insurance and Reinsurance			35157
	INSURER B :			
	INSURER C :			
	INSURER D :			
	INSURER E :			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y / <input type="checkbox"/> N / A					<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Other: Medical Professional Liability Occurrence Form			GP - FCO05 - 033333906	2/22/21	2/22/22	\$2,500,000 Each Medical Incident \$7,500,000 Per Provider Annual Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Named Insured: Sepideh Ahmadpour, NP

CERTIFICATE HOLDER**CANCELLATION**

Deschutes County Health Services
2577 NE Courtney Drive
Bend, OR 97701

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

01/12/2022 Item #1.
01/12/21

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PRODUCER Professional Risk Management Services 1401 Wilson Blvd., Suite 700 Arlington, VA 22209	CONTACT NAME: Group Services PHONE (A/C, No, Ext): 800-245-3333 E-MAIL ADDRESS: groupservices@prms.com	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
INSURED Iris Telehealth Medical Group, PA 114 W 7th Street, Suite 900 Austin, TX 78701	INSURER A: Fair American Insurance and Reinsurance	NAIC # 35157
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / <input checked="" type="checkbox"/> N / A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Other: Medical Professional Liability Occurrence Form			GP - FCO05 - 033333906	2/22/21	2/22/22	\$2,500,000 Each Medical Incident \$7,500,000 Per Provider Annual Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Named Insured: Roberta L. Mowdy, NP

CERTIFICATE HOLDER

CANCELLATION

Deschutes County Health Services
2577 NE Courtney Drive
Bend, OR 97701

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

01/12/2022 Item #1.

3/8/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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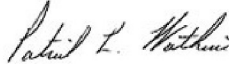
PRODUCER Watkins Insurance Group-Austin 3834 Spicewood Springs Rd, Ste 100 Austin TX 78759		CONTACT NAME: Nina Terrasas PHONE (A/C. No. Ext): 512-452-8877 E-MAIL ADDRESS: nterrasas@watkinsinsurancegroup.com		FAX (A/C. No): 512-452-0999
		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: Twin City Fire Insurance Company		29459
		INSURER B: Hartford General (Rated by Multiple Companies)		914
		INSURER C:		
		INSURER D:		
		INSURER E:		
		INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** 1687135146 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			65SBMNY8131	3/19/2021	3/19/2022	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 2,000,000
							GENERAL AGGREGATE	\$ 4,000,000
							PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			65SBMNY8131	3/19/2021	3/19/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			65SBMNY8131	3/19/2021	3/19/2022	EACH OCCURRENCE	\$ 2,000,000
							AGGREGATE	\$ 2,000,000
								\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	65WBCAB3S9K	3/19/2021	3/19/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	Employment Practices Liability			65SBMNY8131	3/19/2021	3/19/2022	Limit	10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The Commercial General Liability insurance and Automobile Liability insurance must include the Deschutes County, the State of Oregon, their officers, employees, volunteers and agents as Additional insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

CERTIFICATE HOLDER Deschutes County, the State of Oregon their officers, employees, volunteers and agents 1128 NW Harriman Street Bend OR 97701	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C.** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section **C.** - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **C.** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
 - (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

- b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - (2) This insurance applies to such liability assumed by the insured;
 - (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
 - (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or

released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of web sites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
 - (a) An "advertisement" for others on your web site;
 - (b) Placing a link to a web site of others on your web site;
 - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
 - (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**E. LIABILITY AND MEDICAL EXPENSES
GENERAL CONDITIONS**

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;
- b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or
- c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
- 13. "Leased worker"** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- 14. "Loading or unloading"** means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
- 15. "Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- 16. "Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 17. "Personal and advertising injury"** means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19.** "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20.** "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 23.** "Volunteer worker" means a person who:
- a. Is not your "employee";

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER FROM
OTHERS ENDORSEMENT - CALIFORNIA**

Policy Number: 65 WBC AB3S9K **Endorsement Number:**
Effective Date: 03/19/21 Effective hour is the same as stated on the Information Page of the policy.
Named Insured and Address: IRIS TELEHEALTH MEDICAL GROUP PA
114 W 7TH ST STE 900
AUSTIN TX 78701

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

Any person or organization for whom you are required by written contract or agreement to obtain this waiver of rights from us

Countersigned by _____ Authorized Representative



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER
FROM OTHERS ENDORSEMENT**

Policy Number: 65 WBC AB3S9K

Endorsement Number:

Effective Date: 03/19/21

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: IRIS TELEHEALTH MEDICAL GROUP PA
114 W 7TH ST STE 900
AUSTIN TX 78701

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

Any person or organization for whom you are required by contract or agreement to obtain this waiver from us. Endorsement is not applicable in KY, NH, NJ or for any MO construction risk

Countersigned by _____
Authorized Representative



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

Policy Number: 65 WBC AB3S9K

Endorsement Number:

Effective Date: 03/19/21

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: IRIS TELEHEALTH MEDICAL GROUP PA
114 W 7TH ST STE 900
AUSTIN TX 78701

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

- 1. Special Waiver
Name of person or organization
- Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
- 2. Operations:
All Texas Operations
- 3. Premium:
The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
- 4. Advance Premium:

STANDARD TERMS AND CONDITIONS

Contractor shall comply with the following requirements herein to the extent that it is applicable to the agreement for services determined and agreed to by and between Contractor and County.

- 1. **Time is of the Essence.** Contractor agrees that time is of the essence in the performance of this Contract.
- 2. **Contractor's Services.** Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations.

- Exhibit A – OUTLINE OF PROGRAM AND PROGRAM DEFINITIONS
- Exhibit B – STATEMENT OF WORK, PAYMENT TERMS and SCHEDULE
- Exhibit C – INSURANCE
- Exhibit D– CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR
- Exhibit E – WORKER'S COMPENSATION EXEMPTION CERTIFICATION
- Exhibit F – EXPENSE REIMBURSEMENT
- Exhibit G – CONFIDENTIALITY AGREEMENT
- Exhibit H – FEDERAL AND STATE LAWS, STATUTES, RULES, REGULATIONS, EXECUTIVE ORDERS AND POLICIES

The above-referenced exhibits are attached hereto and incorporated by this reference. Contractor's services are funded in part by and through County's understanding with the Central Oregon Health Council and General Funds. The Tele-psychiatric Services ("Services") is further described in Exhibit A, attached hereto and incorporated by this reference.

- 3. **Consideration.** It is understood and agreed that in the event funds are not awarded to County from Central Oregon Health Council or other funding sources as applicable, or if the amount of funds County actually receives from funding sources is less than anticipated, County may either immediately terminate this Contract or decrease the total compensation and reimbursement to be paid hereunder upon agreement of the Parties.
 - A. Payment for services charged to this Contract shall not exceed the maximum sum of **\$306,000** inclusive of travel and all other expenses. Services, charged directly to the Oregon Health Plan (OHP) or other insurance providers is not calculated as part of the contract maximum compensation.
 - B. Contractor shall invoice County in accordance with Exhibit B. County will only pay for completed work that is accepted by County. Invoice and supporting documentation must be sent to County Accounts Payable by mail, fax or e-mail as indicated in Paragraph 14, "Notices".
 - C. Prior to approval or payment of any invoices, County may require and Contractor shall provide any information, not available within County electronic systems, which County deems necessary to verify work has been properly performed in accordance with the Contract. If invoice or supporting documentation contains Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA), then documentation must be faxed or emailed with encryption. Invoices may require such supporting documentation as signed time cards, travel receipts, or other reports.
 - D. Contractor shall not invoice and County will not pay, any amount in excess of the maximum compensation set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of this Contract.
 - E. Should County discover Contractor is committing or has committed "fraud and abuse" as those terms are defined in OAR 410-120-0000, either through an audit or other means, County may recover funds paid to Contractor under this Contract. If state or federal authorities demand the repayment of funds received under this Contract and Contractor has been found willfully committing "fraud and abuse" as those terms are defined in OAR 410-120-0000, County may recover funds paid to Contractor under this Contract and any fines or penalties charged to County as a result of Contractor's actions. In the event that the County determines that Contractor is responsible for the repayment of any funds paid to Contractor, in addition to any fines or penalties charged to the County due to Contractor willfully committing "fraud and abuse", Contractor agrees to make such payment (and upon request by County, authorize County withhold of funds otherwise due to Contractor) within ten (10) days of notification by County. If federal or state authorities demand the repayment of funds received under this Contract, County may recover all funds paid under this Contract, unless a smaller amount is disallowed or demanded from federal or state authorities.

F. In the event that an insurance, statutorily required operating license, insurance, or letter of approval is suspended or not extended, County's obligation to provide reimbursement for services or program expenses hereunder related to services rendered without the necessary license, insurance, or approval will cease on the date of termination of this Contract (whether in whole or in part) or the date of expiration or suspension of the license or letter of approval, whichever date is earlier.

4. Expense Reimbursement. If the consideration under this Contract provides for the reimbursement to Contractor for travel expenses, in addition to Exhibit F, Exhibit B shall state whether Contractor is or is not entitled to reimbursement for such approved expenses.

- A. County shall only reimburse Contractor for expenses reasonably and necessarily incurred in the performance of this Contract.
- B. Expenses reimbursed shall be at the actual cost incurred; including any taxes paid, and shall not include any mark-up unless the mark-up on expenses is specifically agreed to in this Contract.
- C. The cost of any subcontracted work approved in this Contract shall not be marked up.
- D. Contractor shall not invoice County for any time expended to complete the documents necessary for reimbursement of expenses or for payment under this Contract.
- E. The limitations applicable to reimbursable expenses are set forth in Exhibit "F," attached hereto and by reference incorporated herein.

5. Withholding of Payments. Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports when due, or fail to perform or document the performance of contracted services; County shall immediately withhold payments under this Contract.

6. Work Standard.

- A. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.
- B. For goods and services to be provided under this Contract, Contractor agrees to:
 - 1) perform the work in a good, workmanlike, and timely manner using the schedule, materials, plans and specifications approved by County;
 - 2) comply with all applicable legal requirements;
 - 3) comply with all programs, directives, and instructions of County relating to safety, storage of equipment or materials;
 - 4) take all precautions necessary to protect the safety of all persons at or near County or Contractor's facilities, including employees of Contractor, County and any other contractors or subcontractors and to protect the work and all other property against damage.

7. Ownership of Work. All work of Contractor that results from this Contract (the "Work Product") is the exclusive property of County.

- A. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed author.
- B. If, for any reason, the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- C. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County.
- D. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- E. County shall have no rights in any pre-existing work product of Contractor provided to County by Contractor in the performance of this Contract except an irrevocable, non-exclusive, perpetual, royalty-free license to copy, use and re-use any such work product for County use only.
- F. If this Contract is terminated prior to completion, and County is not in default, County, in addition to any other rights provided by this Contract, may require Contractor to transfer and deliver all partially completed work products, reports or documentation that Contractor has specifically developed or specifically acquired for the performance of this Contract.
- G. In the event that Work Product is deemed Contractor's Intellectual Property and not "work made for hire," Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on County's behalf.
- H. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the County's behalf and in the name of the County, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on County's behalf.
- 8. Meaningful Use.** "Meaningful Use" is the set of standards defined by the Centers for Medicare & Medicaid Services (CMS) Incentive Programs that governs the use of electronic health records and allows eligible providers and hospitals to earn incentive payments by meeting specific criteria.
- A. Contractor understands that County has implemented a health information technology system to comply with the Electronic Health Record (EHR) Incentive program, created by the American Recovery and Reinvestment Act, Pub. L. 111-5 (Meaningful Use). Contractor agrees to assist County in meeting the obligations and objectives set forth in 42 CFR Part 495 and to take such steps as necessary to allow County to realize the benefits of the EHR Incentive Program, including but not limited to participating in the Medicaid EHR Incentive Program as an Eligible Professional, using Certified EHR technology, and providing attestations of adoption, implementation, upgrading and meaningful use of such technology as requested or required by County or other federal or state authority.
- 9. Reserved.**
- 10. County Code Provisions.** Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address: https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=2.37.150_Standard_Contract_Provisions
- 11. Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their successors and approved assigns, if any.
- 12. Reporting.**
- A. Contractor agrees to prepare and furnish such reports and data as may be required by County, OHA or PacificSource Community Health Solutions, Inc., to which they are applicable to the services being provided under this Contract. Reports may include but not be limited, to financial reports documenting all expenditures of funds under this Contract in accordance with generally accepted accounting procedures, client records which contain client's identification, problem assessment, service plan (including any training and/or care plan), appropriate medical information, and service notes, including a service termination summary and current assessment or evaluation instrument as designated in the Oregon Administrative Rules. Oregon Health Authority's Measures and Outcomes Tracking System (MOTS), Community Mental Health Provider Report, and Termination Service Recording Form, if applicable, may be completed in accordance with OHA requirements and submitted to County. Contractor agrees to, and does hereby grant County, PacificSource Community Health Solutions Inc., and OHA the right to reproduce, use and disclose for County, PacificSource Community Health Solutions or OHA purposes, all or any part of the reports, data, and technical information furnished to County under this Contract. Contractor shall make available to County and any individual for whom Contractor furnishes services pursuant to this Contract, any and all written materials in alternate formats. For purposes of the foregoing, "written materials" includes, without limitation, all work product and contracts related to this Contract.
- B. **Access to Records and Facilities.** County and its authorized representatives shall have the right to direct access to all of Contractor's books, documents, papers and records of Contractor that are directly related to this Contract, the financial assistance provided hereunder, or any service for the purpose of making audits, examinations, excerpts,

copies and transcriptions. The foregoing access is subject to the Parties and requesting agencies strict compliance with applicable provisions of 42 CFR Part 2.

- C. Contractor shall permit County and OHA to make site visits upon reasonable notice to monitor the delivery of services under this Contract.
- D. **Retention of Records.** Contractor shall retain and keep accessible all books, documents, paper, and records and client records, that are directly related to this Contract, the financial assistance provided hereunder or any service, in accordance with OAR 166-150-0005 through 166-150-0215 (State Archivist). Unless OAR 166-150-0005 through 166-150-0215 requires a longer retention period, client records must be retained for a minimum of six (6) years from termination or expiration of this Contract. If there are unresolved audit or Contract Settlement questions at the end of the retention period, Contractor shall retain the records until the questions are resolved.
- E. Contractor agrees that services provided under this Contract by Contractor, facilities used in conjunction with such services, client's records, Contractor's policies, procedures, performance data, financial records, and other similar documents and records of Contractor, that pertain, or may pertain, to services under this Contract, shall be open for inspection by County, or its agents, at any reasonable time during business hours.

13. Confidentiality. In addition to the obligations imposed upon Contractor by **Exhibit G**, Contractor shall maintain confidentiality of information obtained pursuant to this Contract as follows:

- A. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.
- B. Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidentiality provision.
- C. Contractor shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by other terms of this Contract.
- D. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.
- E. Personally identifiable health information about applicants and Medicaid recipients will be subject to the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA").
- F. Contractor shall cooperate with County in the adoption of policies and procedures for maintaining the privacy and security of records and for conducting transactions pursuant to HIPAA requirements.
- G. This Contract may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA.
- H. If Contractor receives or transmits protected health information, Contractor and County shall enter into a Business Associate Agreement or a Confidentiality Agreement, whichever is applicable, which, if attached hereto, shall become a part of this Contract.
- I. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between County and OHA for purposes directly related to the provision of services to clients which are funded in whole or in part under this Contract. Contractor shall maintain the confidentiality of records of clients as required by applicable state and federal law, including without limitation, ORS 179-495 to 179.507. 45 CFR Part 205, 42 CFR Part 2, any administrative rule adopted by the Oregon Health Authority (OHA), implementing the foregoing laws, and any written policies made available to Contractor by County or by the OHA. Contractor shall create and maintain written policies and procedures related to the disclosure of a client's information and shall make such policies and procedures available to County and the OHA for review and inspection as reasonably requested by County or the OHA.

14. Notice. Except as otherwise expressly provided in this Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth

below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery, electronic mail, facsimile, or mailing the same, postage prepaid.

- A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- B. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- C. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage or delivered as follows:

<u>To Contractor:</u>	<u>To County:</u>
Jeremy Unger	Janice Garceau, Deputy Director
Iris Telehealth Medical Group, PA	Deschutes County Health Services
114 W. 7 th St.	2577 NE Courtney Dr.
Austin, TX 78701	Bend, Oregon 97701
Fax No.	Fax No. 541-322-7565
jeremy.unger@iristelehealth.com	Janice.garceau@deschutes.org

<u>To County – for Notices & Terminations:</u>	<u>To County – Accounts Payable:</u>
Grace Justice Evans, Contract Specialist	Accounts Payable
Deschutes County Health Services	Deschutes County Health Services
2577 NE Courtney Dr.	2577 NE Courtney Dr.
Bend, Oregon 97701	Bend, Oregon 97701
Fax No. 541-322-7565	Fax No. 541-322-7565
grace.evans@deschutes.org	HSAccountsPayable@deschutes.org

15. Termination. All or part of this Contract may be terminated by mutual consent of both Parties or by either Party at any time for convenience upon ninety (90) days' notice in writing to the other Party. The County may also terminate all or part of this Contract as specified below:

- A. This Contract shall be terminated immediately and no obligations, financial or otherwise, shall be imposed upon County if funding to the County from Federal, State, or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services. The County will give notice whenever possible.
- B. With thirty (30) days' written notice, if Federal or State regulations are modified or changed in such a way that services are no longer allowable for purchase under this Contract.
- C. Upon notice of denial, revocation, or non-renewal of any letter of approval, license, or certificate required by law or regulation to be held by the Contractor to provide a service under this Contract.
- D. With thirty (30) days' written notice, if Contractor fails to provide services, or fails to meet any performance standard as specified by the County in this Contract (or subsequent modifications to this Contract) within the time specified herein, or any extensions thereof.
- E. Upon written notice, if the Contractor fails to start services on the date specified in this Contract (or subsequent modifications to this Contract).
- F. Upon written or oral notice, if County has evidence that the Contractor has endangered or is endangering the health and safety of clients, residents, staff, or the public.
- G. Failure of the Contractor to comply with the provisions of this Contract and all applicable Federal, State and local laws and rules which may be cause for termination of this Contract. The circumstances under which this Contract may be terminated by either Party under this paragraph may involve major or minor violations. Major violations include, but are not limited to:
 - 1) Acts or omissions that jeopardize the health, safety, or security of individuals.
 - 2) Misuse of funds.
 - 3) Intentional falsification of records.

- H. In the case a failure to perform jeopardizes the safety and security of an individual the Contractor and the County shall jointly conduct an investigation to determine whether an emergency exists and what corrective action will be necessary. Such an investigation shall be completed within five (5) working days from the date the County determines that such failure exists.
- I. In those circumstances where a major violation is substantiated, continued performance may be suspended by the County immediately. In all cases involving a major violation, a written notice of intent to terminate this Contract shall be sent to the Contractor found to be in violation. Prior to termination, the Contractor shall be given a reasonable opportunity to refute the findings. If the problem is not corrected within a reasonable time as determined by County in its sole discretion, this Contract may be terminated or other remedial actions may be initiated.
- J. Minor violations usually involve less than substantial compliance with the general or special conditions of this Contract. In the event of alleged minor violations, written notice shall be given and a reasonable period shall be allowed to develop a corrective action plan. This plan shall describe activities that respond to specific violations and means by which a permanent change will be made in the procedures or practices that caused the violation. If these activities do not occur within the notice period, this Contract may be terminated. Continued substantial minor violations that threaten adequacy of services may be treated like a major violation.
- K. Termination shall be without prejudice to any obligations or liabilities of either Party accrued prior to such termination.
- L. Contractor shall make no expenditures, enter into no contracts, nor encumber funds in its possession or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County.

16. Payment on Early Termination. Upon termination pursuant to Paragraph 15, payment shall be made as follows:

- A. If Contract terminated because funding from Federal, State, or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services, the County shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Provided however, County shall not pay Contractor for any obligations or liabilities incurred by Contractor after Contractor receives written notice of termination.
- B. If this Contract is terminated due to Contractor's failure to perform services in accordance with the Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.
- C. If Contract is terminated by the Contractor due to a breach by the County, then the County shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract:
 - 1) with respect to services compensable on an hourly basis, for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred if payable according to this Contract and interest within the limits set forth under ORS 293.462, and
 - 2) with respect to deliverable-based Work, the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor.
 - 3) Subject to the limitations under paragraph 18 of this Contract.

17. Contractor's Tender upon Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless County expressly directs otherwise in such notice of termination.

- A. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had this Contract been completed.
- B. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the work.

18. Remedies. In the event of breach of this Contract the Parties shall have the following remedies:

- A. Termination under this Contract shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination.
 - 1) Contractor may not incur obligations or liabilities after Contractor receives written notice of termination.

- 2) Additionally, neither Party shall be liable for any indirect, incidental, consequential or special damages under this Contract or for any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- B. If terminated under this Contract by the County due to a breach by the Contractor, County may pursue any remedies available at law or in equity.
- 1) Such remedies may include, but are not limited to, termination of this Contract, return of all or a portion of this Contract amount, payment of interest earned on this Contract amount, and declaration of ineligibility for the receipt of future contract awards.
 - 2) Additionally, County may complete the work either by itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall be liable to the County for the amount of the reasonable excess.
- C. If amounts previously paid to Contractor exceed the amount due to Contractor under this Contract, Contractor shall repay any excess to County upon demand.
- D. Neither County nor Contractor shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Contractor, respectively; however, Contractor shall 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. For any delay in performance as a result of the events described in this subparagraph, Contractor shall be entitled to additional reasonable time for performance that shall be set forth in an amendment to this Contract.
- E. The passage of this Contract expiration date shall not extinguish or prejudice the County's or Contractor's right to enforce this Contract with respect to any default or defect in performance that has not been cured.
- F. County's remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- G. Differences between a Contractor and County, or between contractors, will be resolved when possible at appropriate management levels, followed by consultation between boards, if necessary. County's Director will have ultimate responsibility for resolution of disagreements among subcontract agencies.
- 19. Suspension.** Following reasonable notice to Contractor and attempts to resolve problems informally, County may suspend funding in whole or in part, terminate funding, or impose any other sanction for any of the following reasons:
- A. Failure of Contractor to become operational within sixty (60) days of the effective date of this Contract, with failure to provide reasons for the delay and the steps taken to initiate services. An extension to ninety (90) days may be allowed only under unusual circumstances.
 - B. Failure of Contractor to comply substantially with the requirements or statutory objectives of the services to be provided, or other provisions of State or Federal law.
 - C. Failure of the Contractor to make satisfactory progress toward the approved goals and objectives.
 - D. Failure of the Contractor to adhere to the requirements for the provision of services.
 - E. Proposing or implementing substantial changes that result in services that would not have been selected if it had to be subjected to the original review of scope of work and/or services to be provided.
- 20. Independent Contractor.** County is not, by virtue of this Contract, a partner or joint venturer with Contractor in connection with activities carried out under this Contract, and shall have no obligation with respect to Contractor's debts or any other liabilities of each and every nature. Unless Contractor is a State of Oregon governmental agency, Contractor agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.
- 21. Contractor Not an Agent of County, Department or State of Oregon.** It is agreed by and between the Parties that Contractor is not carrying out a function on behalf of the County, State of Oregon, or the United States and County. The State of Oregon and the United States do not have the right of direction or control of the manner in which Contractor delivers services under this Contract or exercise any control over the activities of the Contractor.

22. Contractor and Subcontractors. Workers Compensation insurance must be in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2) or claiming exemption by conditions outlined in Exhibit E. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with coverage B Employer's Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employers liability coverage shall not be less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

23. Delegation and Reports. Contractor shall not delegate the responsibility for providing services hereunder to any other individual or agency.

24. No Third Party Beneficiaries.

- A. County and Contractor are the only Parties to this Contract and are the only Parties entitled to enforce its terms.
- B. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

25. Constraints. Pursuant to the requirements of ORS 279B.220 through 279B.335 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

- A. Contractor shall:
 - 1) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in this Contract.
 - 2) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of this Contract.
 - 3) Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - 4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - 5) Be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, County 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.
- B. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper offices representing County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of this Contract.
- C. Contractor shall promptly, as due, make payment to any person or partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of Contractor, of all sums which Contractor agrees to pay for such services, and all monies and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or Contract for the purpose of providing or paying for such services.
- D. Contractor shall pay employees at least time and a half for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under the Fair Labor Standards Act of 1938 (29 U.S. C. 201, et seq.) from receiving overtime. Persons employed under this contract shall receive at least time and a half for work performed on the legal holidays specified in ORS 279B.020(1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one day or in excess of forty (40) hours in any one week, whichever is greater.

- E. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.
- F. Contractor shall abide by all mandatory standards and policies which relate to energy efficiency and which are contained in the State of Oregon energy conservation plan that was issued in compliance with the Energy Policy and Conservation Act (PL 94-165).
- G. Contractor shall comply with Federal rules and statutes pertaining to the Substance Abuse and Mental Health Services Administration (SAMHSA) and Social Security (formerly Title XX) Community Health Services Block Grant(s); including the Public Health Services Act, especially sections 1914 (b)(1-5), 1915 (c)(12), 1916 (b)(2) and Public Law 97-35.
- H. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that the individual is authorized to act on behalf of Contractor, the individual has authority and knowledge regarding Contractors' payment of taxes, and to the best of the individual's knowledge, Contractor is not in violation of any Oregon tax laws.

26. Insurance. Contractor shall provide insurance in accordance with Exhibit C attached hereto and incorporated by reference herein. 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 County. County shall not authorize contractors to begin work under the Contract until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall 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 Contract as permitted by the Contract provisions, or pursuing legal action to enforce the insurance requirements. In no event shall County permit Contractor to work under this Contract when the County is aware that Contractor is not in compliance with the insurance requirements.

27. Settlement of Disputes. Differences between a Contractor and County, or between contractors, will be resolved when possible at appropriate management levels, followed by consultation between boards, if necessary. The Deschutes County Health Services Director will have ultimate responsibility for resolution of disagreements among subcontract agencies.

28. Financial Audit. If requested, Contractor shall, at its sole expense, provide County with a copy of a Financial Review or Financial Audit conducted by a Certified Public Accountant within ninety (90) days following the termination of this Contract. This audit shall comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

29. Indemnity and Hold Harmless.

- A. To the fullest extent authorized by law Contractor shall defend, save, hold harmless and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of Contractor or its officers, employees, contractors, or agents under this Contract, including without limitation any claims that the work, the work product or any other tangible or intangible items delivered to County by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party.
- B. Contractor shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither contractor nor any attorney engaged by Contractor shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County's legal counsel, in a form and manner determined appropriate by the County's legal counsel, authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of the Count without the approval of the County's legal counsel.
- C. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Contractor and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Contract.

D. Contractors that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents 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 Contractor or any of the officers, agents, employees or subcontractors. It is the specific intention of the Parties that the State of Oregon shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the State of Oregon, be indemnified from and against any and all claims.

30. Drugs and Alcohol. Contractor shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful (under either state or federal law) selling, possession or use of controlled substances while performing work under this Contract.

31. Criminal Background Investigations. Contractor understands that Contractor and Contractor's employees and agents are subject to periodic criminal background investigations by County and, if such investigations disclose criminal activity not disclosed by Contractor, such non-disclosure shall constitute a material breach of this Contract and County may terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County.

32. Federal Law compliance. Contractor shall comply with the provisions of those laws referred to in Exhibit H, attached hereto. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract.

33. Non-Appropriation. In the event sufficient funds shall not be appropriated for the payment of consideration required to be paid under this Contract, and if County has no funds legally available for consideration from other sources, then County may terminate this Contract in accordance with Paragraph 15 of this Contract.

34. Attorney Fees. In the event an action, suit or proceeding, including appeal there from, is brought for breach of any of the terms of this Contract, or for any controversy arising out of this Contract, each Party shall be responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

35. Entire Contract. This Contract constitutes the entire Contract between the parties on the subject matter hereof. There are no understandings, Contracts, or representations, oral or written, not specified herein regarding this Contract.

36. Renewal. This Contract may be renewed, subject to the following conditions: (1) renewal will be based on the County approval by the Department, and (2) renewal is subject to the availability of funding.

37. Waiver.

A. County's delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

B. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

38. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

A. Any claim, action, suit or proceeding (collectively, "Claim") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

B. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

39. Severability. If any term or provision of this Contract 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 this Contract did not contain the particular term or provision held invalid.

40. Merger Clause. This Contract and the attached exhibits constitute the entire agreement between the Parties.

- A. All understandings and agreements between the Parties and representations by either Party concerning this Contract are contained in this Contract.
- B. No waiver, consent, modification or change in the terms of this Contract shall bind either Party unless in writing signed by both Parties.
- C. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

41. Identity Theft Protection. Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).

42. Representations and Warranties.

- A. **Contractor's Representations and Warranties.** Contractor represents and warrants to County that:
 - 1) Contractor has the power and authority to enter into and perform this Contract;
 - 2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - 3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor 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 Contractor's industry, trade or profession;
 - 4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
 - 5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
 - 6) Contractor's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order of any court, regulatory commission, board or other administrative agency.
- B. **Warranties Cumulative.** The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided.

43. SB 675 (2015) Representation and Covenant.

- A. Contractor represents and warrants that Contractor has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.
- B. Contractor covenants to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this Contract.
- C. Contractor acknowledges that failure by Contractor to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Contractor has executed the Contract or during the term of the Contract is and will be deemed a default for which Deschutes County may terminate the Contract and seek damages and/or other relief available under the terms of the Contract or under applicable law.

44. Nondiscrimination. Contractor must provide services to clients without regard to race, color, 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 including, but not limited to, limited English language proficiency.

45. Survival. The provisions of the following paragraphs shall survive termination or expiration of this Contract: 7 (Ownership of Work); 11 (Successors in Interest); 12 B (Access to Records); 13 (Confidentiality); 14 (Notice); 17 (Contractor's Tender upon Termination); 18 (Remedies); 24 (No Third Party Beneficiaries); 29 (Indemnity & Hold Harmless); 37 (Waiver); 38 (Governing Law); 41 (Identity Theft Protection); 42 (Representations & Warranties).

EXHIBIT A
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-970
OUTLINE OF PROGRAM AND PROGRAM DEFINITIONS

Services Outline:

The term “Contractor” shall be in reference to Iris Telehealth Medical Group, PA and/or the Licensed Medical Provider appointed by and contracted with Iris Telehealth Medical Group, PA for the provision of services.

Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations. Contractor shall provide required documentation of services in County’s Electronic Medical Record (EMR) system.

Contractor shall provide Medical Services as a Licensed Medical Practitioner (LMP) in accordance with OAR’s 309-019-0105 (62) and (68); 309-019-0140. Contractor shall perform the services described and funded by and through County’s contract with the Oregon Health Authority (“OHA”). Services shall be performed in accordance with a schedule agreed upon by both Contractor and County. Contractor shall provide Medical Services in a manner that is in accordance with Definitions, laws, and regulations. Deschutes County Health Services’ Policy entitled “Mental health and Substance Use Disorder Services and Supports Policy”, and in accordance with the Oregon Administrative Rules (OAR) “Outpatient Behavioral Health Services”, OAR 309-019-0100 through OAR 309-019-0220, which is incorporated into this Contract herein by reference or required by law to be so incorporated. Deschutes County policies may be found on the Deschutes County Intranet in the Health Services’ Department’s “Policies and Procedures”.

Definitions:

1. **Addiction Treatment, Recovery & Prevention Services**
Services for Individuals diagnosed with disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, mood disorder, etc., as defined in DSM criteria.
2. **Behavioral Health**
Mental/emotional wellbeing and/or actions that affect wellness. Behavioral health problems include substance abuse and misuse, Problem Gambling, and Mental Health disorders as well as serious psychological distress and suicide.
3. **Client or individual**
With respect to a particular Service, any person who is receiving that Service, in whole or in part, with funds provided under this Contract.
4. **Coordinated Care Organization (CCO)**
A corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization’s members. PacificSource Community Health Solutions, Inc. has been designated by the Oregon Health Authority as the CCO for the Central Oregon region.
5. **Culturally Competent**
The capacity to provide services in an effective manner that is sensitive to the culture, race, ethnicity, language and other characteristics of an individual. Such services may include, but are not limited to, use of bilingual and bicultural staff, provision of services in culturally appropriate alternative settings, and use of bicultural paraprofessionals as intermediaries with professional staff.
6. **Fraud and Abuse**
Fraud (410-120-0000) is defined as intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

Abuse (410-120-0000) means provider practices that are inconsistent with sound, fiscal, business or medical practices and result in unnecessary costs to County and/or Medicaid/Medicare, or services that aren’t medically necessary or medically appropriate.

- 7. Health Services Division or HSD
For the purpose of this Contract, the division of Oregon Health Authority (OHA) that is responsible for Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services.
- 8. Individual service record or service record or clinical record
The documentation, written or electronic, regarding an individual and resulting from entry, clinical assessment, orientation, service and support planning, services and supports provided, and service conclusion.
- 9. Medically appropriate means services and medical supplies required for prevention, diagnosis or treatment of a physical or mental health condition or injuries and which are:
 - A. Consistent with the symptoms of a health condition or treatment of a health condition;
 - B. Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;
 - C. Not solely for the convenience of an individual or a provider of the service or medical supplies; and;
 - D. The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an individual.
- 10. Measures and outcomes Tracking System or "MOTS"
The Oregon Health Authority, data system that stores data submitted by contractors and subcontractors.
- 11. Oregon Health Authority or "OHA"
The agency within the State of Oregon that is responsible for Problem Gambling, Addiction Treatment, Recovery & Prevention Services, children and adult Community Mental Health services, and maintaining custody of persons committed to the state, by courts, for care and treatment of mental illness.
- 12. Problem Gambling means prevention, treatment, maintenance and recovery Services for Individuals diagnosed with Gambling Disorder including or inclusive of any family and/or significant other impacted by the problem gambler for access to treatment. For the purposes of this Contract, Problem Gambling Services and Gambling Disorder will be used interchangeably.
- 13. Serious and Persistent Mental Illness (SPMI)
Means the current DSM diagnostic criteria for at least one of the following conditions as a primary diagnosis for an adult age eighteen (18) or older:
 - a. Schizophrenia and other psychotic disorders;
 - b. Major depressive disorder;
 - c. Bipolar disorder;
 - d. Anxiety disorders limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
 - e. Schizotypal personality disorder; or
 - f. Borderline personality disorder
- 14. Service(s)
Any one of the services or group or services as described in Exhibit B, in which costs are covered in whole or in part of this Contract.
- 15. Trauma Informed Services
Services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking Community Mental Health and Add Services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.

EXHIBIT B
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-970
STATEMENT OF WORK, PAYMENT TERMS and SCHEDULE

Contract Monitoring. County shall monitor Contractor’s delivery of services and promptly report to OHA when County identifies a deficiency in a Contractor’s delivery of a service or in a Contractor’s compliance with the Contract between Contractor and County. County shall promptly take all necessary action to remedy any identified deficiency on the part of the Contractor. County shall also monitor the fiscal performance of Contractor and shall take all lawful management and legal action necessary to pursue this responsibility. In the event of a deficiency in Contractor’s delivery of a service or in a Contractor’s compliance with the Contract between the Contractor and County, nothing shall limit or qualify any right or authority OHA has under state or federal law to take action directly against the Contractor.

1. Contractor shall perform the following work. The term “Contractor” shall be in reference to Iris Telehealth Medical Group, PA and/or the Licensed Medical Provider appointed by and contracted with Iris Telehealth Medical Group, PA for the provision of services. Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations. Contractor shall provide required documentation of services in County’s Electronic Medical Record (EMR) system. Contractor shall provide services as a Licensed Medical Provider (LMP) and document Medical Services using County’s EMR, in a manner consistent with professional and community standards of care.

- A. Contractor shall provide: Tele-psychiatric services for County clients which may include psychiatric evaluations, medication management services, orders for laboratory and other medical procedures, and client consultation or client therapy.
- B. Contractor shall use County’s EMR and accurately document each client contact including assessments, chart notes, medication/laboratory records, service conclusion summaries and service notes (unless completed by behavioral health staff at time of service).
- C. Contractor shall provide Medical Supervision. Medical Supervision means a LMP’s review and approval, at least annually, of the clinical assessment and the medical appropriateness of services and supports identified in the service plan for each client receiving services for one (1) or more continuous years.
- D. Contractor will comply with all privacy and security regulations under the Health Information Portability and Accountability Act (HIPAA).
- E. Contractor shall provide full assistance to County in order to credential the contracted Licensed Medical Provider so that County may bill and recover revenue from all legal resources for the services provided. Contractor shall provide County with copies of licenses, certificates of insurance and evidence of Continuing Medical Education (CME) credits, as applicable, prior to the provision of services.
- F. Contractor will give a minimum thirty (30) day advance notice to County of planned and/or anticipated absences. Contractor shall alert County as soon as possible in the event of unanticipated absence.
- G. Contractor shall maintain all requirements to perform Tele-psychiatric services which includes maintaining applicable insurance and licenses as a physician within the state of Oregon.
- H. Contractor shall maintain all requirements to perform services as a LMP according to OAR 309-019-0105(62) which includes maintaining license as a physician within the state of Oregon.
- I. Contractor shall screen and assess clients for tobacco use, and offer tobacco cessation resources to individuals choosing to quit.

2. County Services. County shall provide Contractor, at County's expense, with material and services described as follows:

- A. County shall provide EHR, training and technical support where Contract will record data as described in Paragraph 1 of this Exhibit for each specific client that Contractor provides services for.

- 3. **Consideration.** County shall provide payments to Contractor once Contractor's invoice is approved.
 - A. County will pay Contractor on a fee-for-service basis at \$137 per hour for services provided by a licensed Psychiatric Nurse Practitioner. Contractor shall provide services as requested by County not to exceed eighty (80) hours per week.
 - B. County will pay Contractor for Psychiatric Nurse Practitioner's time, \$137 per hour for new hire orientation and EHR training. Contractor shall confirm with County's Program Manager, by e-mail, the orientation time and hours of EHR training prior to invoicing County.
 - C. Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports when due, or fail to perform or document the performance of contracted services; County may immediately withhold payments under this Contract or reject part or all of Contractor's invoice for payment.
 - D. If the Oregon Health Authority (OHA) disallows or requests repayment for any funds paid under this Contract due to Contractor's acts or omissions, Contractor shall make payment to County of the amount OHA disallows or requests repayment.
 - E. In the event that OHA determines that County or Contractor is responsible for the repayment of any funds owed to OHA by Contractor, Contractor agrees to make such payment within ten (10) days of notification by County or OHA of said determination by OHA.
 - F. Upon County Department Director or Behavioral Health Deputy Director's written approval, provided in a separate email or a Memo with an original signature, Contractor shall be entitled to reimbursement for expenses as set forth in Exhibit F. If reimbursement for expenses is approved, supporting documentation such as detailed, itemized receipts must be included with Contractor's reimbursement request. Reimbursement requests are subject to County's approval.

4. **The maximum compensation.**

- A. The maximum compensation under this Contract is **\$306,000**.
- B. Contractor shall not submit invoices for, and County shall not pay for any invoice in excess of the maximum compensation amount set forth above.
 - 1) County may be required to amend maximum compensation through amendment of this Contract. If this maximum compensation amount is decreased or increased by amendment of this Contract, the amendment shall be fully effective before Contractor performs work subject to the amendment.
 - 2) Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports, itemized receipts or documentation as outlined in this Contract, or fail to perform or document the performance of contracted Services; County shall immediately withhold payments under this Contract or reject part or the Contractor's entire invoice for payment.
 - 3) In the event that a statutorily required license or insurance is suspended or not extended, County's obligation to provide reimbursement for services rendered without the necessary license or insurance will cease on the date of expiration or suspension of license and/or insurance.

5. **Schedule of Performance or Delivery.**

- A. County's obligation to pay depends upon Contractor's delivery or performance in accordance with this Exhibit B.
- B. County will only pay for completed work that conforms to the terms of the Contract.

6. **Renewal.** This Contract may be renewed subject to availability of funding and County approval.

EXHIBIT C
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-970
INSURANCE

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this Contract. Policies written on a "claims made" basis must be approved and authorized by Deschutes County.

Workers Compensation insurance must be in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2) or claiming exemption by conditions outlined in Exhibit E.

Professional Liability insurance with an occurrence combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
<input type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input checked="" type="checkbox"/> \$2,500,000	<input checked="" type="checkbox"/> \$7,500,000

Professional Liability insurance covers damages caused by error, omission, or any negligent acts related to services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after this Contract is completed.

Required by County Not required by County (one box must be checked)

Commercial General Liability insurance with a combined single limit of not less than:

<u>Per Single Claimant and Incident</u>	<u>All Claimants Arising from Single Incident</u>
<input type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input checked="" type="checkbox"/> \$3,000,000	<input checked="" type="checkbox"/> \$5,000,000

Commercial General Liability insurance includes covering bodily injury, death, and property damage in a form and with coverages satisfactory to County, and not less than \$1,000,000. This insurance shall include personal injury liability, products and completed operations.

The insurance coverage provided for herein must be endorsed as primary and non-contributory to any insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that Contractor shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action.

Required by County Not required by County (One box must be checked)

Automobile Liability insurance with a combined single limit of not less than:

Per Occurrence

- \$1,000,000
- \$2,000,000
- \$3,000,000

Automobile Liability insurance coverage for all owned, non-owned and hired vehicles. This coverage may be written in combination with Commercial General Liability Insurance (with separate limits for Commercial General Liability" and "Automobile Liability").

Required by County Not required by County (one box must be checked)

Additional Insured. The Commercial General Liability insurance and Automobile Liability insurance must include the Deschutes County, the State of Oregon, their officers, employees, volunteers and agents as Additional insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. Contractor or Contractor's insurer must provide written notice to County at least thirty (30) calendar days before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

Certificate of Insurance Required. Contractor shall furnish a current Certificate of Insurance to the County for all required insurance before Contractor performs under the Contract. The certificate(s) or an attached endorsement must specify: i) all entities and Individuals who are endorsed on the policy as Additional Insured; and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

Tail Coverage. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, 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 twenty-four (24) months following the later of : (i) Contractor's completion and County 's acceptance of all Services required under this Contract or, (ii) the expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing twenty-four (24) month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then Contractor may request and OHA may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OHA approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

Workers Compensation. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with coverage B Employer's Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employers liability coverage shall not be less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

Signature: *Sarah Key*

Email: sarah.key@deschutes.org


Title: Loss Prevention Coordinator

Company: Deschutes County Risk Management

EXHIBIT D
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-970
CERTIFICATION STATEMENT FOR CORPORATION
OR INDEPENDENT CONTRACTOR

NOTE: Contractor Shall Complete A or B in addition to C below:

A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.

I certify under penalty of perjury that Contractor is a [check one]:
 Corporation Limited Liability Company Partnership authorized to do business in the State of Oregon.


B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.

Contractor certifies under penalty of perjury that the following statements are true:

- 1. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), **and**
- 2. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business registered with the State of Oregon, **and**
- 3. All of the statements checked below are true.

NOTE: Check all that apply. You shall check at least three (3) - to establish that you are an Independent Contractor.

- ___ A. The labor or services I perform are primarily carried out at a location that is separate from my residence or primarily carried out in a specific portion of my residence that is set aside as the location of the business.
- ___ B. I bear the risk of loss related to the business or provision of services as shown by factors such as: (a) fixed-price agreements; (b) correcting defective work; (c) warranties over the services or (d) indemnification agreements, liability insurance, performance bonds or professional liability insurance.
- ___ C. I have made significant investment in the business through means such as: (a) purchasing necessary tools or equipment; (b) paying for the premises or facilities where services are provided; or (c) paying for licenses, certificates or specialized training.
- ___ D. I have the authority to hire other persons to provide or to assist in providing the services and if necessary to fire such persons.
- ___ E. Each year I perform labor or services for at least two different persons or entities or I routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

C. Representation and Warranties.

Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:

- 1. Contractor has the power and authority to enter into and perform this contract;
- 2. This contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- 3. The services under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
- 4. Contractor shall, at all times during the term of this contract, be qualified, professionally competent, and duly licensed to perform the services.
- 5. To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4),
- 6. Contractor understands that Contractor is responsible for any federal or state taxes applicable to any consideration and payments paid to Contractor under this contract; and
- 7. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.



EXHIBIT E
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-970
WORKERS' COMPENSATION EXEMPTION CERTIFICATION

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (*check the appropriate box*):

- NOT APPLICABLE**
 - Contractor is providing Workers' Compensation certificate.
- SOLE PROPRIETOR**
 - Contractor is a sole proprietor, and
 - Contractor has no employees, and
 - Contractor shall not hire employees to perform this contract.
- CORPORATION - FOR PROFIT**
 - Contractor's business is incorporated, and
 - All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
 - The officers and directors shall perform all work. Contractor shall not hire other employees to perform this contract.
- CORPORATION - NONPROFIT**
 - Contractor's business is incorporated as a nonprofit corporation, and
 - Contractor has no employees; all work is performed by volunteers, and
 - Contractor shall not hire employees to perform this contract.
- PARTNERSHIP**
 - Contractor is a partnership, and
 - Contractor has no employees, and
 - All work shall be performed by the partners; Contractor shall not hire employees to perform this contract, and
 - Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.
- LIMITED LIABILITY COMPANY**
 - Contractor is a limited liability company, and
 - Contractor has no employees, and
 - All work shall be performed by the members; Contractor shall not hire employees to perform this contract, and
 - If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

*NOTE: Under OAR 436-050-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation or, if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

**NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a contractor who shall perform construction work.

Signature: 

Email: tom.milam@iristelehealth.com

Title: CMO & President

Company: Iris Telehealth, Inc

EXHIBIT F
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-970
EXPENSE REIMBURSEMENT

It is the policy of the County that travel shall be allowed only when the travel is essential to Contractor's performance and delivery of services outlined in Exhibit B of this Contract. If Contractor is approved to be reimbursed for expenses outlined below, it will be stipulated in Exhibit B of this Contract in the paragraph entitled "Consideration".

Contractor shall be entitled to reimbursement for expenses as set forth in this Exhibit F:

- YES
- NO
- Contingent upon Department Director or Deputy Director's approval as outlined in Exhibit B, Paragraph 4 C.**

- A. General Information: All travel shall be conducted in the most efficient and cost effective manner resulting in the best value to the County.
 - County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County.
 - County may approve a form other than the County's Expense Reimbursement Form for Contractor to submit an itemized description of travel expenses for payment.
 - Personal expenses shall not be authorized at any time.
 - Unless otherwise stipulated, all expenses are included in the total maximum contract amount.
 - Travel expenses shall be reimbursed only in accordance with rates approved by the County and only when the reimbursement of expenses is specifically provided for in Exhibit B of this Contract.
 - The current approved rates for reimbursement of travel expenses are set forth by the United States General Services Administration ("GSA") and are subject to change accordingly.
 - County shall not reimburse for any expenses related to alcohol consumption or entertainment.
 - Charge slips for gross amounts are not acceptable.
- B. Expense Reporting: Contractors must submit expense reports timely and accurately for all expense reimbursements. Such reports must be submitted within sixty (60) days from the date incurred. Untimely expenses may not be reimbursed.
- C. Documentation Requirements; Contractors are required to accurately and completely:
 - Include necessary backup data and supporting receipts (see "Receipts" section below).
 - Complete either County's Expense Reimbursement Form (Contact Deschutes County Health Services Contract Specialist for the most current version of the County form) or another form agreeable to both Contractor and County, for all expenses incurred, regardless of method of payment.
- D. Receipts: The following are required:
 - Contractor must submit **itemized** receipts.
 - Lodging receipts must be a detailed hotel bill.
 - An air travel receipt should be the passenger copy of the ticket and/or itinerary.
 - Rental vehicle receipt must be the traveler's copy.
 - Original amounts and dates must not be altered. If the original information is incorrect, the discrepancy must be explained.
 - Contractors that have been approved for reimbursement for cell phone expenses must submit the detail summary page for reimbursement.
- E. Exceptions: Exceptions from, or deviations to this Exhibit require County's Department Director's prior written approval.
- F. Per Diem. Per Diem covers meals, lodging, and incidentals. Mileage allowances cover fuel, and auto operating expenses of a personal vehicle. Per diem payments may never exceed the IRS/U.S. Government approved per diem rates.

- G. Air Travel Policy: Contractors are required to:
 - Accept the lowest logical airfare consistent with business needs. However, Contractor may elect to fly non-stop (over a lower-priced, connecting flight) provided the additional cost is less than \$100 per direction, or if the connection would add more than two (2) hours of travel time each way.
 - Use economy/coach class for all domestic flights. However, upgrades are acceptable as long as there is no additional cost to the County.
 - Flight insurance premiums are not reimbursable.

- H. Vehicle Rental Policy: When it is necessary to rent a vehicle, the cost of the rental plus tolls, fuel, and parking is reimbursable. The cost of full-size (or smaller) cars will be reimbursed. Upgrade costs for GPS are not reimbursable. If a personal vehicle is used, reimbursement shall be at the GSA's stated mileage rate. Contractors must provide a copy of Automobile Liability Insurance to be reimbursed for mileage.
 - Contractor shall be entitled to mileage for travel in a private automobile while Contractor is acting within the course and scope of Contractor's duties under this Contract and driving over the most direct and usually traveled route to and from Bend, Oregon.
 - To qualify for mileage reimbursement, Contractor shall hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by this contract.
 - No mileage reimbursement shall be paid for the use of motorcycles or mopeds.

- I. Lodging Policy: The daily cost of lodging is a reimbursable expense when away from the normal work place on County business. Such cost includes only the single occupancy room rate and applicable taxes. Charges for hotel amenities are not a reimbursable expense.
 - County shall reimburse Contractor for Contractor's actual cost of lodging necessary to provide service to the County and shall not exceed the maximum lodge set by the GSA for Bend, Oregon.
 - Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.

- J. Meals: Contractor may be reimbursed for the reasonable and actual cost of meals (including tips) subject to the GSA maximum per diem meal allowance.
 - Any reimbursement for meals shall be for actual cost of meals incurred by Contractor while acting within the course and scope of Contractor's duties under this Contract.
 - For purposes of calculating individual meals where the Contractor is entitled only to a partial day reimbursement, the following maximum allocation of the meal expenses applies:
 - a) Breakfast, \$14;
 - b) Lunch, \$16;
 - c) Dinner, \$29.
 - Except in the event of necessary overnight travel as provided below, partial day meal expenses shall be reimbursed as follows and only while Contractor is acting within the course and scope of Contractor's duties under this contract:
 - a) Breakfast expenses are reimbursable if Contractor is required to travel more than two (2) hours: before the start Contractor's regular workday (i.e. 8:00 a.m.).
 - b) Lunch expenses are reimbursable only if Contractor is required to travel overnight and begins the journey before 11:00 am or ends the journey after 11:00 a.m.
 - c) Dinner expenses are reimbursable only if Contractor is required to travel more than two (2) hours after Contractor's regular workday (i.e. 5:00 p.m.).
 - Breakfast and dinner expenses are reimbursable during Contractor's necessary overnight travel while acting within the course and scope of Contractor's duties under this Contract and shall not exceed those set by the GSA and are subject to change accordingly.

Exhibit G
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-970
CONFIDENTIALITY AGREEMENT

1. INTRODUCTION

This Confidentiality (the "Agreement") is entered into as of December 1, 2021 by and between Iris Telehealth Medical Group, PA, ("Contractor") and Deschutes County, a political subdivision of the State of Oregon, acting by and through its Health Care Component, Deschutes County Health Services ("Covered Entity").

WHEREAS, in connection with the performance of the Services, Contractor may receive from the County or otherwise have access to certain information that is required to be kept confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as may be amended from time to time (collectively, "HIPAA"); and

WHEREAS, as a part of the American Recovery and Reinvestment Act, the federal Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") was signed into law, imposing certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of Protected Health Information (PHI) and Electronic Protected Health Information (E PHI), including extending certain HIPAA and HITECH Act requirements directly to business associates; and

WHEREAS, the HITECH Act requires that certain of its provisions be included in contractor agreements, and that certain requirements of the Privacy Standards be imposed contractually upon Covered Entities as well as contractors;

Therefore, in consideration of the foregoing premises and the mutual covenants and conditions set forth below and in the agreement between Contractor and County for Contractor's provision of services, intending to be legally bound, agree as follows.

2. DEFINITIONS

- A. *Disclosure* means the release, transfer, provision of access to, or divulging in any other manner, of PHI, outside Contractor's organization, i.e., to anyone other than its employees who have a need to know or have access to the PHI.
- B. *Electronic Protected Health Information* or "*E PHI*" means protected health information (as defined below) that is transmitted, stored, or maintained by use of any electronic media. For purposes of this definition, "electronic media" includes, but is not limited to, memory devices in computers (hard drives); removable/transportable digital memory media (such as magnetic tape or disk, removable drive, optical disk, or digital memory card); the internet; the extranet; leased lines; dial-up lines; private networks; or e-mail.
- C. *Health Care Component* means a Deschutes County department, office or division, that regularly provides healthcare services or that regularly creates, accesses, uses or maintains PHI, and that Deschutes County has designated as a HIPAA-covered component of the County.
- D. *Protected Health Information* or "*PHI*" means information transmitted by or maintained in any form or medium, including demographic information collected from an individual, that (a) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (b) individually identifies the individual or, with respect to which, there is a reasonable basis for believing that the information can be used to identify the individual; and (c) is received by Contractor from or on behalf of County, or is created by Contractor, or is made accessible to Contractor by County.
- E. *Secretary* means the Secretary of the United States Department of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.
- F. *Services* means the LMP Services provided by Contractor and identified in the Personal Services Contract to which this Exhibit G is attached.

G. *Use* (whether capitalized or not and including the other forms of the word) means, with respect to PHI, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within Contractor's organization.

3. **AGREEMENT.** Contractor shall:

- A. not use PHI except as necessary to provide the Services.
- B. not disclose PHI to any third party without County's prior written consent.
- C. not use or disclose PHI except as required by law.
- D. implement appropriate safeguards to prevent unauthorized use or disclosure of PHI.
- E. comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of EPHI other than as provided for by this Agreement.
- F. mitigate, as much as possible, any harmful effect of which it is aware of any use or disclosure of PHI in violation of this Agreement.
- G. promptly report to County any use or disclosure of PHI not permitted by this Agreement of which Contractor becomes aware.
- H. make its internal practices, books, and records (including the pertinent provisions of this Agreement) relating to the use and disclosure of PHI, available to the Secretary for the purposes of determining County's compliance with HIPAA.
- I. return to County, or destroy, any PHI of County still in Contractor's possession upon conclusion or termination of the Services.
- J. ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Contractor agree to the same restrictions, conditions, and requirements that apply to the Contractor with respect to security and privacy of such information.
- K. make PHI available to County as necessary to satisfy County's obligation with respect to individuals' requests for copies of their PHI, as well as make available PHI for amendments (and incorporate any amendments, if required) and accountings.
- L. make any amendment(s) to PHI in a designated record set as directed or agreed to by the County pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy County's obligations under 45 CFR 164.526.
- M. to the extent the Contractor is to carry out one or more of County's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the County in the performance of such obligation(s).
- N. If Contractor (a) becomes legally compelled by law, process, or order of any court or governmental agency to disclose PHI, or (b) receives a request from the Secretary to inspect Contractor's books and records relating to the use and disclosure of PHI, Contractor, to the extent it is not legally prohibited from so doing, shall promptly notify County and cooperate with County in connection with any reasonable and appropriate action County deems necessary with respect to such PHI.
- O. If any part of Contractor's performance of business functions involves creating, receiving, storing, maintaining, or transmitting EPHI:
 - i. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, stores, maintains, or transmits on behalf of County, in accordance with the requirements of 45 CFR Part 160 and Part 164, Subparts A and C; and
 - ii. report to County any security incident relating to the EPHI that Contractor maintains for County.

4. HIPAA DATA BREACH NOTIFICATION AND MITIGATION

- A. Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402 (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section, governs the determination of the date of a HIPAA Breach. Contractor will, following the discovery of a HIPAA Breach, notify County immediately and in no event later than seven business days after Contractor discovers such HIPAA Breach, unless Contractor is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations.
- B. For purposes of reporting a HIPAA Breach to County, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Contractor or, by exercising reasonable diligence, would have been known to the Contractor. Contractor will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Contractor. No later than seven (7) business days following a HIPAA Breach, Contractor shall provide County with sufficient information to permit County to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400, *et seq.*
- C. Specifically, if the following information is known to (or can be reasonably obtained by) Contractor, Contractor will provide County with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach; (ii) a brief description of the circumstances of the HIPAA Breach, including its date and the date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach; (iv) a brief description of what the Contractor has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) a liaison (with contact information) so that Contractor may conduct further investigation concerning the HIPAA Breach. Following a HIPAA Breach, Contractor will have a continuing duty to inform County of new information learned by Contractor regarding the HIPAA Breach, including but not limited to the information described herein.
- D. Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements above, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, Contractor believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information.
- E. Breach Indemnification. Contractor shall indemnify, defend and hold County harmless from and against any and all actual losses, liabilities, damages, costs and expenses (collectively, “Information Disclosure Claims”) arising directly from (i) the use or disclosure of Individually Identifiable Information (including PHI) in violation of the terms of this Agreement or applicable law, and (ii) any HIPAA Breach of unsecured PHI and/or any State Breach of Individually Identifiable Information. Contractor will assume the defense of any Information Disclosure Claim; County may participate, at its expense, in the defense of such Information Disclosure Claim. Contractor shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of County.


5. OTHER PROVISIONS

- A. A breach under this Agreement shall be deemed to be a material default in Contractor’s agreement with Deschutes County to provide Services.
- B. Contractor authorizes termination of this Agreement by County if County determines Contractor has violated a material term of this Agreement.
- C. Upon conclusion or termination of the Services, Contractor shall promptly return or destroy all PHI that Contractor maintains in any form and retain no copies of such information. If the return or destruction of such PHI is not feasible, the obligations under this Agreement shall continue in effect for so long as Contractor retains such information, and any further use or disclosure of such PHI shall be limited to those purposes that make the return or destruction of the PHI infeasible.
- D. To the extent there are any inconsistencies between this Agreement and the terms of any other agreement, either written or oral, between County and Contractor, the terms of this Agreement shall prevail.
- E. Contact Information in the event of HIPAA Data Breach or Termination.

- 1) 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, to Covered Entity or Business Associate at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery, electronic mail, facsimile, or mailing the same, postage prepaid.
- 2) Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 3) Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- 4). Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

<u>To Covered Entity:</u>	<u>Copy to Privacy Officer</u>	<u>To Contractor:</u>
Janice Garceau, Deputy Director	Kayla Sells, Privacy Officer	Iris Telehealth Medical Group, PA
Deschutes County Health Services	Deschutes County Health Services	114 W. 7 th St.
2577 NE Courtney Dr.	2577 NE Courtney Dr.	Austin, TX 78701
Bend, Oregon 97701	Bend, Oregon 97701	Attn: Jeremy Unger
Fax No. 541-322-7565	Fax No. 541-322-7565	
janice.garceau@deschutes.org	kayla.sells@deschutes.org	jeremy.unger@iristelehealth.com

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, either as individuals, or by their officers, thereunto duly authorized.

Signature: 
Janice Garceau (Dec 27, 2021 09:23 PST)
Email: janice.garceau@deschutes.org
Title: Behavioral Health Director
Company: Deschutes County Health Services

Signature: 
Email: tom.milam@iristelehealth.com
Title: CMO & President
Company: Iris Telehealth, Inc

**Exhibit H
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-970**

**Compliance with provisions, requirements of funding source and
FEDERAL AND STATE LAWS, STATUTES, RULES, REGULATIONS, EXECUTIVE ORDERS AND POLICIES**

Contractor shall comply with the following federal requirements herein when federal funding is being used and to the extent that the requirements are applicable to the agreement for services determined and agreed to by and between Contractor and County. For the purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

- 1. Miscellaneous Federal Provisions.** Contractor shall comply with all federal laws, regulations, and executive orders applicable to the Contract or to the delivery of Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. 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. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
- 4. Energy Efficiency.** Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
- 5. Truth in Lobbying.** By signing this Contract, the Contractor certifies under penalty of perjury that the following statements are true to the best of the Contractor’s knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

- d. This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e. No part of any federal funds paid to Contractor under this Contract shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f. No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

6. Resource Conservation and Recovery. Contractor shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

7. Audits. Contractor shall comply, with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds including, but not limited to, if a sub-recipient (as defined in 45 CFR 75.2) or contractor expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, a sub-recipient or contractor shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If a sub-recipient or contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to OHA within thirty (30) calendar days of completion. If a sub-recipient or contractor expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.

8. Debarment and Suspension. County shall not permit any person or entity to be a contractor if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or Non-procurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180). This list contains names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. Drug-Free Workplace. Contractor shall comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor’s workplace or while

providing Services to OHA clients. Contractor’s notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: the dangers of drug abuse in the workplace, County’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten (10) calendar days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vii) above; (ix) Neither County, Contractor nor any of County’s or Contractor’s employees, officers, agents may provide any Service required under this Contract while under the influence of drugs. For purposes of this provision, “under the influence” means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or Contractor’s employee, officer, agent has used a controlled substance, prescription or non-prescription medication that impairs the County or Contractor, County or Contractor’s employees, officers, agents performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this section may result in termination of this Contract.

10. Pro-Children Act. Contractor shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).

11. Medicaid Services. To the extent Contractor provides any service in which costs are paid in whole or in part by Medicaid, Contractor shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396 a(a)(27); 42 CFR Part 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Contractor shall acknowledge Contractor’s understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Contract and any other Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).

12. ADA. Contractor shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) 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 delivery of Services.

13. Agency-Based Voter Registration. If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

14. Disclosure.

- a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.
- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person’s involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- c. OHA reserves the right to take such action required by law, or where OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.

15. Special Federal Requirements Applicable to Addiction Treatment, Recovery & Prevention Services for Counties receiving Substance Abuse Prevention and Treatment (SAPT) Block Grant funds.

- a. Order for Admissions:
 - (1) Pregnant women who inject drugs;
 - (2) Pregnant substance abusers;
 - (3) Other Individuals who inject drugs; and,
 - (4) All others.
- b. Women’s or Parent’s Services. If Contractor provides A&D 61 and A&D 62 Services, Contractor must:
 - (1) Treat the family as a unit and admit both women or parent and their children if appropriate.
 - (2) Provide or arrange for the following services to pregnant women and women with dependent children:
 - (a) Primary medical care, including referral for prenatal care;
 - (b) Pediatric care, including immunizations, for their children;
 - (c) Gender-specific treatment and other therapeutic interventions, e.g. sexual and physical abuse counseling, parenting training, and child care.
 - (d) Therapeutic interventions for children in custody of women or parent in treatment, which address, but are not limited to, the children’s developmental needs and issues of abuse and neglect; and
 - (e) Appropriate case management services and transportation to ensure that women or parents and their children have access to the services in (a) through (d) above.
- c. Pregnant Women. If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:

- (1) Within the priority categories, if any, set forth in a particular Service Description, give preference in admission to pregnant women in need of treatment who seek, or are referred for, and would benefit from, such services within 48 hours;
- (2) If Contractor has insufficient capacity to provide treatment services to a pregnant woman, Contractor must refer the women to another provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within 48 hours, including a referral for prenatal care; and,
- (3) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.

d. Intravenous Drug Abusers. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client Finding Outreach Services, Contractor must:

- (1) Within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
- (2) Programs that receive funding under the grant and that treat Individuals for intravenous substance abuse, upon reaching 90 percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within 7calendar days.
- (3) If Contractor receives a request for admission to treatment from an intravenous drug abuser, Contractor must, unless it succeeds in referring the Individual to another provider with treatment capacity, admit the Individual to treatment not later than:
 - (a) 14 calendar days after the request for admission to Contractor is made; or
 - (b) 120 calendar days after the date of such request if no provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than 48 hours after such request.
 - (c) If Contractor has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that interim services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider from the county of the Individual's residence that is referring the Individual to residential services will make available counseling and education about human immunodeficiency virus(HIV) and tuberculosis(TB), risk of sharing needles, risks of transmission to sexual partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment services, if necessary, within 48 hours.

e. Infectious Diseases. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client Finding Outreach Services, Contractor must:

- (1) Complete a risk assessment for infectious disease including Human Immunodeficiency Virus (HIV) and tuberculosis, as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from County; and
- (2) Routinely make tuberculosis services available to each Individual receiving Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if Contractor denies Individual admission on the basis of lack of capacity, refer the Individual to another provider of tuberculosis Services.
- (3) For the purposes of (2) above, "tuberculosis services" means:
 - (a) Counseling the Individual with respect to tuberculosis;
 - (b) Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the individual; and
 - (c) Appropriate treatment services.

- f. OHA Referrals. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client finding Outreach Services, Contractor must, within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery & Prevention and Problem Gambling Service delivery to persons referred by OHA.
- g. Barriers to Treatment. Where there is a barrier to delivery of any Addiction Treatment, Recovery & Prevention and Problem Gambling Services due to culture, gender, language, illiteracy, or disability, Contractor shall develop support services available to address or overcome the barrier, including:
 - (1) Providing, if needed, hearing impaired or foreign language interpreters.
 - (2) Providing translation of written materials to appropriate language or method of communication.
 - (3) Providing devices that assist in minimizing the impact of the barrier.
 - (4) Not charging clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.
- h. Misrepresentation. Contractor shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made of OHA.
- i. Oregon Residency. Addiction Treatment, Recovery & Prevention, and Problem Gambling Services funded through this Contract, may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child's residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.
- j. Tobacco Use. If Contractor has Addiction Treatment, Recovery & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, Contractor must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered on the grounds of such facilities.
- k. Client Authorization. Contractor must comply with 42 CFR Part 2 when delivering Addiction Treatment, Recovery & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. Contractor must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with respect to delivery of an Addiction Treatment, Recovery & Prevention Service to that Individual.

16. Special Federal Requirements Applicable To Addiction Treatment, Recovery, & Prevention Services for Counties Receiving Temporary Assistance for Needy Families (TANF) Grant Funds.

Funding requirements. TANF may only be used for families receiving TANF, and for families at risk of receiving TANF, and for the purpose of providing housing services (room and board) for Individuals who are dependent children ages 18 years old or younger whose parent is in adult addiction residential treatment, so that the children may reside with their parent in the same treatment facility. Families at-risk of receiving TANF must:

- a. Include a dependent child age 18 years of age or under, who is living with a parent or caretaker relative. "Caretaker relative" means a blood relative of the child; stepmother, stepfather, stepbrother, or stepsister; or an individual who has legally adopted the child.
- b. Be an Oregon resident.
- c. Have income at or below 250% of the Federal Poverty Level.

Use of TANF block grant funds and state expenditures counted towards TANF MOE must meet the requirements of 45 CFR 263. Only non-medical Services may be provided with TANF Block Grant funds.

17. Community Mental Health Block Grant. All funds, if any, awarded under this Contract for Community Mental Health Services are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the

Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 et. seq., and Contractor shall comply with those restrictions.

18. Substance Abuse Prevention and Treatment. To the extent Contractor provides any Service whose costs are paid in whole or in part by the Substance Abuse, Prevention, and Treatment Block Grant, Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent Contractor provides any substance abuse prevention or treatment services, Contractor shall comply with the confidentiality requirements of 42 CFR Part 2. County may not use funds received under applicable agreement with Oregon Health Authority for inherently religious activities, as described in 45 CFR Part 87.

19. Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200. All required data elements in accordance with 45 CFR 75.352 are available at: <http://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.

20. Super Circular Requirements. 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:

- a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
- b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
- c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Recipient, and Recipient shall also include these contract provisions in its contracts with non-Federal entities.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: 01/12/2022

SUBJECT: Consideration of Resolution No. 2022-003 Increasing 0.5 Limited Duration FTE within the District Attorney's Office and the 2021-2022 Deschutes County Budget.

RECOMMENDED MOTION:

Move Approval of Resolution No. 2022-003 Increasing 0.5 Limited Duration FTE within the District Attorney's Office and the 2021-2022 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

On 12/20/2021 the BOCC considered a request from the Deschutes County District Attorney's Office to increase 0.5 limited duration FTE in support of the Justice Reinvestment grant program for the duration of the fiscal year 2021-2022.

BUDGET IMPACTS:

This position is covered by sufficient budgetary savings in the District Attorney's Office Fund.

ATTENDANCE:

Betsy Tucker, Senior Budget Analyst, Finance.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Increasing *
FTE within the 2021-2022 * RESOLUTION NO. 2022-003
Deschutes County Budget *

WHEREAS, the Deschutes County District Attorney’s Office presented to the Board of County Commissioners on 12/20/2021, with regards to adding 0.5 FTE in support of the Justice Reinvestment grant program, and

WHEREAS, Deschutes County Policy HR-1 requires that a 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 added:

Job Class	Type	Duration if Limited Duration	FTE
Deputy District Attorney	Limited Duration	6/30/2022	0.50
Total FTE			0.50

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 January, 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: 01/12/2022

SUBJECT: Consideration of Resolution No. 2022-004 Increasing 0.5 Regular FTE within Health Services and the 2021-2022 Deschutes County Budget.

RECOMMENDED MOTION:

Move Approval of Resolution No. 2022-004 Increasing 0.5 Regular FTE within Health Services and the 2021-2022 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

On 12/20/2021 the BOCC considered a request from Deschutes County Health Services to increase 0.5 regular FTE in support of the Health Services Clinical Services Program for the duration of the fiscal year 2021-2022.

BUDGET IMPACTS:

This position is funded by grant revenue and current-year budgetary savings in the Health Services program.

ATTENDANCE:

Betsy Tucker, Senior Budget Analyst, Finance

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Increasing *
FTE within the 2021-2022 * RESOLUTION NO. 2022-004
Deschutes County Budget *

WHEREAS, Deschutes County Health Services presented to the Board of County Commissioners on 12/20/2021, with regards to adding 0.5 FTE in support of the Reproductive Health Clinics program, and

WHEREAS, Deschutes County Policy HR-1 requires that a 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 added:

Job Class	Type	Duration	FTE
Nurse Practioner (position #2626)	Regular Duration		0.50
Total FTE			0.50

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 January, 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: January 12, 2022

SUBJECT: SunWest Builders Contract for remodel of the Facilities/IT Warehouse

RECOMMENDED MOTION:

Move approval of County Administrator signature of not-to-exceed contract in the amount of \$289,397 with SunWest Builders for remodel of the Facilities/IT Warehouse.

BACKGROUND AND POLICY IMPLICATIONS:

In October of 2019, the Facilities Department conducted a competitive procurement through an informal process for remodel of the Facilities and Property Management portion of the Facilities/IT Warehouse. The project was delayed due to a discrepancy between City of Bend records and County Facilities Department records which resulted in an assessment of approximately \$60,000 in City of Bend System Development Charges (SDC). After a prolonged appeal, the issue was resolved through the discovery of documents in the City's archives which corroborated the County's position. Associated charges have been reduced to approximately \$6,000 allowing the project to proceed after a significant delay.

The delay did result in increased material and labor costs which are captured in the revised cost proposal from SunWest Builders. By expanding into open warehouse space, the scope of work will result in a net gain of (3) offices, custodial staff space, shared Property Management/Facilities conference room, larger office copy, storage, and circulation areas, large structural mezzanine storage for both Archives and Facilities, and increased office space for Property Management. Additional remodel work is being performed and managed by Facilities Department staff which will add (3) restrooms to meet current code requirements and to better meet the needs of all departments in the building: Information Technology, Property Management, Facilities Department, and Clerk's Office archives.

BUDGET IMPACTS:

If approved, the County will enter into a not-to-exceed Time & Materials contract with SunWest Builders of Redmond, Oregon for \$289,398. The project will span FY 2022 and FY 2023 with funds currently allocated in the General County Projects Fund 070 for FY 2022.

ATTENDANCE:

Lee Randall and Josh Clawson

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: January 12, 2022

Department: Facilities

Contractor/Supplier/Consultant Name: SunWest Builders

Contractor Contact: Adam Bowles **Contractor Phone #:** 541-548-7341

Type of Document: Services Agreement: not-to-exceed contract with savings returned to the County

Goods and/or Services: Labor and materials for remodel construction

Background & History:

In October of 2019 the Facilities Department conducted a competitive procurement through an informal process for remodel of the Facilities and Property Management portion of the Facilities/IT Warehouse. The project was delayed due to a discrepancy between City of Bend records and County Facilities Department records which resulted in an assessment of approximately \$60,000 in City of Bend System Development Charges (SDC). After a prolonged appeal, the issue was resolved through the discovery of documents in the City's archives which corroborated the County's position. Associated charges have been reduced to approximately \$6,000 allowing the project to proceed after a significant delay.

The delay did result in increased material and labor costs which are captured in the revised cost proposal from SunWest Builders. The scope of work will result in a net gain of (3) offices, custodial staff space, shared Property Management/Facilities conference room, improved copy and office storage areas, mezzanine storage for both Archives and Facilities, and increased office space for Property Management. Additional remodel work is being performed and managed by Facilities Department staff which will add (3) restrooms to meet current code requirements and better meet the needs of all departments in the building: Information Technology, Property Management, Facilities Department, and Clerk's Office archives.

Agreement Starting Date: January 17, 2022 **Ending Date:** December 31, 2022

Annual Value or Total Payment: \$289,398

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

Special conditions attached to this grant: N/A

Deadlines for reporting to the grantor: N/A

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: N/A

Contact information for the person responsible for grant compliance: N/A

Departmental Contact and Title: Lee Randall, Director **Phone #:**541-617-4711

Department Director Approval: _____
Signature Date

Distribution of Document: Please return all documents to the Facilities Department.

Official Review:

County Signature Required (check one):

- BOCC if >\$150K
- Administrator (if >\$25K but <\$150K *based on approval of BOCC at 1/12/22 meeting.*)
- Department Director (if <\$25K)

Legal Review _____ Date _____

Document Number **2021-998**

For Recording Stamp Only

**DESCHUTES COUNTY SERVICES CONTRACT
CONTRACT NO. 2021-998**

This Contract is between DESCHUTES COUNTY, a political subdivision, acting by and through the Facilities Department (County) and SunWest One LLC, dba SunWest Builders (Contractor). The parties agree as follows:

Effective Date and Termination Date. The effective date of this Contract shall be December 22, 2021 or the date, on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance or on December 31, 2022, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured.

Statement of Work. Contractor shall perform the work described in Exhibit 1 and Attachment "A".

Payment for Work. County agrees to pay Contractor in accordance with Exhibit 1.

Contract Documents. This Contract includes Page 1-8 and Exhibits 1, 2, 3, 4, 5 and 6 and Attachment "A".

CONTRACTOR DATA AND SIGNATURE

Contractor Address: 2642 SW 4th, PO Box 489, Redmond, OR 97756

Federal Tax ID# or Social Security #: 93-0995707

Is Contractor a nonresident alien? Yes No

Business Designation (check one): Sole Proprietorship Partnership
 Corporation-for profit Corporation-non-profit Other, describe

A Federal tax ID number or Social Security number is required to be provided by the Contractor and shall be used for the administration of state, federal and local tax laws. Payment information shall be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

I have read this Contract including the attached Exhibits. I understand this Contract and agree to be bound by its terms. NOTE: Contractor shall also sign Exhibits 3 and 4 and, if applicable, Exhibit 5.

Signature

Title

Name (please print)

Date

DESCHUTES COUNTY SIGNATURE

Contracts with a maximum consideration of not greater than \$25,000 are not valid and not binding on the County until signed by the appropriate Deschutes County Department Head. Additionally, Contracts with a maximum consideration greater than \$25,000 but less than \$150,000 are not valid and not binding on the County until signed by the County Administrator or the Board of County Commissioners.

Dated this _____ of _____, 20__

DESCHUTES COUNTY

Nick Lelack, County Administrator

STANDARD TERMS AND CONDITIONS

- 1. **Time is of the Essence.** Contractor agrees that time is of the essence in the performance of this Contract.

- 2. **Compensation.** Payment for all work performed under this Contract shall be made in the amounts and manner set forth in Exhibit 1 Section 5.
 - a. Payments shall be made to Contractor following County’s review and approval of billings and deliverables submitted by Contractor.
 - b. All Contractor billings are subject to the maximum compensation amount of this contract.
 - c. Contractor shall not submit billings for, and County shall not pay, any amount in excess of the maximum compensation amount of this Contract.
 - 1) If the maximum compensation amount is increased by amendment to this Contract, the amendment shall be signed by both parties and fully executed before Contractor performs work subject to the amendment.
 - 2) No payment shall be made for any services performed before the beginning date or after the expiration date of this contract.
 - d. This Contract shall not be amended after the expiration date.
 - e. Contractor shall submit monthly invoices for work performed. The invoices shall describe all work performed with particularity (See Exhibit Section 5 for details).
 - f. Prior to approval or payment of any billing, County may require and Contractor shall provide any information which County deems necessary to verify work has been properly performed in accordance with the Contract.

- 3. **Delegation, Subcontracts and Assignment.** Contractor shall not delegate or subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County.
 - a. Any delegation, subcontract, assignment, or transfer without prior written consent of County shall constitute a material breach of this contract.
 - b. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the County may deem necessary.
 - c. No approval by the County of any assignment or transfer of interest shall be deemed to create any obligation of the County to increase rates of payment or maximum Contract consideration.
 - d. Prior written approval shall not be required for the purchase by the Contractor of articles, supplies and services which are incidental to the provision of services under this Contract that are necessary for the performance of the work.
 - e. Any subcontracts that the County may authorize shall contain all requirements of this contract, and unless otherwise specified by the County the Contractor shall be responsible for the performance of the subcontractor.

- 4. **No Third Party Beneficiaries.**
 - a. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.
 - b. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

- 5. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.

- 6. **Early Termination.** This Contract may be terminated as follows:
 - a. Mutual Consent. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
 - b. Party’s Convenience. County or Contractor may terminate this Contract for any reason upon 30 calendar days written notice to the other party.
 - c. For Cause. County may also terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County, under any of the following conditions:

- 1) If funding from state or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services as required in this Contract.
 - 2) This Contract may be modified to accommodate the change in available funds.
 - 3) If state laws, regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
 - 4) In the event sufficient funds shall not be appropriated for the payment of consideration required to be paid under this Contract, and if County has no funds legally available for consideration from other sources.
 - 5) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that the Contractor no longer meets requirements for such license or certificate.
- d. Contractor Default or Breach. The County, by written notice to the Contractor, may immediately terminate the whole or any part of this Contract under any of the following conditions:
- 1) If the Contractor fails to provide services called for by this Contract within the time specified or any extension thereof.
 - 2) If the Contractor fails to perform any of the other requirements of this Contract or so fails to pursue the work so as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from the County specifying such failure, the Contractor fails to correct such failure within 10 calendar days or such other period as the County may authorize.
 - 3) 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.
- e. County Default or Breach.
- 1) Contractor may terminate this Contract in the event of a breach of this Contract by the County. Prior to such termination, the Contractor shall give to the County written notice of the breach and intent to terminate.
 - 2) If the County has not entirely cured the breach within 10 calendar days of the date of the notice, then the Contractor may terminate this Contract at any time thereafter by giving notice of termination.

7. Payment on Early Termination. Upon termination pursuant to paragraph 6, payment shall be made as follows:

- a. If terminated under subparagraphs 6 a. through c. of this Contract, the County shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Provided however, County shall not pay Contractor for any obligations or liabilities incurred by Contractor after Contractor receives written notice of termination.
- b. If this Contract is terminated under subparagraph 6 d. of this Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.
- c. If terminated under subparagraph 6 e of this Contract by the Contractor due to a breach by the County, then the County shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract:
 - 1) with respect to services compensable on an hourly basis, for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred if payable according to this Contract and interest within the limits set forth under ORS 293.462, and
 - 2) with respect to deliverable-based Work, the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor.
 - 3) Subject to the limitations under paragraph 8 of this Contract.

8. Remedies. In the event of breach of this Contract the parties shall have the following remedies:

- a. Termination under subparagraphs 6 a. through c. of this Contract shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination.
 - 1) Contractor may not incur obligations or liabilities after Contractor receives written notice of termination.
 - 2) Additionally, neither party shall be liable for any indirect, incidental, consequential or special damages under this Contract or for any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- b. If terminated under subparagraph 6 d. of this Contract by the County due to a breach by the Contractor, County may pursue any remedies available at law or in equity.
 - 1) Such remedies may include, but are not limited to, termination of this contract, return of all or a portion of this Contract amount, payment of interest earned on this Contract amount, and declaration of ineligibility for the receipt of future contract awards.
 - 2) Additionally, County may complete the work either by itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall be liable to the County for the amount of the reasonable excess.
- c. If amounts previously paid to Contractor exceed the amount due to Contractor under this Contract, Contractor shall repay any excess to County upon demand.
- d. Neither County nor Contractor shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Contractor, respectively; however, Contractor shall 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. For any delay in performance as a result of the events described in this subparagraph, Contractor shall be entitled to additional reasonable time for performance that shall be set forth in an amendment to this Contract.
- e. The passage of this Contract expiration date shall not extinguish or prejudice the County's or Contractor's right to enforce this Contract with respect to any default or defect in performance that has not been cured.
- f. County's remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

9. Contractor's Tender upon Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless County expressly directs otherwise in such notice of termination.

- a. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had this Contract been completed.
- b. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the work.

10. Work Standard.

- a. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.
- b. For goods and services to be provided under this contract, Contractor agrees to:
 - 1) perform the work in a good, workmanlike, and timely manner using the schedule, materials, plans and specifications approved by County;
 - 2) comply with all applicable legal requirements;
 - 3) comply with all programs, directives, and instructions of County relating to safety, storage of equipment or materials;
 - 4) take all precautions necessary to protect the safety of all persons at or near County or Contractor's facilities, including employees of Contractor, County and any other contractors or subcontractors and to protect the work and all other property against damage.

11. Drugs and Alcohol. Contractor shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful selling, possession or use of controlled substances while performing work under this Contract.

12. Insurance. Contractor shall provide insurance in accordance with Exhibit 2 attached hereto and incorporated by reference herein.

13. Expense Reimbursement: This Contract does not provide for the reimbursement to Contractor for expenses. In addition, Exhibit 1 shall state that Contractor is not entitled to reimbursement for such expenses.

14. Criminal Background Investigations. Contractor understands that Contractor and Contractor's employees and agents are subject to periodic criminal background investigations by County and, if such investigations disclose criminal activity not disclosed by Contractor, such non-disclosure shall constitute a material breach

of this Contract and County may terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County.

15. Confidentiality. Contractor shall maintain confidentiality of information obtained pursuant to this Contract as follows:

- a. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.
- b. The Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidentiality provision.
- c. Contractor shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by other terms of this Contract.
- d. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.
- e. Personally identifiable health information about applicants and Medicaid recipients will be subject to the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA").
- f. Contractor shall cooperate with County in the adoption of policies and procedures for maintaining the privacy and security of records and for conducting transactions pursuant to HIPAA requirements.
- g. This Contract may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA.
- h. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which, if attached hereto, shall become a part of this Contract.

16. Reports. Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by Contractor shall be supported by documentation in Contractor's possession from third parties.

17. Access to Records. Contractor shall maintain fiscal records and all other records pertinent to this Contract.

- a. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken.
 - 1) All records shall be retained and kept accessible for at least three years following the final payment made under this Contract or all pending matters are closed, whichever is later.
 - 2) If an audit, litigation or other action involving this Contract is started before the end of the three year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.
- b. County and its authorized representatives shall have the right to direct access to all of Contractor's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts.
 - 1) These records also include licensed software and any records in electronic form, including but not limited to computer hard drives, tape backups and other such storage devices. County shall reimburse Contractor for Contractor's cost of preparing copies.
 - 2) At Contractor's expense, the County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives, shall have license to enter upon Contractor's premises to access and inspect the books, documents, papers, computer software, electronic files and any other records of the Contractor which are directly pertinent to this Contract.
 - 3) If Contractor's dwelling is Contractor's place of business, Contractor may, at Contractor's expense, make the above records available at a location acceptable to the County.

18. Ownership of Work. All work of Contractor that results from this Contract (the "Work Product") is the exclusive property of County.

- a. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed author.

- b. If, for any reason, the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- c. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County.
- d. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- e. County shall have no rights in any pre-existing work product of Contractor provided to County by Contractor in the performance of this Contract except an irrevocable, non-exclusive, perpetual, royalty-free license to copy, use and re-use any such work product for County use only.
- f. If this Contract is terminated prior to completion, and County is not in default, County, in addition to any other rights provided by this Contract, may require Contractor to transfer and deliver all partially completed work products, reports or documentation that Contractor has specifically developed or specifically acquired for the performance of this Contract.
- g. In the event that Work Product is deemed Contractor’s Intellectual Property and not “work made for hire,” Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on County’s behalf.
- h. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the County’s behalf and in the name of the County, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on County’s behalf.

19. County Code Provisions. Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address: <https://weblink.deschutes.org/public/DocView.aspx?id=78735&searchid=818e81ed-6663-4f5b-9782-9b5523b345fc>.

20. Partnership. County is not, by virtue of this contract, a partner or joint venturer with Contractor in connection with activities carried out under this contract, and shall have no obligation with respect to Contractor’s debts or any other liabilities of each and every nature.

21. Indemnity and Hold Harmless.

- a. To the fullest extent authorized by law Contractor shall defend, save, hold harmless and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of Contractor or its officers, employees, contractors, or agents under this Contract, including without limitation any claims that the work, the work product or any other tangible or intangible items delivered to County by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County’s use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party.
- b. Contractor shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither contractor nor any attorney engaged by Contractor shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County’s legal counsel, in a form and manner determined appropriate by the County’s legal counsel, authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of the Count without the approval of the County’s legal counsel.
- c. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Contractor and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Contract.

22. Waiver.

- a. County’s delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- b. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

23. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

- a. Any claim, action, suit or proceeding (collectively, “Claim”) between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- b. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

24. Severability. If any term or provision of this Contract 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 this Contract did not contain the particular term or provision held invalid.

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

26. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.

- a. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- b. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- c. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage or delivered as follows:

To Contractor:

SunWest Builders
 Attn. Steve Buettner
 2642 SW 4th, PO Box 489
 Redmond, OR 97756
 Tel: 541-548-7341 Cell: 541-480-8920

To County:

Deschutes County Facilities Department
 Lee W. Randall, Director
 P.O. Box 6005
 Bend, OR 97708-6005
 Tel: 541-617-4711 Fax: 541-317-1368

27. Merger Clause. This Contract and the attached exhibits constitute the entire agreement between the parties.

- a. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
- b. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.
- c. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

28. Identity Theft Protection. Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).

29. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 4, 5, 8, 9, 15, 17, 18, 20-27, 28 and 30.

30. Representations and Warranties.

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to County that:
 - 1) Contractor has the power and authority to enter into and perform this Contract;
 - 2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - 3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor 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 Contractor's industry, trade or profession;
 - 4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
 - 5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
 - 6) Contractor's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order of any court, regulatory commission, board or other administrative agency.
- b. **Warranties Cumulative.** The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided.

31. Representation and Covenant.

- a. Contractor represents and warrants that Contractor has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.
- b. Contractor covenants to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this contract.
- c. Contractor acknowledges that failure by Contractor to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Contractor has executed the contract or during the term of the contract is and will be deemed a default for which Deschutes County may terminate the contract and seek damages and/or other relief available under the terms of the contract or under applicable law.

**EXHIBIT 1
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-998
STATEMENT OF WORK, COMPENSATION
PAYMENT TERMS and SCHEDULE**

- 1. Contractor shall perform the following work:**
SunWest Builders to provide Construction and General Contractor services for completion of the Deschutes County Facilities Warehouse and Archives remodel.
- 2. County Services.** County shall provide Contractor, at county's expense, with material and services described as follows:
 - a. Building permit by County. Sprinkler Permit is covered by a signed affidavit (Severson Fire Protection) and is contracted direct with Owner. Mechanical, Plumbing and Lighting Electrical permits are by Owner. Special Inspections by County.
 - b. County is contracting direct with HVAC, Plumbing and Fire Sprinkler subcontractors. Contractor is to coordinate this work and include subcontractors on the overall & 3-week look ahead schedules.
- 3. Consideration.**
 - a. County shall pay Contractor on a not-to-exceed (NTE) fee for a total of \$289,397.
 - b. Contractor shall be entitled to reimbursement for expenses as set forth in Exhibit 5
 YES X NO [Check one]
- 4. The maximum compensation.**
 - a. The maximum compensation under this contract is \$289,397. This is a NTE fee and all costs will be reconciled at project completion. Any savings will be returned to the County via deductive Change Order. Refer to Attachment "A" for summary of costs.
 - b. Contractor shall not submit invoices for, and County shall not pay for any amount in excess of the maximum compensation amount set forth above.
 - 1) If this maximum compensation amount is increased by amendment of this contract, the amendment shall be fully effective before contractor performs work subject to the amendment.
 - 2) Contractor shall notify County in writing of the impending expiration of this Contract thirty (30) calendar days prior to the expiration date.
- 5. Schedule of Performance or Delivery.**
 - a. County's obligation to pay depends upon Contractor's delivery or performance in accordance with the following schedule: Schedule to be produced by Contractor prior to mobilization. Schedule to be mutually agreed upon and as amended during project meetings. Contractor may submit monthly pay applications for completed work.
 - b. County will only pay for completed work that conforms to this schedule.
- 6. Oregon Bureau of Labor & Industries required provisions.**
 - a. Workers will not be paid less than the applicable prevailing wage rates in accordance with ORS 279C.838 and 279C.840.
 - b. When projects are subject to both State Prevailing Wage law and Federal Davis Bacon law, workers must be paid not less than the higher of the applicable State or Federal rate.
 - c. If the Contractor fails to pay for labor or services, Deschutes County may be required to withhold payment to Contractor and pay for labor or services directly.
 - d. Daily, weekly, weekend and holiday overtime will be paid as required in ORS 279C.540.
 - e. Contractor/employer must give a written schedule to all employees showing the number of hours per day and days per week that is required to work.
 - f. Contractor/employer must promptly pay for any medical services they have agreed to pay.
 - g. Contractor must file a Public Works Bond with CCB prior to starting work on this project, unless exempt. Every subcontractor shall file a Public Works Bond with CCB prior to starting work on this project, unless exempt.

**EXHIBIT 2
DESCHUTES COUNTY SERVICES CONTRACT**

**Contract No. 2021-998
INSURANCE REQUIREMENTS**

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this contract. Policies written on a "claims made" basis must be approved and authorized by Deschutes County.

SunWest Builders

Workers Compensation insurance in compliance with ORS 656.017, requiring Contractor and all subcontractors to provide workers' compensation coverage for all subject workers, or provide certification of exempt status. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employer's Liability coverage all at the statutory limits. . In the absence of statutory limits the limits of said Employers liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

Professional Liability insurance with an occurrence combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
<input type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after the contract work is completed.

Required by County Not required by County (one box must be checked)

Commercial General Liability insurance with a combined single limit of not less than:

<u>Per Single Claimant and Incident</u>	<u>All Claimants Arising from Single Incident</u>
<input checked="" type="checkbox"/> \$1,000,000	<input checked="" type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that Contractor shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action.

The policy shall be endorsed to name **Deschutes County, its officers, agents, employees and volunteers as an additional insured**. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis. The additional insurance protection shall extend equal protection to County as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed unenforceable, then the additional insurance protection to County shall be narrowed to the maximum amount of protection allowed by law.

Required by County Not required by County (One box must be checked)

Automobile Liability insurance with a combined single limit of not less than:

Per Occurrence
 \$500,000
 \$1,000,000
 \$2,000,000

Automobile Liability insurance includes coverage for bodily injury and property damage resulting from operation of a motor vehicle. Commercial Automobile Liability Insurance shall provide coverage for *any* motor vehicle (symbol 1 on some insurance certificates) driven by or on behalf of Contractor during the course of providing services under this contract. Commercial Automobile Liability is required for contractors that own business vehicles registered to the business. Examples include: plumbers, electricians or construction contractors. An Example of an acceptable personal automobile policy is a contractor who is a sole proprietor that does not own vehicles registered to the business.

Required by County Not required by County (one box must be checked)

Additional Requirements. Contractor shall pay all deductibles and self-insured retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.

Certificate of Insurance Required. Contractor shall furnish a current Certificate of Insurance to the County with the signed Contract. Contractor shall notify the County in writing at least 30 days in advance of any cancellation, termination, material change, or reduction of limits of the insurance coverage. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. Contractor shall be responsible for any deductible or self-insured retention. If requested, complete copies of insurance policies shall be provided to the County.

Risk Management review

Date

**EXHIBIT 3
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-998
CERTIFICATION STATEMENT FOR CORPORATION
OR INDEPENDENT CONTRACTOR**

NOTE: Contractor Shall Complete A or B in addition to C below:

A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.

I certify under penalty of perjury that Contractor is a [check one]:		
<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Partnership authorized to do business in the State of Oregon.
Signature	Title	Date

B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.

Contractor certifies under penalty of perjury that the following statements are true:	
<p>1. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), and</p> <p>2. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business registered with the State of Oregon, and</p> <p>3. All of the statements checked below are true.</p> <p style="text-align: center;">NOTE: Check all that apply. <u>You shall check at least three (3)</u> - to establish that you are an Independent Contractor.</p> <p>___ A. The labor or services I perform are primarily carried out at a location that is separate from my residence or primarily carried out in a specific portion of my residence that is set aside as the location of the business.</p> <p>___ B. I bear the risk of loss related to the business or provision of services as shown by factors such as: (a) fixed-price agreements; (b) correcting defective work; (c) warranties over the services or (d) indemnification agreements, liability insurance, performance bonds or professional liability insurance.</p> <p>___ C. I have made significant investment in the business through means such as: (a) purchasing necessary tools or equipment; (b) paying for the premises or facilities where services are provided; or (c) paying for licenses, certificates or specialized training.</p> <p>___ D. I have the authority to hire other persons to provide or to assist in providing the services and if necessary to fire such persons.</p> <p>___ E. Each year I perform labor or services for at least two different persons or entities or I routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.</p>	
Contractor Signature	Date

C. Representation and Warranties.

Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:

1. Contractor has the power and authority to enter into and perform this contract;
2. This contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
3. The services under this contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
4. Contractor shall, at all times during the term of this contract, be qualified, professionally competent, and duly licensed to perform the services.
5. To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4),
6. Contractor understands that Contractor is responsible for any federal or state taxes applicable to any consideration and payments paid to Contractor under this contract; and
7. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

 Contractor Signature _____
 Date

**EXHIBIT 4
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-998
Workers' Compensation Exemption Certificate**

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (check the appropriate box):

SOLE PROPRIETOR

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor shall not hire employees to perform this contract.

CORPORATION - FOR PROFIT

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
- The officers and directors shall perform all work. Contractor shall not hire other employees to perform this contract.

CORPORATION - NONPROFIT

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor shall not hire employees to perform this contract.

PARTNERSHIP

- Contractor is a partnership, and
- Contractor has no employees, and
- All work shall be performed by the partners; Contractor shall not hire employees to perform this contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

LIMITED LIABILITY COMPANY

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work shall be performed by the members; Contractor shall not hire employees to perform this contract, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

*NOTE: Under OAR 436-050-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation or, if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

**NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a contractor who shall perform construction work.

Contractor Printed Name

Contractor Signature

Contractor Title

Date

Exhibit 5
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-998
Compliance with provisions, requirements of funding source and
Federal and State laws, statutes, rules, regulations, executive orders and policies.

Conflicts of Interest

Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor’s knowledge:

1. If Contractor is currently performing work for the County, State of Oregon or federal government, Contractor, by signature to this Contract, declares and certifies that Contractor’s Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor’s employee agency (County State or Federal) would prohibit Contractor’s Work under this Contract. Contractor is not an “officer,” “employee,” or “agent” of the County, as those terms are used in ORS 30.265.
2. No federally appropriated funds have been paid or shall be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - a. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - 1) Standard Form-LLL and instructions are located in 45 CFR Part 93 Appendix B.
 - 2) If instructions require filing the form with the applicable federal entity, Contractor shall then as a material condition of this Contract also file a copy of the Standard Form-LLL with the Department.
 - 3) This filing shall occur at the same time as the filing in accordance with the instructions.
 - b. Contractor understands this certification is a material representation of fact upon which the County and the Department has relied in entering into this Contract. Contractor further understands that submission of this certification is a prerequisite, imposed by 31 USC 1352 for entering into this Contract.
 - c. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - d. Contractor shall include the language of this certification in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
 - e. Contractor is solely responsible for all liability arising from a failure by Contractor to comply with the terms of this certification.
 - f. Contractor promises to indemnify County for any damages suffered by County as a result of Contractor's failure to comply with the terms of this certification.
3. Contractor understands that, if this Contract involves federally appropriated funds, this certification is a material representation of facts upon which reliance was placed when this Contract was made or entered into, submission of this certification is a prerequisite for make or entering into this Contract imposed by Section 1352, Title 311, U.S. Code and that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Contractor Signature

Date

REVIEWED

LEGAL COUNSEL

EXHIBIT 6
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2021-998
General Conditions of the Contract

For Recording Stamp Only

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
(Contract No. 2021-998)

For the following Project:

Deschutes County Facilities Warehouse Remodel
Bend, Oregon

CONTRACTOR:

SunWest One LLC
Dba SunWest Builders
2642 SW 4th
P.O. Box 489
Redmond, OR 97756

OWNER:

Deschutes County
% Facilities Department
P.O. Box 6005
Bend, Oregon 97708-6005
Telephone Number: (541) 383-6713
Fax Number: (541) 317-3168

ARCHITECT:

Pinnacle Architects – Permit Set Drawings, dated 4/19/2021

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 OWNER**
- 3 CONTRACTOR**
- 4 ADMINISTRATION OF THE CONTRACT**
- 5 SUBCONTRACTORS**
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- 7 CHANGES IN THE WORK**
- 8 TIME**
- 9 PAYMENTS AND COMPLETION**

- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT

ARTICLE 1. GENERAL PROVISIONS

§1.1 Basic Definitions

§1.1.1 The Contract Documents: The Contract Documents consist of those documents listed in the Agreement between Owner and Contractor (hereinafter the “Agreement”), including Modifications issued after execution of the contract. A Modification is: (1) a Contract Amendment, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by Architect/Engineer or Owner. A Contract Amendment is a document signed by Owner and Contractor pursuant to Paragraph 7.1.4.

§1.1.2 The Contract: The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between (1) Architect/Engineer and Contractor, (2) Owner and any subcontractor or sub-subcontractor, (3) Owner and Architect/Engineer, or (4) any persons or entities other than Owner and Contractor.

§1.1.3 The Work: The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§1.1.4 The Project: The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.

§1.1.5 The Drawings: The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. **Permt Set Phases 1 & 2, dated 4/19/2021**

§1.1.6 The Specifications: The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§1.1.7 The Project Manual: The Project Manual is a volume assembled for the Work which may include Addenda, prevailing wage requirements, program requirements, and Specifications. **See attachments listed in Instructions to Bidders.**

§1.2 Correlation and Intent of the Contract Documents

§1.2.1 The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. All Contract Documents are intended to be consistent. However, anything provided in one document but not provided in another shall be of like effect as if shown or mentioned in both. This does not constitute a conflict, discrepancy, or error between the two. In the event of directly conflicting provisions, precedence shall be given as follows: (1) Modifications of the Agreement, with those of later date having precedence over those of earlier date; (2) the Agreement; (3) Addenda to the Bid Documents; (4) the General Conditions of the Contract for Construction; (5) the Specifications, with precedence given to Division 1 over Divisions 2-16 and equal precedence given to Divisions 2-16; (6) the Drawings, with precedence given to figures in the event of any conflict between figures and scaled measurements, and precedence given to large scale drawings in the event of any conflict between large scale drawings and small scale drawings.

§1.2.1.1 Inconsistencies within any one Contract Document, or inconsistencies not otherwise resolved by the above prioritization, shall be resolved in favor of Owner receiving (a) the greater quality or greater quantity of goods, services or performance, or (b) the greater obligation to Owner in the terms and conditions. Both (a) and (b) shall be resolved in Owner’s sole discretion.

§1.2.1.2 Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and (1) the provisions of any standard, specification, manual, code, or instruction (collectively, “standards”), whether or not specifically incorporated by reference in the Contract Documents, unless the standards provide the better quality or greater quantity of Work to Owner, in which case the standards shall take precedence; or (2) the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

§1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control Contractor in dividing the Work among subcontractors or in establishing the extent of the Work to be performed by any trade.

§1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§1.2.4 All Work shall be the best of the respective kinds specified or indicated. Should workmanship or materials be required which are not directly or indirectly called for in the Specifications or shown on the Drawings, but are consistent with the Contract Documents and reasonably inferable by them or standard industry practice, said workmanship or materials shall be the same as similar parts that are detailed, indicated or specified, or shall match or exceed the quality of existing improvements, and Contractor shall understand the same to be implied and provide for the same as fully as if it were particularly described or delineated.

§1.2.5 Contractor has included within the Contract Sum all labor, materials, equipment, and services that are likely to be required for the Project in accordance with the requirements of state laws, local building codes, local building officials, manufacturer’s recommendations, building standards, and trade practices. To the extent, if at all, that the Contract Documents contain ambiguities, discrepancies, errors, or omissions, and to the extent, if at all, that there are discrepancies between the Contract Documents and the Project site and surveys (collectively referred to hereafter in this Section as “errors and omissions”), Contractor hereby waives any claims for additional compensation or damages or additional time resulting from any such errors and omissions to the extent Contractor has actually observed, or with the exercise of reasonable care should have observed, those errors and omissions and failed to report them to Owner and Architect/Engineer prior to executing the Agreement.

§1.2.6 All of the Work shall conform strictly to the Contract Documents. No change therefrom shall be made without Contract Modification. Where detailed information is lacking, or should discrepancies appear among the Contract Documents, Contractor shall, in writing, request interpretation or information from Architect/Engineer before proceeding with the Work.

§1.2.7 Reference in the Specifications to an article, device, or piece of equipment in the singular number shall apply to as many such articles as are shown on Drawings or required to complete the installation. Mention in the Specifications or indication of the Drawings of articles, products, materials, operations or methods requires Contractor to provide and install such items.

§1.3 Capitalization

§1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the AIA.

§1.4 Interpretation

§1.4.1 In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§1.4.2 The misplacement, addition or omission of any letter, word, or punctuation mark shall in no way affect the true spirit, intent, or meaning of the Contract Documents.

§1.4.3 The words “shown,” “indicated,” “noted,” “scheduled,” or words of like effect, shall be understood to mean that reference is made to the Drawings accompanying the Project Manual.

§1.4.4 Where reference herein is made to products or materials “as approved” or “as selected,” selection or approval shall be by Architect/Engineer and Owner.

§1.5 Execution of Contract Documents

§1.5.1 The Contract Documents shall be signed by Owner and Contractor. If either Owner or Contractor or both do not sign all the Contract Documents.

§1.5.2 Execution of the Contract by Contractor is a representation by Contractor that the Contract Documents are full and complete, are sufficient to have enabled Contractor to determine the Cost of the Work and Contract Sum, and to enable Contractor to construct the Work described therein, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Contractor’s obligation to construct the Work for an amount not in excess of the Contract Sum on or before the Contract time established in the Agreement. Contractor further acknowledges and declares that it and its subcontractors have visited and examined the site, examined all physical, legal and other conditions affecting the Work, and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection therewith, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to (1) the nature, location, and character of the Project and the site, including, without limitation, the ground conditions and all structures and obstructions thereon and thereunder, both natural and man-made, and the surrounding area; (2) the nature, location and character of the general area in which the Project is located, including, without limitation, its climactic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the available quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work.

§1.5.3 Contractor recognizes the degree of care required for the specific site construction circumstances with respect to safety, protection of pedestrians, cleanliness of the site, health and other laws, and protection of existing utilities, adjacent streets, and property. In arriving at the contract Sum and the Contract Time, contractor has, as an experienced and prudent contractor, exercised its best judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract time.

§1.6 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by Architect/Engineer and Architect/Engineer’s consultants are Instruments of Service owned by Owner through which the Work to be executed by Contractor is described. Contractor may retain one record set. Neither Contractor nor any subcontractor, sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by Architect/Engineer or Architect/Engineer’s consultants and owned by Owner, and unless otherwise indicated, Owner shall retain all common law, statutory and other reserved rights in addition to the copyrights. All copies of Instruments of Service shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications, and other documents prepared by Architect/Engineer and Architect/Engineer’s consultants, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of Owner. Contractor and subcontractors are authorized to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by Architect/Engineer and Architect/Engineer’s consultants appropriate to and for use in the execution of the Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications, and other documents prepared by Architect/Engineer and Architect/Engineer’s consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of Owner’s copyrights or other reserved rights.

§1.6.2 The Contract Documents furnished to Contractor or any subcontractor are owned by Owner and contain proprietary and confidential information for use solely with respect to this Project. During the course of the Work and after its completion, Architect/Engineer, Contractor, subcontractors, and all other persons utilizing the Contract Documents shall keep the Contract Documents (and all information received concerning the Work, the Project, and the affairs of Owner) confidential and not divulge any such information to any other person except as is necessary in conjunction with the performance of the Work or as necessary in any litigation or similar dispute resolution process. Neither the Contract Documents nor the other property and confidential information described herein are to be used by such persons outside the scope of this Project without the prior written consent of Owner. Upon request by Owner, all copies of the Contract Documents shall be returned to Owner upon completion of the Work or upon termination of this Agreement for any reason.

ARTICLE 2. OWNER

§2.1 General

§2.1.1 Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Owner shall designate in writing a representative who shall have express authority to bind Owner with respect to all matters requiring Owner’s approval or authorization. Except as otherwise provided in Paragraph 4.2.1, Architect/Engineer does not have such authority. The term “Owner” means Owner or Owner’s authorized representative.

§2.1.2 Owner shall furnish to Contractor, within a reasonable time after receipt of a written request, information which is reasonably necessary and relevant for Contractor to evaluate, give notice of, or enforce claims.

§2.2 Information and Services Required by Owner

§2.2.1 0[DELETED]

§2.2.2 Except for permits and fees, including those required under Paragraph 3.7.1, which are the responsibility of Contractor under the Contract Documents, Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures, or for permanent changes in existing facilities, unless noted otherwise under Paragraph 3.7.1 or within the Contract Documents

§2.2.3 Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project and a legal description of the site. Contractor shall be entitled to rely on the accuracy of information furnished by Owner, but shall exercise proper precautions relating to the safe performance of the Work. Any such information, including subsurface characteristics or conditions, that is included in the Contract Documents is specifically incorporated into this Agreement. The furnishing of these surveys and the legal description of the site shall not relieve Contractor of any of its duties under the Contract Documents.

§2.2.4 Information or services required by Owner by the Contract Documents shall be furnished by Owner with reasonable promptness. Any other information or services relevant to Contractor’s

performance of the Work under Owner’s control shall be furnished by Owner after receipt from Contractor of a written request for such information or services.

§2.2.5 The Contract Documents will be furnished to Contractor for use during construction as follows:

.1 Owner will provide electronic copies of all Contract Documents to Contractor.

§2.3 Owner’s Right to Stop the Work

§2.3.1 If Contractor fails to correct the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out the Work in accordance with the Contract documents, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the party of Owner to exercise its right for the benefit of Contractor or any other person or entity, including, but not limited to, the surety.

§2.3.1.1 Owner’s exercise of its right to stop the Work pursuant to Paragraph 2.3.1 shall not relieve Contractor from any of its responsibilities and obligations under the Contract Documents.

§2.4 Owner’s Right to Carry Out the Work

§2.4.1 If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the reasonable cost of correcting such deficiencies, including Owner’s expenses (including, but not limited to, construction costs, Owner managerial and administrative time and costs, and delay damages), and compensation for Architect/Engineer’s or any other consultant’s or contractor’s additional services made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.

§2.5 Extent of Owner’s Rights

§2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of Owner granted in the Contract Documents, at law or in equity.

§2.5.2 In no event shall Owner have control over, charge of, or any responsibility for the construction means, methods, techniques, sequences, or procedures or for the safety precautions and programs in connection with the Work, notwithstanding however any of the rights and authority granted to Owner in the Contract Documents.

ARTICLE 3. CONTRACTOR

§3.1 General

§3.1.1 Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means Contractor or Contractor’s authorized representative.

§3.1.2 Contractor shall perform the Work in accordance with the Contract Documents.

§3.1.3 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Architect/Engineer in Architect/Engineer’s administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than Contractor.

§3.2 Review of Contract Documents and Field Conditions by Contractor

§3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by Owner pursuant to Paragraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Contractor shall notify Architect/Engineer and Owner in writing of any errors, inconsistencies, omissions or ambiguities in the Contract Documents discovered by Contractor. Contractor shall be responsible for any additional costs to Owner resulting from Contractor’s failure to verify existing conditions related to any portion of the Work or to report to Architect/Engineer and Owner any errors, inconsistencies, omissions, or ambiguities in the Contract Documents discovered by, or which should have been discovered by, Contractor.

§3.2.1.1 Contractor shall notify Architect/Engineer and Owner in writing of materials, systems, procedures, or methods of construction, either shown on the Drawings or specified in the Specifications, which Contractor discovers are incorrect or inappropriate for the purpose intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. Architect/Engineer and Owner will make a determination of such matters in writing. Contractor shall be responsible for any additional costs to Owner resulting from Contractor’s failure to notify Architect/Engineer and Owner of incorrect or inappropriate materials, systems, procedures, and methods that Contractor knows or should know are incorrect or inappropriate.

§3.2.2 Any design errors or omissions noted by Contractor during this review shall be reported promptly to Architect/Engineer, but it is recognized that Contractor’s review is made in Contractor’s capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to Contractor shall be reported promptly to Architect/Engineer.

§3.2.3 If Contractor believes that additional cost or time is involved because of clarifications or instructions issued by Architect/Engineer in response to Contractor’s notices or requests for information pursuant to Paragraphs 3.2.1 through 3.2.2, Contractor shall make claims as provided in Paragraphs 4.3.5 through 4.3.7. If Contractor fails to perform the obligations of Paragraphs 3.2.1 and 3.2.2, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor

had performed such obligations. Contractor shall not be liable to Owner or Architect/Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to Architect/Engineer or Owner.

§3.2.4 Neither Owner nor Architect/Engineer assume responsibility for any understanding or representation made by their agents or representatives prior to the execution of the Agreement unless such understanding or representation is expressly stated in the Contract Documents.

§3.2.5 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, then it shall be the duty of Contractor to request interpretation or information from Architect/Engineer as to what is best suited. The material that would normally be used in its place to produce first quality finished Work shall be considered a part of the Contract.

§3.3 Supervision and Construction Procedures

§3.3.1 Contractor shall supervise, inspect, and direct the Work using Contractor’s best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If Contractor knows or should know that such means, methods, techniques, sequences, or procedures may not be safe, Contractor shall give timely written notice to Owner and Architect/Engineer and shall not proceed with that portion of the Work without further written instructions from Architect/Engineer.

§3.3.2 Contractor shall be responsible to Owner for acts and omissions of Contractor’s employees, subcontractors, materials suppliers and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its subcontractors. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor or any subcontractor the agent, servant or employee of Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor or any subcontractor.

§3.3.3 Contractor shall be responsible for inspection of portions of the Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§3.4 Labor and Materials

§3.4.1 Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, insurance and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§3.4.1.1 Contractor’s obligations under Paragraph 3.4.1 shall include, without limitation, the obligation to pay all subcontractors and any other person or entity having bond rights regarding the Project due to their performance of Contractor’s obligations under the Contract. Contractor agrees to keep the Project and the Project site free and clear of any and all subcontractor claims (bond claims or otherwise) filed or served by any person or entity at any tier performing the Work or Contractor’s obligations under the Contract.

§3.4.1.2 To the fullest extent authorized by law Contractor agrees to indemnify, defend, reimburse and hold harmless (with counsel approved by Owner) Owner and Architect/Engineer from, for, and against any and all claims referenced in Paragraph 3.4.1.1, and actions, suits, or proceedings relating to such claims and any and all related costs and expenses incurred by Owner, including, without limitation, attorneys’ fees and expert/consultant fees.

§3.4.1.3 Nothing in Paragraph 3.4.1 shall limit Owner’s rights under Paragraph 9.10.

§3.4.2 Contractor may make substitutions only with the written consent of Owner, after evaluation by Architect/Engineer and in accordance with a Modification.

§3.4.3 Contractor shall enforce strict discipline and good order among Contractor’s employees and other persons carrying out the Contract. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. Contractor shall be responsible for labor peace on the Project and shall at all times make its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstance and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Paragraph 8.3.1, Contractor shall be liable to Owner for all damages suffered by Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes.

§3.4.4 Subcontractors whose Work is unsatisfactory to Owner or Architect/Engineer, or is considered by Owner or Architect/Engineer to be careless, incompetent, unskilled or otherwise objectionable, shall be dismissed from Work under the Contract upon written notice from Owner or Architect/Engineer. No additional compensation shall be provided to Contractor due to the proper dismissal of a subcontractor by Owner or Architect/Engineer.

§3.4.5 Contractor shall coordinate all Work of like material in order to produce harmony of matching finishes, textures, colors, etc., throughout the various components of the Project.

§3.5 Warranty

§3.5.1 Contractor warrants to Owner and Architect/Engineer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the standards and requirements of the Contract Documents and generally recognized standards of the construction industry, whichever provides the higher standard. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered

defective. Except as provided in Paragraph 9.8.4, when a longer warranty time is specifically called for in the Specifications, or is otherwise provided by law, warranty shall be for a period of one year commencing on the date of Substantial Completion, shall be in form and content otherwise satisfactory to Owner. Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by Architect/Engineer, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§3.5.2 All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor, as the case may be, and countersigned by Contractor. All warranties shall be addressed to Owner and delivered to Architect/Engineer upon completion of the Work and before or with the Final Payment Application.

§3.5.3 Contractor hereby assigns to Owner effective automatically upon Final Completion of the Work, any and all subcontractors’ warranties relating to materials and labor used in the Work, and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

§3.5.4 Contractor shall collect, assemble in a binder, and provide to Owner written warranties and related documents provided by subcontractors. All such written shall extend to Owner.

§3.6 Taxes

§3.6.1 Contractor shall pay sales, consumer, use, and similar taxes for the Work provided by Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§3.7 Permits, Fees and Notices

§3.7.1 Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§3.7.2 Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

§3.7.3 If Contractor knows or should know that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, Contractor shall promptly notify Architect/Engineer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§3.7.4 If Contractor performs Work knowing it to be contrary to laws, statutes, ordinances building codes, and rules and regulations without such notice to Architect/Engineer and Owner, Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§3.8 Allowances – Not Applicable to this Contract

§3.8.1 Contractor shall include in the Contract Sum all Allowances stated in the Contract Documents. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as Owner may direct, but Contractor shall not be required to employ persons or entities to whom Contractor has reasonable objection.

§3.8.2 Unless otherwise provided in the Contract Documents:

- .1** Allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts.
- .2** Contractor’s and subcontractors’ costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Contract Sum but not in the Allowances; and
- .3** Whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order executed by both parties in advance of the excess costs being incurred. The amount of the Change Order shall reflect (a) the difference between actual costs and the Allowances under Paragraph 3.8.2.1, and (b) changes in Contractor’s costs under Paragraph 3.8.2.2.

§3.9 Superintendent

§3.9.1 Contractor shall employ a competent superintendent approved by Owner and Architect/Engineer and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent shall not be replaced without the consent of Owner. Owner shall have the right, which shall be exercised in a reasonable fashion, to require replacement of the superintendent.

§3.10 Contractor’s Construction Schedules

§3.10.1 Promptly after being awarded the Contract, Contractor shall prepare and submit for Owner’s and Architect/Engineer’s information a Contractor’s construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and the Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. It is specifically understood and agreed that the “float” or “slack” time for the whole or any part of the Work as provided in Contractor’s construction schedule shall belong solely to Owner.

§3.10.2 Contractor shall prepare and keep current, for Architect/Engineer’s approval, a schedule of submittals which is coordinated with Contractor’s construction schedule and allows Architect/Engineer reasonable time to review submittals.

§3.10.3 Contractor shall perform the Work in general accordance with the most recent schedules approved by Owner and Architect/Engineer.

§3.10.4 In the event Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, Owner shall have the right to order Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation (1) working additional shifts or overtime, (2) supplying additional manpower, equipment and facilities, and (3) other similar measures (hereinafter referred to collectively as “Acceleration”), which shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner’s right to require Acceleration is solely for the purpose of ensuring Contractor’s compliance with the construction schedule. Any failure of Owner or Architect/Engineer to require Acceleration shall not relieve Contractor of meeting the schedule, the Contract Time, or any other obligation under the Contract Documents.

§3.10.5 Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Acceleration except to the extent Acceleration was made necessary by reason of Owner’s or Architect/Engineer’s wrongful acts or omissions.

§3.11 Documents and Samples at the Site

§3.11.1 Contractor shall maintain at the site for Owner one record copy of the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to Owner and Architect/Engineer and shall be delivered to Architect/Engineer for submittal to Owner upon completion of the Work. Failure to deliver them shall result in Owner withholding Contractor’s retainage until they are delivered.

§3.12 Shop Drawings, Product Data and Samples

§3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specifically prepared for the Work by Contractor or a subcontractor to illustrate some portion of the Work.

§3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

§3.12.3 Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

§3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Architect/Engineer is subject to the limitations of Paragraph 4.2.7. Informational submittals upon which Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by Architect/Engineer without action.

§3.12.5 Contractor shall review for compliance with the Contract Documents, approve and submit to Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Architect/Engineer without action.

§3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§3.12.7 Contractor shall perform no portion of the Work for which the Contract Documents required submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by Architect/Engineer.

§3.12.8 The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviation from requirements of the Contract Documents by Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless (1) Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in shop Drawings, Product Data, Samples, or similar submittals by Architect/Engineer's approval thereof.

§3.12.9 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by Architect/Engineer on previous submittals. In the absence of such written notice, Architect/Engineer's approval of a resubmission shall not apply to such revisions.

§3.12.10 Contractor shall not be required to provide professional services which constitute the practice of Architect/Engineer unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Architect/Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, and certifications. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Architect/Engineer. Owner and Architect/Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Architect/Engineer have specified to Contractor applicable performance and design criteria that such services must satisfy. Pursuant to this Paragraph 3.12.10,

Architect/Engineer will review, approve, or take other appropriate action on submittals only for the limited purpose (unless Owner requests otherwise) of checking for conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents; however, Contractor shall notify Architect/Engineer if additional performance or design criteria are required in accordance with Paragraph 3.2.

§3.12.11 Owner shall be entitled to deduct from the Contract Sum amounts paid to Architect/Engineer for evaluation of any additional resubmittals by Contractor to the extent such resubmittals by Contractor are not the fault of Owner or Architect/Engineer.

§3.13 Use of Site

§3.13.1 Contractor shall confine operations at the site to areas and times permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.14 Cutting and Patching

§3.14.1 Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§3.14.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and of such separate contractor; such consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold from Owner or a separate contractor Contractor’s consent to cutting or otherwise altering the Work.

§3.15 Cleaning Up

§3.15.1 Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, Contractor shall remove from and about the Project waste materials, rubbish, Contractor’s tools, construction equipment, machinery, and surplus materials.

§3.15.1.1 Unless otherwise specified in the Contract Documents, Contractor shall not be required to clean up debris or rubbish resulting from operations of Owner or Owner’s separate contractors.

§3.15.2 If Contractor fails to clean up as provided in the Contract documents, Owner may do so and the cost thereof shall be charged to Contractor.

§3.16 Access to Work

§3.16.1 Contractor shall provide Owner and Architect/Engineer safe access to the Work in preparation and progress wherever located.

§3.17 Royalties, Patents and Copyrights

§3.17.1 Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify, reimburse and hold Owner and Architect/Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by Owner or Architect/Engineer. However, if Contractor has reason to believe that the required design process or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to Architect/Engineer.

§3.18 Indemnification

§3.18.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, reimburse, protect and hold harmless Owner and its commissioners, executives, managers, directors, officers, agents, attorneys, employees and designees (individually and collectively the “Indemnified Parties”) from all claims under the workers’ compensation acts and other employee benefit acts with respect to Contractor’s employees or its subcontractors’ employees. The obligation under this Paragraph shall not be limited in any way by any limitation on amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under workers’ or workmen’s compensation acts, including that of the State of Oregon, United States Longshoremen’s and Harbor Workers’ Act, Jones Act, or any workers’ compensation disability or other employee benefit--state or federal.

§3.18.2 To the fullest extent permitted by law, Contractor shall also indemnify, defend, reimburse, protect, and hold harmless the Owner/Indemnified Parties from all other claims and damages including, but not limited to, economic damages and damages to personal or real property, including the Project itself, and all costs, expenses, losses, injuries, personal or otherwise, including, but not limited to, sickness, disease, and death, and all claims, suits, actions, judgments, orders, awards and liabilities (collectively, “Damages”) resulting from or arising out of the Work or the Project to the extent the Damages directly or indirectly arise out of or result from breach of contract, negligence, intentional acts, errors or omissions or other improper conduct of Contractor or its subcontractors, employees, or agents in connection with their obligations stated in this Agreement. The coverage of the obligations contained in this Paragraph shall include, without limitation, attorneys’ fees, expert consultant fees, and court/arbitration costs incurred by Owner in connection with any of the foregoing. Payment to third party by an Owner/Indemnified Party shall not be a condition precedent to enforcing such party’s right under this Paragraph. The obligations set forth in this Paragraph shall apply during the term of this Agreement (or Contractor’s performance thereof), and shall survive the expiration or termination of this Agreement until such time as action against the Indemnified Parties on account of any matter covered by this Paragraph is barred by the applicable statute of limitations, Contractor shall insure specifically the obligations contained in this Paragraph and shall include the Owner/Indemnified Parties as named additional insureds by causing amendatory riders or endorsements to be attached to the insurance policies as described in Article 11 herein. The insurance coverage afforded under these policies shall be primary to any insurance carried independently by the Owner/Indemnified Parties. Said amendatory riders or endorsements shall indicate that, with respect to the Owner/Indemnified Parties, there shall be severability of interests under said insurance policies for all coverage provided under said insurance policies.

§3.19 Maintenance and Inspection of Contractor’s Books and Records

§3.19.1 Contractor shall maintain all fiscal records in accordance with generally accepted accounting principles. In addition, Contractor shall maintain all other records necessary to clearly document Contractor’s performance and any claims arising from or relating to Contractor’s performance. Contractor shall permit Owner to audit and otherwise have prompt access at all times to all of Contractor’s records, correspondence, account books, bills, invoices, cancelled checks, payrolls, labor records, daily logs, and other records relating to the Contract, to the Work, and to Contractor’s costs. For these purposes, Contractor shall preserve at its expense all such records for the longer of (1) six years after the Final payment hereunder, (2) if any part of the Contract is involved in litigation, until the litigation is resolved, or (3) such longer period as provided by law.

§3.20 Statement of Compliance with Contract Documents

§3.20.1 Within seven (7) days of Owner’s request, Contractor shall execute and deliver to Owner a certificate addressed to Owner concerning the compliance of the Work with the Contract Documents and applicable laws and regulations, the status of completion of the Work, and the status of payments and defaults.

§3.21 Nondiscrimination

§3.21.1 Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, veterans status or political affiliation in programs, activities, services, benefits or employment. Contractor shall not discriminate against minority-owned, women-owned, or emerging small businesses. Contractor shall include a provision in each subcontract requiring subcontractors to comply with the requirements of this Paragraph.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§4.1 Architect/Engineer

§4.1.1 Architect/Engineer is the person lawfully licensed to practice Architect/Engineering or an entity lawfully practicing Architect/Engineering identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect/Engineer” means Architect/Engineer or Architect/Engineer’s authorized representative. If the design professional retained by Owner for the Work to be done under this Agreement is an Engineer, the term “Architect/Engineer” as used in this Agreement shall refer to the Engineer.

§4.1.2 Duties, responsibilities and limitations of authority of Architect/Engineer as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of Owner and Architect/Engineer.

§4.1.3 In the event of a termination of Architect/Engineer or a restriction of the duties, responsibilities or authority of Architect/Engineer as described in the contract Documents, Owner itself or through

another licensed Architect/Engineer shall carry out those duties, responsibilities, and authority of Architect/Engineer.

§4.1.4 Owner and Contractor acknowledge and agree that nothing in Architect/Engineer’s engagement implies any undertaking by Architect/Engineer for the benefit of, or which may be enforced by, Contractor, its subcontractors, or the surety of any of them, it being understood and agreed that Architect/Engineer’s obligations are to Owner.

§4.2 Architect/Engineer’s Administration of the Contract

§4.2.1 Architect/Engineer will provide administration of the Contract as described in the Contract Documents and for the duration provided in the agreement between Architect/Engineer and Owner. Architect/Engineer will have authority to act on behalf of Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§4.2.2 Architect/Engineer, as a representative of Owner, will visit the site as provided in the agreement between Architect/Engineer and Owner. However, Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Architect/Engineer shall report to Owner any deviations from the Contract Documents that Architect/Engineer is aware of or reasonably should be aware of, and Architect/Engineer is responsible to Owner for any failures in this regard. However, other than its reporting requirements to Owner, Architect/Engineer will neither have control over or charge of, nor be directly responsible for the construction means, methods, techniques, sequences, or procedures (unless Architect/Engineer has specified such means, methods, techniques, sequences, or procedures in the Contract Documents) nor for the safety precautions and programs in connection with the Work, since these are Contractor’s rights and responsibilities under the Contract documents, except as provided in Paragraph 3.3.1. Architect/Engineer shall promptly submit to Owner a written report subsequent to each on-site visit.

§4.2.3 Architect/Engineer shall report to Owner known deviations or those deviations that should be known from the most recent construction schedule submitted by Contractor. However, other than this reporting requirement to Owner, Architect/Engineer will not be directly responsible for Contractor’s failure to perform the Work in accordance with the construction schedule. Architect/Engineer will be responsible for its negligent acts or omissions, but shall not have control over or charge of and will not be directly responsible for acts or omissions of Contractor, subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work unless such acts are performed consistent with the direction of Architect/Engineer.

§4.2.4 [DELETED]

§4.2.5 Based on Architect/Engineer’s evaluations of Contractor’s Applications for Payment, Architect/Engineer will review and certify the amounts due Contractor and will issue Certificates for Payment in such amounts.

§4.2.6 Architect/Engineer will have authority to reject Work that does not conform to the Contract Documents. Whenever Architect/Engineer considers it necessary or advisable, Architect/Engineer will have authority to require inspection or testing of the Work in accordance with Paragraphs 13.5.2 and

13.5.3, whether or not such Work is fabricated, installed, or completed. However, neither this authority of Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of Architect/Engineer to Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§4.2.7 Architect/Engineer will review in reasonable detail and approve or take other appropriate action upon Contractor’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose (unless Owner requests otherwise) of checking for conformance with information given and the design concept expressed in the Contract Documents. Architect/Engineer’s action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of Owner, Contractor or separate contractors, while allowing sufficient time in Architect/Engineer’s professional judgment to permit adequate review. Unless Owner requests otherwise, review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. Architect/Engineer’s review of Contractor’s submittals shall not relieve Contractor of the obligations under Paragraph 3.3, 3.5 and 3.12. Architect/Engineer’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. Architect/Engineer’s approval of a specific item shall not indicate approval of an assembly of which the item is a component. Architect/Engineer, however, shall report to Owner any concerns regarding accuracy, completeness, safety, and conformity with the Contract Documents that Architect/Engineer is aware of or reasonably should be aware of as a result of Architect/Engineer’s reasonably detailed review of Contractor’s submittals.

§4.2.8 Architect/Engineer shall prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

§4.2.9 Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and will receive from Contractor and forward to Owner for Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by Contractor.

§4.2.10 If Owner and Architect/Engineer agree, Architect/Engineer will provide one or more project representatives to assist in carrying out Architect/Engineer’s responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§4.2.11 Architect/Engineer will interpret and make recommendations concerning performance of Contractor on written request of Owner. Architect/Engineer’s response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§4.2.12 Interpretations and recommendations of Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

§4.2.13 Architect/Engineer shall advise, counsel, and guide Owner with respect to initial decisions on claims, disputes, or other matters in question between Owner and Contractor.

§4.3 Claims and Disputes

§4.3.1 Definition: A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§4.3.2 Time Limits on Claims: Claims by Contractor must be made as soon as possible, but in any event no later than thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after Contractor first recognizes, or reasonably should have recognized, the condition giving rise to the Claim, whichever is later; provided, however, Contractor shall cooperate with Architect/Engineer and Owner in an effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of such a Claim. Failure to make a Claim within the thirty (30) day timeframe will result in Contractor’s waiver of the Claim and all related damage. Claims must be made by written notice. Claims must contain reasonably detailed information (including all supporting documents) sufficient to allow meaningful review by Owner and Architect/Engineer. Contractor must provide all impacts to the Contract Time and Contract Sum at the time the Claim is submitted. Failure to do so will result in Contractor’s waiver of the Claim and all related damage.

§4.3.3 Continuing Contract Performance: Pending final resolution of a Claim, except as otherwise directed by Owner in writing or provided in Paragraph 9.7.1 and Article 14, Contractor shall proceed diligently with performance of the Contract, and Owner shall continue to make approved payments in accordance with the Contract Documents.

§4.3.4 Claims for Concealed or Unknown Conditions: If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or otherwise known to (or should have been known to) Contractor, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and should not have been known to Contractor, then written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than fourteen (14) days after first observance of the conditions. Owner will promptly investigate such conditions and, if they differ materially from what Contractor knew or should have known and cause an increase or decrease in Contractor’s cost of or time required for performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents or that otherwise should have been known to Contractor, and that no change in the terms of the Contract is justified, Owner shall so notify Contractor in writing, stating the reasons. Claims by Contractor in opposition to such determination must be made within thirty (30) days after Owner has given notice of the decision. If Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment

determination shall be referred to arbitration as provided herein. It is expressly agreed that no adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by Contractor’s (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews and preconstruction services which Contractor had the opportunity to or should have performed in connection with the Project.

§4.3.5 Claims for Additional Cost: If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6. Any change in the Contract Sum resulting from such Claim shall be authorized by written Modification.

§4.3.6 If Contractor believes additional cost is involved for reasons including, but not limited to (1) a written interpretation from Architect/Engineer, (2) an order by Owner to stop the Work where Contractor was not at fault, (3) a written order for a minor change in the Work issued by Architect/Engineer, (4) failure of payment by Owner, (5) termination of the Contract by Owner, (6) Owner’s suspension, or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§4.3.7 Claims for Additional Time:

§4.3.7.1 If Contractor wishes to make Claim for an extension in the Contract Time, written notice as provided herein shall be given to Owner. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time and a critical path schedule analysis based upon the approved Contractor’s construction schedule showing the impact of the cause or event on the critical path of the approved Contractor’s schedule. Failure to do so will result in Contractor’s waiver of the Claim and all related damages. In the case of a continuing delay, only one Claim is necessary.

§4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be valid only to the extent documented by data substantiating that weather conditions were (1) abnormal for the period of time, (2) could not have been reasonably anticipated, and (3) had an adverse effect on the scheduled construction. A notice of Claim for additional time due to adverse weather conditions shall include the monthly issue of *Local Climatological Data – Bend, Oregon* for the months involved, plus the “Normals, Means and Extremes” table from the latest *Annual Summary of Local Climatological Data – Bend, Oregon*, both of which are published by the US Department of Commerce, National Oceanic and Atmospheric Administration, national Climatic Data Center located in Asheville, NC 28801. Failure to do so will result in Contractor’s waiver of the Claim and all related damages. Unless otherwise agreed by Owner and Contractor, the “Normals, Means and Extremes” table shall be the basis for determining the number of adverse weather days and the effect on the Work resulting therefrom which Contractor should have expected to encounter.

§4.3.8 Injury or Damage to Person or Property: If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding thirty (30) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§4.3.10 Claims for Consequential Damages: Each party shall be responsible to the other for damages suffered by the other by virtue of a failure to perform in accordance with this Agreement. Such responsibility shall include, without limitation, consequential damages and economic losses suffered by Owner by reason of Contractor’s failure to perform as required by this Agreement.

§4.4 Resolution of claims and Disputes

§4.4.1 [DELETED]

§4.4.2 Owner will review Claims and within thirty (30) days of the receipt of the claim take one or more of the following actions: (1) request additional supporting data from the claimant, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.

§4.4.3 In evaluating Claims, Owner may, but shall not be obligated to, consult with or seek information from either Contractor, Architect/Engineer, or from persons with special knowledge or expertise who may assist Owner in rendering a decision.

§4.4.4 If Owner requests Contractor to furnish additional supporting data, Contractor shall respond, within seven (7) days after receipt of such request, and shall either provide a response on the requested supporting data, advise Owner when the response or supporting data will be furnished, or advise Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, Owner will either reject or approve the Claim in whole or in part.

§4.4.5 Owner will approve or reject Claims by written decision which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by Owner shall be subject to mediation and arbitration as provided herein.

§4.4.6 When a written decision of Owner states that (1) the decision is final but subject to mediation and arbitration, and (2) a demand for arbitration of a Claim covered by such decision must be made within thirty (30) days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said thirty (30) days shall result in Owner’s decision becoming final and binding upon Contractor.

§4.4.7 Upon receipt of a Claim against Contractor or at any time thereafter, Architect/Engineer or Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the claim. If the Claim relates to a possibility of Contractor’s default, Architect/Engineer or Owner may, but is not obligated to, notify the surety or request the surety’s assistance in resolving the controversy.

4.4.8 [DELETED]

§4.5 Mediation

§4.5.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§4.5.2 Owner and Contractor shall endeavor to resolve claims, disputes, and other matters in question between them by mediation. Request for mediation shall be filed in writing with the other party to this Agreement. The request may be made concurrently with the filing of a demand for arbitration, but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§4.5.3 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written and executed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§4.6 Arbitration

§4.6.1 Any claim, dispute or matter in question arising out of or related to this Agreement shall be decided by arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

§4.6.2 The demand for arbitration shall be filed in writing with the other party to this Agreement. The parties shall mutually select a single arbitrator for cases with less than One Million Dollars (\$1,000,000.00) in dispute, and a panel of three arbitrators for cases involving One Million Dollars (\$1,000,000.00) or more in dispute. Each party shall be entitled to reasonable discovery in the arbitration. The parties agree to exchange all expert reports prepared for purposes of giving testimony in the arbitration, whether or not such reports will be introduced in the arbitration, thirty (30) days prior to the arbitration.

§4.6.3 A demand for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on said Claim would be barred by the applicable period of limitations. For all claims by Owner against Contractor, the applicable period of limitations shall not commence to run, and any alleged cause of action shall not be deemed to have accrued (whether such action involves negligence, strict liability, indemnity, intentional tort or other tort, breach of contract, breach of implied or express warrant, or any other legal or equitable theory), unless and until Owner is fully aware of all three of the following: (1) the identity of the part(ies) responsible, (2) the magnitude of the damage or injury, and (3) the cause(s) of the damage or injury. Claims for indemnity shall not begin to run until Owner has actually paid out or otherwise actually incurred the injury or damage. The discovery rule provided herein applies in lieu of any otherwise applicable statute or related case law.

§4.6.4 Consolidation or Joinder. Any arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, any additional persons or entities if (1) such persons or entities are materially involved in a common issue of law or fact in dispute, and (2)

such persons or entities are either contractually bound to arbitrate or otherwise consent to arbitration. If for any reason a party whose presence is required for complete relief to be accorded in the arbitration cannot be joined in the arbitration, Owner may elect to forego arbitration and litigate the dispute. In such event, the parties agree to exchange expert reports in the litigation as provided in Paragraph 4.6.2. The foregoing agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§4.6.5 [DELETED]

§4.6.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators (unless unlawful) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTORS

§5.1 Definitions

§5.1.1 A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work at the site. The term “subcontractor” is referred to throughout the Contract Documents as if singular in number and means a subcontractor or an authorized representative of the subcontractor. The term “subcontractor” does not include a separate contractor or subcontractors of a separate contractor. The term includes all subcontractors, suppliers, manufacturers, materialmen, and vendors at any tier unless otherwise qualified as “first tier” only.

§5.1.2 A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform a portion of the Work at the site. The term “sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a sub-subcontractor or an authorized representative of the sub-subcontractor.

§5.2 Award of Subcontracts or Other Contracts for Portions of the Work

§5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Owner through Architect/Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. Architect/Engineer will promptly reply to Contractor in writing stating whether or not Owner or Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity.

§5.2.2 Contractor shall not contract with a proposed person or entity to whom Owner or Architect/Engineer has made reasonable and timely objection. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.

§5.2.3 If Owner or Architect/Engineer has reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another to whom Owner or Architect/Engineer has no reasonable objection. If the proposed but rejected subcontractor was reasonably capable of performing the Work and if its bid was reasonable, the Contract Sum and Contract Time shall be increased or decreased by

the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless Contractor has acted promptly and responsively in submitting names as required.

§5.2.4 Contractor shall not change a subcontractor, person, or entity previously selected without the prior written consent of Owner. If such consent is given and the subcontractor to be replaced is a minority, woman, or emerging small business registered with the State of Oregon, Contractor shall make good faith efforts to contract with an M/W/ESB for the work to be performed by that subcontractor. Documentation of these efforts is required and must be submitted to Owner upon request.

§5.3 Subcontractual Relations

§5.3.1 By appropriate agreement, written where legally required for validity, Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all obligations and responsibilities, including the responsibility for safety of the subcontractor’s Work, which Contractor, by these Documents, assumes toward Owner and Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of Owner and Architect/Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Owner. Where appropriate, Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

§5.3.2 Contractor shall include in all subcontracts with subcontractors a right for Contractor to assign subcontracts to Owner in the event of termination of the Contract with Owner.

§5.4 Contingent Assignment of Subcontracts

§5.4.1 Each subcontract agreement for a portion of the Work is assigned by Contractor to Owner, provided that:

- .1 assignment is effective only after termination of Contract by Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which Owner accepts by notifying the subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§6.1 Owner’s Right to Perform Construction and to Award Separate Contracts

§6.1.1 Owner reserves the right to perform construction or operations related to the Project with Owner’s own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If Contractor claims that delay or additional cost is involved because of such action by Owner, Contractor shall make such Claim as provided in Section 4.3.

§6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the contractor who executes each separate Owner-Contractor Agreement.

§6.1.3 Contractor shall provide for coordination of the activities of Owner’s own forces and of each separate contractor with the Work of Contractor. Owner shall require its own forces and separate contractors to cooperate with Contractor with respect to such coordination. Contractor shall participate with other separate contractors and Owner in reviewing their construction schedules when directed to do so. Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by Contractor, separate contractors, and Owner until subsequently revised.

§6.2 Mutual Responsibility

§6.2.1 Contractor shall afford Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate Contractor’s construction and operations with theirs as required by the Contract Documents.

§6.2.2 If part of Contractor’s Work depends, for proper execution or results, upon construction or operations by Owner or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Architect/Engineer and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive Contractor’s Work, except as to defects not then reasonably discoverable.

§6.2.2.1 If part of Contractor’s Work requires that any work being performed by Owner or any of its contractors be performed before Contractor can proceed, Contractor shall give Owner and Architect/Engineer adequate prior written notice of when such work must be done. In the absence of such notice, Contractor shall not be entitled to any additional costs or time arising out of delay caused by Owner or its contractors in completing such Work.

§6.2.3 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. Owner shall be responsible to Contractor for costs incurred by Contractor because of

delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§6.2.4 Contractor shall promptly remedy damage wrongfully caused by Contractor to completed or partially completed construction or to property of Owner or separate contractors as provided in Paragraph 10.2.5.

§6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in Section 3.14.

§6.3 Owner’s Right to Clean Up

§6.3.1 If a dispute arises among Contractor, separate contractors, and Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may clean up and Architect/Engineer will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§7.1 General

§7.1.1 Changes in the Work may be accomplished AFTER EXECUTION OF THE Contract, and without invalidating the Contract, by prior written Change Order, Construction Change Direction or order for a minor change in the work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§7.1.2 Owner will not be responsible for additional costs, fees, or time associated with any altered or additional Work unless a Modification is properly and timely prepared and executed as required in the Contract Documents. Contractor hereby waives any argument that Owner’s conduct (including, but not limited to, orally approving changes) amounts to a waiver of the prior, written change requirements of the Contract Documents.

§7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in a Change Order, Construction Change Directive, or order for a minor change in the Work.

§7.1.4 Owner shall periodically combine several Change Orders into a Contract Amendment which shall be signed by Owner and Contractor. After a Contract Amendment is signed by Owner and Contractor, Contractor may include in the Contractor’s Application for Payment the amounts set forth in the Change Orders included in the Contract Amendment as the Work is completed.

§7.2 Change Orders

§7.2.1 A Change Order is a written instrument prepared by Architect/Engineer and signed by Owner, Contractor and Architect/Engineer, stating their agreement upon all of the following:

- .1 change in the Work;

- .2 the amount of the adjustment, if any, in the Contract Sum, including all direct and indirect costs, all delay costs, impact costs, ripple effect costs, and all profit and overhead on these costs associated with the change; and
- .3 the extent of the adjustment, if any, in the Contract Time, including any delays, schedule impacts, and ripple effects on the Contract Time.

§7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Paragraph 7.3.3.

§7.3 Construction Change Directives

§7.3.1 A Construction Change Directive is a written order signed by Owner and Architect/Engineer directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contact Sum or Contract Time or both. Owner may, by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Times being adjusted accordingly.

§7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 if Owner and Contractor cannot agree on the amount under methods .1, .2 or .3, above, then the adjustment shall be made as provided in Paragraph 7.3.6.

§7.3.4 Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Architect/Engineer of Contractor’s agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§7.3.5 A Construction Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum and Contract Time, or both, or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§7.3.6 If Owner and Contractor cannot agree on the amount of a Change Order under the methods provided in Paragraphs 7.3.3 (.1, .2 or .3), then the adjustment shall be determined as provided in Paragraph 7.3.6.1 and Paragraph 7.3.6.2, below.

§7.3.6.1 Costs. Costs for the purposes of this Paragraph 7.3.6 shall mean actual charges or expenses, verified by receipt or invoice, if available, or Contractor’s certification and shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker’s compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

§7.3.6.2 Overhead and Profit. The combined overhead and profit included in the total cost to Owner of a change in the Work shall be based on the following schedule. Costs to which overhead and profit are to be applied shall be determined in accordance with Paragraph 7.3.6.1.

- .1 for Contractor, for Work performed by Contractor’s own forces, ten percent (10%) of the cost;
- .2 for Contractor, for Work performed by Contractor’s subcontractors, five percent (5%) of the amount due the subcontractors, provided that with respect to subcontractors affiliated with or substantially owned by Contractor or Contractor’s principal officers, no such adjustment under this subparagraph .2 will be allowed; and
- .3 for each subcontractor involved, for Work performed by that subcontractor’s own forces, five percent (5%) of the cost, provided that with respect to subcontractors affiliated with or substantially owned by Contractor or Contractor’s principal officers, no such adjustment under this subparagraph .3 will be allowed .

§7.3.7 The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Architect/Engineer, plus a corresponding decrease in overhead and profit. When both additions and credits covering related Work or substitutions are involved in a change, the Allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§7.3.8 Pending final determination of the total cost of a Construction Change Directive to Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment

accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, Owner and Architect/Engineer will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

§7.3.9 When Owner and Contractor agree with the determination made by Architect/Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§7.3.10 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over One Thousand Dollars (\$1,000.00) be approved without such itemization.

§7.4 Minor Changes in the Work

§7.4.1 Owner and Architect/Engineer will each have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and Contractor. Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§8.1 Definitions

§8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§8.1.2 The date of commencement of the Work is the date established in the Agreement.

§8.1.3 The date of Substantial Completion is the date certified by Architect/Engineer in accordance with Section 9.8.

§8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§8.2 Progress and Completion

§8.2.1 Time limits stated in the Contract Documents are of the essence of the contract. By executing the Agreement, Contractor confirms that the Contract Time is a reasonable period for performing and completing the Work.

§8.2.2 Contractor shall not, except by agreement or instruction of Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11, to be furnished by Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by Owner, Contractor shall notify Owner in writing not less than seven (7) days or other agreed period before commencing the Work.

§8.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§8.3 Delays and Extensions of Time

§8.3.1 If Contractor is delayed at any time in the commencement or progress of the work by an act or neglect of Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by Owner, or by changes ordered in the Work, or by industry-wide labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Contractor’s control, or by delay authorized by Owner pending mediation and arbitration, then the following shall apply:

- .1 except as set out in Item .4, below, Contractor shall, if Owner so directs in writing, accelerate the performance of the Work, with additional labor, services, materials, equipment, facilities, subcontractors, supervision and otherwise as necessary, so as to overcome the delay and achieve completion of the Work by the Contract Time, and the Contract Sum shall be increased by prior written Change Order to compensate Contractor for its costs incurred in accelerating the Work in an amount determined in accordance with Article 7 of these General Conditions.
- .2 Contractor shall give prior written notice to Owner and Owner’s Representative of Contractor’s intent to commence Acceleration of the performance of the Work pursuant to Item .1, above. Owner shall not be obligated to increase the Contract Sum as a result of any Acceleration of the Work commenced in advance of Owner’s receipt of written notice of Contractor’s intent to commence such Acceleration.
- .3 In the event of Acceleration, except as set out in Item .4, below, the Contract Time shall not be extended due to the delays set out in Paragraph 8.3.1. Contractor’s sole remedy in the event of those delays is an increase in the Contract Sum pursuant to Item .1, above, unless otherwise agreed to by Owner.
- .4 Contractor shall not be obligated to overcome the delay and achieve completion of the Work by the Contract Time set out in the Agreement, nor shall Contractor be denied an extension of the Contract Time, in the event the nature of the cause of the delay under Paragraph 8.3.1 is such that no amount of Acceleration of the Work pursuant to Item .1 above reasonably could enable Contractor to overcome the delay and achieve completion of the Work by the Contract Time set out in the Agreement. In the circumstances set out in this Item .4, Contractor shall accelerate the Work to the extent it reasonably is able pursuant to Item .1 above, the unavoidable delay shall be excused, and the Contract Time shall be extended by Change Order in the amount of the unavoidable delay.

§8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§9.1 Contract Sum

§9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents.

§9.2 Schedule of Values

§9.2.1 Before the first Application for Payment, Contractor shall submit to Owner and Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Architect/Engineer may require. This schedule, unless objected to by Owner or Architect/Engineer, shall be used as a basis for reviewing Contractor’s Applications for Payment.

§9.3 Applications for Payment

§9.3.1 Contractor shall submit to Owner an itemized application for Payment for Work completed, based on the current, approved schedule of values, in accordance with the Contract Documents. Such Application shall be notarized and supported by such data substantiating Contractor’s right to payment as Owner may require, including, but not limited to, copies of invoices and requisitions from subcontractors, waivers and releases by Contractor and subcontractors (see Attachment 1), certified payrolls, all invoices for equipment, proof of payment for prior period invoices, and retainage as provided for in the Agreement. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet. Applications for Payment may include requests for payment on account of Change Orders that have been included in a Contract Amendment.

§9.3.1.1 [DELETED]

§9.3.1.2 Such applications may not include requests for payment for portions of the Work for which Contractor does not intend to pay to a subcontractor, unless such Work has been performed by others whom Contractor intends to pay. Contractor shall include a written notice, on Contractor’s letterhead, stating the name of and amount owed to such subcontractor that has requested payment which has not been included on the Application for Payment.

§9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance and in writing by Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by Contractor with procedures satisfactory to Owner to establish Owner’s title to such materials and equipment or

otherwise protect Owner’s interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site.

§9.3.3 Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Contractor further warrants that, upon submittal of an Application for Payment, all work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Contractor’s knowledge, information, and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, subcontractors, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

§9.4 Certificates for Payment

§9.4.1 Architect/Engineer will, within seven (7) days after receipt of Contractor’s Application for Payment, either issue to Owner a Certificate for Payment, with a copy to Contractor, for such amount as Architect/Engineer determines is properly due, or notify Contractor and Owner in writing of Architect/Engineer’s reasons for withholding certification in whole or in part as provided in Paragraph 9.5.1.

§9.4.2 The issuance of a Certificate for Payment will constitute a representation by Architect/Engineer to Owner, based on Architect/Engineer’s reasonably detailed review of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Architect/Engineer’s knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents, and that all conditions to payment have been satisfied. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests, inspections and observations, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that Contractor is entitled to payment in the amount certified.

§9.5 Decisions to Withhold Certification

§9.5.1 Architect/Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect Owner, if in Architect/Engineer’s opinion the representations to Owner required by Paragraph 9.4.2 cannot be made. If Architect/Engineer is unable to certify payment in the amount of the Application, Architect/Engineer will notify Contractor and owner as provided in Paragraph 9.4.1. If Contractor and Architect/Engineer cannot agree on a revised amount, Architect/Engineer will promptly issue a Certificate for Payment for the amount for which Architect/Engineer is able to make such representations to Owner. Architect/Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in Architect/Engineer’s opinion to protect Owner from loss for which Contractor is responsible, including loss resulting from acts and omissions described in Paragraph 3.3.2, because of:

- .1 defective Work not remedied;

- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by Contractor;
- .3 failure of Contractor to make payments properly to subcontractors or for labor, materials, or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages and actual delay damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to abide by all terms and conditions of the Contract Documents.

§9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§9.5.3 Notwithstanding the issuance of a Certificate for Payment, Owner may withhold payment for the reasons set forth in Paragraph 9.5.1. If Owner withholds payment, in whole or in part, Owner shall notify Contractor and Architect/Engineer in writing of Owner’s reasons for withholding payment.

§9.6 Progress Payments

§9.6.1 After Architect/Engineer has issued a Certificate for Payment, Owner shall make payment in the manner and within the time provided in the Contract Documents. Owner may refuse to make payment on any Certificate of Payment for any breach of the Contract, including, but not limited to, those defaults set forth in Paragraphs 9.5.1.1 through 9.5.1.8. Owner shall not be deemed in breach by reason of withholding payment while any such Contractor breaches remain uncured. If Owner refuses to make payment because Contractor is in breach of the Contract, Owner shall notify Contractor and Architect/Engineer in writing of Owner’s reasons for refusing to make payment.

§9.6.2 Contractor shall promptly pay each subcontractor, upon receipt of payment from Owner, out of the amount paid to Contractor on account of such subcontractor’s portion of the Work, the amount to which said subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such subcontractor’s portion of the Work. Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner. Notwithstanding anything in this Section 9.6 to the contrary, Owner may elect, in Owner’s sole discretion, to make any payment jointly payable to Contractor and any subcontractor. Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create (1) any contract between Owner and subcontractors or (2) rights in any subcontractor against Owner. In addition, should Contractor neglect or refuse to pay promptly any bill

or charge legitimately incurred by it, Owner shall have the right, but not the obligation, to pay the bill directly, and Contractor shall immediately reimburse Owner for same, provided Owner notifies Contractor of its intent to pay such bill directly and Contractor fails to provide Owner, within seven (7) days following Owner’s written notice, of an acceptable explanation in writing regarding Contractor’s failure to promptly pay the bill or charge legitimately incurred by Contractor. If Contractor does not reimburse Owner prior to the next payment by Owner to Contractor, Owner may offset the amount of the bill against amounts owed by Owner to Contractor hereunder.

§9.6.3 Architect/Engineer will, on request, furnish to a subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Architect/Engineer and owner on account of portions of the Work done by such subcontractor.

§9.6.4 Neither Owner nor Architect/Engineer shall have an express or implied obligation (1) to pay or to see to the payment of money to a subcontractor or (2) track, monitor or investigate Contractor’s disbursement of Project funds for the benefit of any subcontractor, surety, creditor, or any other person or entity.

§9.6.5 [DELETED]

§9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of the Work not in accordance with the Contract Documents.

§9.6.7 Unless Contractor provides Owner with a payment bond in the full penal sum of the Contract Sum, payments received by Contractor for the Work properly performed by subcontractors shall be held by Contractor for those subcontractors who performed the Work or furnished materials, or both, under contract with Contractor for which payment was made by Owner.

§9.6.8 With each Application for Payment, Contractor shall furnish a conditional waiver (see Attachment 1) and release of claims for itself and each first-tier subcontractor who furnished labor, equipment, materials or services to the Project during the period covered by the Application for Payment. Upon each payment by Owner, Contractor shall execute and cause first-tier subcontractors to execute an unconditional waiver and release of claim acknowledging receipt of all payments due through the period covered by the previous Application for Payment (see Attachment 2). The conditional and unconditional claim releases shall be on forms attached to the Agreement, and Contractor shall deliver the executed releases to Owner with its next succeeding Application for Payment, including the Final Application for Payment.

§9.6.9 In addition to the retainage specified in the Agreement, Owner may withhold progress payments or final payment or any portion thereof on account of (1) defective or nonconforming Work not remedied, (2) claims filed or a reasonable basis to believe that such claims will be filed, (3) failure of Contractor to make payments properly for labor, materials, equipment, or subcontracts, (4) failure of Contractor to submit to Owner claim waivers and releases (see Attachment 1), or (5) significant failure to carry out the Work in strict accordance with this Agreement. Owner may withhold from a progress payment or final payment up to one hundred fifty percent (150%) of the estimated or actual costs associated with the above items.

§9.7 Failure of Payment

§9.7.1 If Owner fails to make payment to Contractor with respect to any amounts which are not in dispute between Owner and Contractor within the time periods for payment as set forth in the Contract Documents, Contractor may, upon fourteen (14) days' prior written notice to Owner, stop the Work and thereby suspend or terminate the Contract, unless within such fourteen (14) days payment is made to Contractor of all undisputed amounts and Owner's good faith basis for contesting any disputed amounts is delivered to Contractor. If Contractor so terminates the Contract, Contractor's exclusive remedies will b governed by Article 14, below.

§9.8 Substantial Completion

§9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work for its intended use without any meaningful interference or disruption.

§9.8.1.1 For Substantial Completion to be achieved, Owner must have received a temporary or final certificate of occupancy and all other governmental approvals as necessary and required for Owner to occupy or utilize the Work or designated portion thereof for its intended purpose. The requirement set out in this Section shall be deemed satisfied if all construction, submittals, and other performance by Contractor required for issuance of the temporary or permanent certificate of occupancy has been completed but the certificate has not been issued solely because of factors beyond the reasonable control of Contractor. A delay in the applicable governmental agency's issuance of a Certificate of Occupancy, following Contractor's completion of construction, submittals, and other performance that is of normal duration for that agency shall not constitute a factor "beyond the reasonable control of Contractor," as that phrase is used in the prior sentence.

§9.8.2 When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Contractor shall prepare and submit to Architect/Engineer a comprehensive list of items to be completed or corrected prior to Final Payment ("Punch List"). Failure to include an item on such list does not alter the responsibility of Contractor to complete all the Work in accordance with the Contract Documents.

§9.8.3 Upon receipt of Contractor's list, Architect/Engineer will make an inspection, accompanied by Owner, to determine whether the Work or designated portion thereof is substantially complete. If Architect/Engineer's inspection discloses any item, whether or not included on the Punch List, which is not sufficiently complete in accordance with the Contract Documents, so that Owner can occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the certificate of Substantial Completion, complete or correct such item upon notification by Architect/Engineer. In such case, Contractor shall then submit a request for another inspection by Architect/Engineer to determine Substantial Completion.

§9.8.4 When the Work or designated portion thereof is substantially complete, Architect/Engineer will prepare a Certificate of Substantial Completion which shall be within the Contract Time unless extended pursuant to Section 8.3, shall establish the date of Substantial Completion, shall establish responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Contractor shall finish all items on the list

accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless the warranty relates to Work that is incomplete or requires correction (in which case, such warranty shall commence upon completion or correction of the Work) and unless otherwise provided in the Certificate of Substantial Completion.

§9.8.5 The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete and not in accordance with the requirements of the Contract Documents.

§9.9 Partial Occupancy or Use

§9.9.1 Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer as required under Paragraph 11.4.1.5, below, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion substantially complete, Contractor shall prepare and submit a list to Architect/Engineer as provided in Paragraph 9.8.2. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between Owner and Contractor.

§9.9.2 Immediately prior to such partial occupancy or use, Owner, Contractor, and Architect/Engineer shall jointly inspect the area to be occupied or portion of the work to be used in order to determine and record the condition of the Work.

§9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§9.10 Final Completion and Final Payment

§9.10.1 Contractor shall, within seven (7) days after completion and correction of the items on the Punch List, notify Architect/Engineer and Owner in writing, requesting that a final inspection be made by Owner and Architect/Engineer. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Owner and Architect/Engineer will notify Contractor of the date and time of the final inspection. When Owner and Architect/Engineer find the Work acceptable under the contract Documents and the Contract fully performed, Architect/Engineer will promptly issue a final Certificate of Payment stating that, to the best of Architect/Engineer’s knowledge, information, and belief, and on the basis of Architect/Engineer’s on-site visits and inspections, the Work has been completed in strict accordance with terms and conditions of the Contract Documents and that the entire balance found to be due

Contractor and noted in the final Certificate is due and payable. Architect/Engineer’s final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 9.10.2 below as precedent to Contractor’s being entitled to Final Payment have been fulfilled.

§9.10.1.1 The term “Final Completion” as used in the Contract Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved, and (2) Owner has received a final Certificate of Occupancy; (3) Owner has received all other governmental approvals as necessary and required for Owner to occupy or utilize the Work or designated portion thereof for its intended purpose; and (4) Architect/Engineer has issued Architect/Engineer’s final Certificate for Payment. Notwithstanding the foregoing, Final Completion shall be deemed achieved if all construction, submittals, and other performance by Contractor required for issuance of the permanent Certificate of Occupancy has been completed, but the certificate has not been issued solely because of factors beyond the reasonable control of Contractor. A delay in the applicable governmental agency’s issuance of a Certificate of Occupancy, following Contractor’s completion of construction, submittals, and other performance that is of normal duration for that agency shall not constitute a factor “beyond the reasonable control of Contractor,” as that phrase is used in the prior sentence.

§9.10.2 Neither Final Payment nor any remaining retained percentage shall become due until Contractor submits to Architect/Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to Owner; (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety to Final Payment; (5) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner; (6) the grounds for withholding certification of payment as set forth in Paragraph 9.5.1 have been removed or no longer exist; (7) completion of the Work in compliance with the Contract Document; and (8) evidence of compliance with all other requirements of the Contract Documents. If a subcontractor refuses to furnish a release or waiver required by Owner, Contractor may furnish a bond satisfactory to Owner to indemnify Owner against such claim. If such claim remains unsatisfied after payments are made, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys’ fees.

§9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion, and Owner and Architect/Engineer so confirm, Owner shall, upon application by Contractor and certification by Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. In such event, Owner shall be entitled to retain an amount equal to one hundred fifty percent (150%) of the estimated costs of finally completing or repairing the Work as determined by Owner. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Owner and Architect/Engineer prior

to certification of such payment. Such payment shall be made under terms and conditions governing Final payment, except that it shall not constitute a waiver of claims.

§9.10.4 The making of Final Payment shall constitute a waiver of Claims by Owner except those arising from:

- .1 claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents or industry standards, or failure of Contractor to comply with all terms and conditions of the contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing either before or after Final Payment.

§9.10.5 Acceptance of Final Payment by Contractor, a subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§10.1 Safety Precautions and Programs

§10.1.1 Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and the entirety of the Work.

§10.1.1.1 Contractor’s safety obligations under this Section shall apply, without limitation, to the areas of Owner’s property where the Work is performed, or which are used for any purpose in connection with the performance of the Work by Contractor or subcontractors.

§10.1.1.2 Contractor shall coordinate its safety program with the safety programs of Owner’s separate contractors and of any other contractors working at the site.

§10.2 Safety of Persons and Property

§10.2.1 Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby, including, but not limited to, licensees, trespassers, and persons on adjacent or adjoining properties;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of Contractor or Contractor’s subcontractors or sub-subcontractors; and

3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. Contractor at all times shall protect adjoining private or public property from damage arising from Contractor's operations. The Drawings show the approximate location of existing utilities on the Project site. Owner believes the utilities exist as represented in the Drawings, but cannot guarantee this fact. Contractor will take all reasonable precautions to protect and accommodate both the utilities identified in the Drawings and those which may otherwise exist.

§10.2.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities, governmental authorities, and all other persons or entities having jurisdiction bearing on safety of persons or property or their protection from damage, injury, or loss.

§10.2.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety, codes, rules, and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

§10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§10.2.5 Contractor shall promptly remedy damage and loss to property, including, but not limited to, the Work itself, caused in whole or in part by Contractor, any subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible, except damage or loss attributable to acts or omissions of Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, not attributable to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under Section 3.18.

§10.2.6 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to Owner and Architect/Engineer.

§10.2.7 Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger the safety of persons or property.

§10.2.8 When all or any portion of the Work is suspended for any reason, Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

§10.2.9 Contractor shall promptly report, in writing, to Owner and Architect/Engineer and to any government or other authority as required by law or regulation, all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner and Architect/Engineer.

§10.3 Hazardous Materials

§10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including, but not limited to, toxic substances or other hazardous materials as defined in Paragraph 10.5.1, below, encountered on the site by Contactor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect/Engineer in writing.

§10.3.2 Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, Owner shall furnish in writing to Contractor and Architect/Engineer the names and qualifications of persons or entities who are to perform tests, verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. Contractor and Architect/Engineer will promptly reply to Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by Owner. If either Contractor or Architect/Engineer has an objection to a person or entity proposed by Owner, Owner shall propose another to whom Contractor and Architect/Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of Contractor’s reasonable additional costs of shut-down, delay, and start-up, which adjustments shall be accomplished as provided in Article 7, above.

§10.3.3 [DELETED]

§10.4 Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by Contractor.

§ 10.5 [DELETED]

§10.5.1 Contractor shall not cause or permit any “Hazardous Materials” (as defined herein) to be brought upon, kept, or used in or about the job site except to the extent such Hazardous Materials are necessary for the prosecution of the Work or are required pursuant to the Contract Documents. Removal of such hazardous Materials shall be undertaken within twenty-four (24) hours following Owner’s demand for such removal. Such removal shall be undertaken by Contractor at its sole cost and expense, and shall be performed in accordance with all applicable laws. Any damage to the Work, the job site, or any adjacent property resulting from the improper use, or any discharge or release of Hazardous Materials, shall be remedied by Contractor at its sole cost and expense, and in compliance with all applicable laws. Contractor shall immediately notify Owner of any release or discharge of any Hazardous Materials on the job site. Contractor shall be responsible for making any and all disclosures required under applicable “Community Right-to-Know” laws. Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and moved from the job site in accordance with all applicable laws and regulations. Contractor shall immediately notify Owner of any citations, orders, or warnings issued to or received by Contractor, or of which Contractor otherwise becomes aware, which

relate to any Hazardous Materials on the job site, without limiting any other indemnification provisions pursuant to law or specified in this Agreement. Contractor shall indemnify, defend (at Contractor’s sole cost, with legal counsel approved by Owner) reimburse, and hold Owner harmless as provided in Paragraph 3.18 from and against any and all such claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses in removing or remediating the effect of any Hazardous materials on, under, from, or about the job site, arising out of or relating to, directly or indirectly, Contractor’s failure to comply with any of the requirements of this Paragraph 10.5.1. As used in Paragraph 10.3, the term “Hazardous Materials” means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or listed by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and any amendments thereto, and any substances, materials, or wastes that are or become regulated under federal, state, or local law. Hazardous Materials (or substances) shall also include, but not be limited to: regulated substances, petroleum products, pollutants, mold and fungi, and any and all other environmental contamination as defined by and in any and all federal, state, and local laws, rules, regulations, ordinances, or statutes now existing or hereinafter enacted relating to air, soil, water, environmental, or health and safety conditions.

§10.6 Emergencies

§10.6.1 In an emergency affecting safety of persons or property, Contractor shall act, at Contractor’s discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7, above.

§10.6.2 If Contractor does, or omits to do, anything where safety may be endangered or where damage or injury may result to person or property (including the Work itself), Owner may, in its sole discretion, after one-day written notice to Contractor, or in case of imminent danger, immediately after delivery of written notice to Contractor, make good all Work, material, omissions or deficiencies to remove the dangerous condition(s) and prevent damage or injury. Owner may deduct Owner’s costs incurred under this Section from the amount included in the Contract Sum due or which may thereafter become due to Contractor. No action taken by Owner under this Section shall affect any of the other rights or remedies of Owner granted by this Agreement or by law, or relieve Contractor from any consequences or liabilities arising from such acts or omissions. Contractor shall not be responsible for costs of emergency work, unless the emergency was due to the negligence or willful misconduct of Contractor or any subcontractors, or anyone for whose acts any of them may be liable.

ARTICLE 11 INSURANCE AND BONDS

§11.1 Contractor’s Liability Insurance

§11.1.1 Contractor shall, at all times provide and maintain and require all subcontractors to provide and maintain the following types of insurance written on an occurrence basis protecting the interests of Owner (or any successor in interest to Owner), and naming Owner and its commissioners, executives, managers, directors, officers, agents, attorneys, employees, and designees as additional insureds, with limits and durations not less than those as set forth below; provided, however, Owner may, in its sole discretion, accept lesser insurance for subcontractors if done so in writing in advance of the Work.

- .1 Worker’s Compensation Insurance to cover claims made under Worker’s Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employers Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employers liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured’s right of subrogation against Owner and Architect/Engineer.

- .2 Commercial General Liability Insurance, including insurance on an “occurrence basis,” with combined bodily injury and property damage in the following amounts: \$2,000,000 each occurrence, \$2,000,000 personal and advertising injury, \$3,000,000 general aggregate, \$3,000,000 products/completed operations aggregate, \$100,000 fire damage legal liability, \$5,000 medical expenses per person. Such insurance shall include the following coverages: (1) Premises-Operations, (2) without exclusion for subsidence, Explosion, Collapse or Underground Property Damages, (3) without exclusion for water intrusion or water damage, (4) Elevators and Escalators, (5) Independent Contractors, (6) Products and Completed operations shall be carried for the duration applicable for the statute of repose in Oregon and (7) contractual including contract obligations specified in the indemnification paragraphs of the owner-contractor agreement. If the Commercial General Liability Form is used, the General Aggregate limit shall apply to this Project only. Policy limits shall not be eroded or wasted by defense costs. There shall be no endorsement requiring specific contract language be in place with any other entity in order for the policy to be effective.

- .3 Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the Work with minimum combined single limits as provided in the Agreement for Bodily Injury and Property Damage Liability Each Person/Each Occurrence of not less than \$2,000,000 each accident.

- .4 Umbrella (Excess) Liability Insurance, including coverage for both bodily injury and property damage, with a minimum limit as provided in the Agreement, covering the following:
 - a. Bodily injury, including damages for care and loss of services, because of bodily injury, including death, at any time resulting therefrom sustained by any person or persons, and including, but not limited to, damages related to and arising out of Hazardous Materials as defined in Article 10, above.
 - b. Property Damage for losses due to injury to or destruction of tangible personal or real property, including, but not limited to, the Work itself, including, but not limited to, consequential damages and loss of use resulting therefrom.
 - c. \$5,000,000 each occurrence, \$5,000,000 aggregate, coverage to be at least as broad as all liability policies described above and shall be carried for the duration of the applicable statute of repose in Oregon.
 - d. coverage hereunder shall be triggered upon exhaustion, which may include reasonable compromise for amounts less than limits, of the underlying primary and additional insurance applicable to the loss.

.5 The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance of Owner, its officers, employees or agents.

§11.1.2 [DELETED]

§11.1.3 Certificates of insurance from Contractor and all subcontractors and all required endorsements (including, but not limited to, additional insured endorsements) acceptable to Owner evidencing compliance with this Section 11.1 shall be filed at Contractor’s cost with Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to Owner. If any of the foregoing insurance coverages are required to remain in force after Final Payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for Payment and upon each renewal for the duration of coverage required. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by Contractor with reasonable promptness in accordance with Contractor’s information and belief. All endorsements, including notice of cancellation and additional insured endorsements, shall be physically attached to the certificate of insurance.

§11.1.4 In the event Contractor or any of its subcontractors has or obtains insurance coverage in amounts in excess of those listed above, such additional limits shall inure to the benefit of Owner.

§11.1.5 Contractor agrees to notify Owner by certified mail thirty (30) days prior to cancellation, non-renewal, or material change in any insurance required hereunder. Any provision which provides that the insurer “will endeavor” to provide notice or that the insurer shall not be liable for failure to provide timely notice shall have “endeavor” and the limitation on liability marked out and signed by any authorized agent of the insurer.

§11.1.6 Failure on the part of Contractor to procure and maintain the required insurance and provide proof thereof to Owner shall constitute a material breach of this Agreement, upon which Owner may immediately terminate this Agreement or, upon seven (7) days notice to Contractor, procure such insurance and deduct all costs of procurement from any sum due Contractor, or to withhold any payment due to Contractor under this Agreement until the required proof of insurance coverage is provided to Owner.

§11.1.7 Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide Owner with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against Owner, its officers, agents, or employees, and that Contractor shall indemnify Owner for costs and expenses, including reasonable attorneys’ fees, incurred or arising out of the defense of such action.

§11.1.8 The issuance or maintaining of insurance of any type by Contractor will not be deemed or construed to release, limit, waive, or discharge Contractor from any and all of the obligations and risks imposed by this Agreement upon Contractor. Neither shall any forbearance or omission by Owner to require proof of insurance from Contractor before permitting Contractor to proceed or continue with

the Work be deemed a waiver of Owner’s rights or Contractor’s obligations regarding the provision of insurance under this Agreement.

§11.1.9 Any coverage for adequacy of Contractor’s performance shall be maintained after Final Completion of the Work for the full one-year correction of Work period and any longer specific periods set forth in the Contract Documents. If the insurance is cancelled before the end of any such period, and Contractor fails to immediately procure replacement insurance as specified, Owner reserves the right to procure such insurance and to either charge the cost thereof to Contractor or deduct the cost from any sum due Contractor.

§11.1.10 Nothing contained in these insurance requirements shall be construed as limiting the extent of Contractor’s responsibility for payment or damages resulting from the operations under this Agreement, including Contractor’s obligation to pay both liquidated damages and actual delay damages.

§11.1.11 In no instance will Owner’s exercise of its option to occupy and use completed portions of the Work relieve Contractor of its obligation to maintain insurance required herein until the date of Final Completion.

§11.1.12 All insurance to be carried by Contractor shall state, by endorsement, that Contractor’s insurance is primary and that any liability insurance maintained by Owner or any other additional insured is excess and noncontributory. Contractor shall not commence Work under this Agreement until proof of all required insurance has been submitted to and approved by Owner. Contractor shall not allow any subcontractor to commence Work until such subcontractor has obtained and submitted proof of insurance as required pursuant to the Contract Documents, including endorsements for notice of cancellation and additional insured provisions.

§11.1.13 The commercial general liability policies maintained by Contractor and subcontractors pursuant to the Contract Documents shall name, by endorsement, Owner and its commissioners, executives, managers, directors, officers, agents, attorneys, employees, and designees as additional named insureds for both ongoing and completed operations. The additional insurance protection shall extend equal protection to Owner as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed unenforceable, then the additional insurance protection to Owner shall be narrowed to the maximum amount of protection allowed by law. Additional insured provisions shall include provision for completed operations and shall be primary and noncontributory in the event of a loss.

§ 11.1.14 Upon Owner’s request, Contractor will immediately provide an actual copy of its insurance policies and those of its subcontractors and suppliers. The insurance shall be provided by an insurance company or companies acceptable to Owner.

§ 11.1.15 All subcontractors’ and suppliers’ insurance shall meet all insurance requirements provided in this section 11.1, including but not limited to the types of insurance (except Excess/Umbrella Liability coverage is not required), the extent and duration of coverages, and notice requirements, except that the limits of insurance for subcontractors shall be no less than the following: Workers Comp and Employers Liability, same, Commercial General Liability (occurrence form), combined bodily injury and property damage, \$1,000,000 each occurrence, \$1,000,000 personal and advertising

injury, \$1,000,000 general aggregate, \$1,000,000 products and completed operations, \$50,000 fire damage, \$5,000 medical expenses per person. With the exception of worker’s compensation, all liability insurance policies shall contain a waiver of subrogation against Owner.

§11.2 Owner’s Liability Insurance

§11.2.1 Owner shall be responsible for purchasing and maintaining Owner’s usual liability insurance and may self-insure.

§11.3 Project Management Protective Liability Insurance

§11.3.1 Optionally, Owner may require Contractor to purchase and maintain Project Management Protective Liability insurance from Contractor’s usual sources as primary coverage for Owner’s, Contractor’s, and Architect/Engineer’s vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, Owner shall reimburse Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and Contractor shall not be responsible for purchasing any other liability insurance on behalf of Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor’s Liability Insurance under Paragraphs 11.1.1.2 through 11.1.1.5.

§11.3.2 To the extent damages are covered by Project management Protective liability insurance, Owner, Contractor, and Architect/Engineer waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§11.4 Property Insurance

§11.4.1 Unless otherwise provided, Owner, at Owner’s option, may purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder’s risk, “all-risk” or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis with deductibles satisfactory to Owner, for which Contractor will be held responsible. Such property insurance shall be maintained, if acquired by Owner, until Final Payment has been made as provided in Section 9.10 or until no person or entity other than Owner has an insurable interest in the property to be covered, whichever is later.

§11.4.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage, including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings, and debris removal, including demolition occasioned by enforcement of any applicable legal requirements.

§11.4.1.2 [DELETED]

§11.4.1.3 [DELETED]

§11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§11.3.1.5 Partial occupancy or use of the premises/building will occur during construction. Owner and Contractor shall take reasonable steps to obtain consent of the insurance company or companies, if any, and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

§11.4.2 Boiler and Machinery Insurance. Owner shall, at its option, purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until Final Acceptance by Owner.

§11.4.3 Loss of use Insurance. Owner, at Owner’s option, may purchase and maintain such insurance as will insure Owner against loss of use of Owner’s property due to fire or other hazards, however caused.

§11.4.4 If Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, Owner may, if possible, at its option, include such insurance, and the cost thereof shall be charged to Contractor by appropriate Change Order.

§11.4.5 [DELETED]

§11.4.6 Upon Contractor’s written request, Owner shall provide Contractor a copy of each policy that includes insurance coverages described by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days’ prior written notice has been given to Contractor.

§11.5 Performance Bond Payment Bond, and BOLI Bond

§11.5.1 Contractor shall obtain a Performance Bond and Payment Bond each in the amount of One Hundred Percent (100%) of the applicable Contract Sum. Contractor shall deliver its required bonds not later than the date of execution of the Agreement and deliver the required subcontractor bonds to Owner not later than the date of execution of the subcontract with any such subcontractor, or if the Work is commenced prior thereto in response to a Notice to Proceed, Contractor shall, prior to commencement of the Work, submit evidence satisfactory to Owner that such bonds will be issued. The bonds shall be in form approved by Owner.

11.5.2 Contractor and subcontractors performing work that exceeds \$100,000 in contract price shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000 and must be in compliance with all requirements of ORS 279C.836, “Public works bonds; rules.” The purpose of this bond is to ensure payment of claims ordered by the Bureau of Labor and Industries. Exemptions to this bonding requirement are contained in ORS 279C.836.

§11.5.3 Upon request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§11.5.4 The bonds shall in all respects conform to the requirements of the laws of Oregon in the county in which the Project is located and shall (1) name Owner as obligee, (2) be in a form and be issued by a licensed surety satisfactory to Owner, and (3) be automatically increased in the amount of any additive Change Orders and Construction Change Directives signed by Owner.

§11.5.5 Owner may, in Owner’s sole discretion, inform the surety of the progress of the Work and obtain consents as necessary to protect Owner’s rights, interests, privileges and benefits under and pursuant to any bond issued in connection with the Work. Owner does not, however, owe any duty to surety, and Owner hereby expressly disclaims any duty or obligation to advise, notify or consult with surety on any matters relating to Contractor or the Project, including, but not limited to, Contractor’s payments to subcontractors or Contractor’s use of Project funds.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§12.1 Uncovering of Work

§12.1.1 If a portion of the Work is covered contrary to Owner’s or Architect/Engineer’s request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by Owner or Architect/Engineer, be uncovered by Owner’s or Architect/Engineer’s examination and be replaced at Contractor’s expense without change in the Contract Time or Contract Sum.

§12.1.2 If a portion of the Work has been covered which Owner or Architect/Engineer has not specifically requested to examine, and the work is typically not Work to be examined, prior to its being covered, Owner or Architect/Engineer may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at Owner’s or Architect/Engineer’s expense. If such Work is not in accordance with the Contract Documents, correction shall be at Contractor’s expense unless the condition was caused by Owner or a separate contractor, in which event Owner or separate contractor shall be responsible for payment of such costs.

§12.2 Correction of Work

§12.2.1 Before or After Substantial Completion

§12.2.1.1 Contractor shall promptly correct Work rejected by Owner or Architect/Engineer or failing to conform to the requirements of the contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for Architect/Engineer’s services and expenses made necessary thereby, shall be at Contractor’s expense.

§12.2.2 After Final Completion

§12.2.2.1 In addition to Contractor’s obligations under Section 3.5, if, within one year after the date of Final Completion of the Work or designated portion thereof, or after the date for commencement of warranties established herein, or by terms of an applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law or in equity, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, either Owner may correct the Work and charge the costs back to Contractor, or Contractor shall correct it promptly at Contractor’s expense after receipt of written notice from Owner to do so unless Owner, with knowledge of the defective or non-conforming condition, has previously given Contractor a written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition.

§12.2.2.2 [DELETED]

§12.2.2.3 Corrective work shall be warranted to be free from defects for the longer of (1) a period of twelve (12) months after the completion of the corrective work, (2) any period specified in the original warranty on such work, (3) any period specified by manufacturer’s warranty, or (4) any period that may be prescribed by law or equity. Any defect in such corrective work shall be corrected again by Contractor promptly upon notice of the defect from Owner. The obligation under this Paragraph 12.2.2.3 shall survive acceptance of the Work and termination of the Contract.

§12.2.3 Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

§12.2.4 Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Owner or separate contractors caused by Contractor’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time limit (if any such limit exists) within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor’s liability with respect to Contractor’s obligations other than specifically to correct the Work.

§12.3 Acceptance of Nonconforming Work

§12.3.1 If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made. Contractor may not rely on any non-written statements that purport to accept nonconforming Work.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§13.1 Governing Law

§13.1.1 The Contract shall be governed by the laws of Oregon, with venue in the Circuit Court for Deschutes County, and/or the Federal District Court for Oregon.

§13.2 Successors and Assigns

§13.2.1 Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Contractor shall not assign any portion of the Contract Documents or any monies due or to become due to it without the advance written consent of Owner.

§13.3 [DELETED]

§13.4 Rights and Remedies

§13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights or remedies shall survive the acceptance of the Work and termination of the Contract.

§13.4.2 No action or failure to act by Owner, Architect/Engineer, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§13.4.3 Notwithstanding any other provisions to the contrary contained in the Contract Documents, provided that Owner continues to make payments of approved amounts not in dispute in accordance with the provisions of the Contract Documents during all disputes, actions, claims and other matters in question arising out of or relating to the Contract Documents or the breach thereof, Contractor will continue the Work and maintain the schedule, unless otherwise agreed between Contractor and Owner in writing.

§13.5 Tests and Inspections

§13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Architect/Engineer timely notice of when and where tests and inspections are to be made so that Architect/Engineer may be present for such procedures.

§13.5.1.1 Representatives of the testing agency shall have access to the Work at all times. Contractor shall provide facilities for such access in order that the agency may properly perform its functions.

§13.5.1.2 Inspection or testing performed exclusively for Contractor’s convenience shall be the sole responsibility the Contractor.

§13.5.2 If Architect/Engineer, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Paragraph 13.5.1, Architect/Engineer will, upon written authorization from Owner, instruct Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to Owner, and Contractor shall give timely notice to Architect/Engineer and Owner of when and where tests and inspections are to be made so that Architect/Engineer and Owner may be present for such procedures. Such costs, except as provided in Paragraph 13.5.3, shall be at Owner’s expense.

§13.5.3 If such procedures for testing, inspection, or approval under Paragraphs 13.5.1 and 13.5.2 reveal faulty or otherwise defective Work or the failure of the portions of the Work to comply with requirements established by the Contract Documents, or if the necessity of any such testing, inspections, and approval procedures arises out of the fault, neglect, or omission of Contractor, all costs made necessary by such failures including, but not limited to, those of repeated procedures and compensation for Architect/Engineer’s services and expenses, shall be at Contractor’s expense.

§13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to Architect/Engineer.

§13.5.5 If Architect/Engineer or Owner is to observe tests, inspections, or approvals required by the Contract Documents, Architect/Engineer and Owner will do so promptly and, where practicable, at the normal place of testing.

§13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid delay in the Work.

§13.5.7 The conducting of any inspections or tests and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner, in writing. Owner’s and Architect/Engineer’s observations, reviews, or approvals of tests and inspections shall not relieve Contractor from its responsibility for construction means, methods, and techniques, nor shall it relieve Contractor of its responsibility to strictly adhere to the Contract Documents.

§13.6 Interest

§13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate provided by law.

§13.7 [DELETED]

§13.8 Forum

§13.8.1 Any mediation, arbitration proceeding, or court suit or action arising out of or related to the Contract or the Work shall be conducted in Bend, Oregon.

§13.9 Severability

§13.9.1 Should any provision of the Contract, at any time, be in conflict with any law, rule, regulation or order, or be unenforceable or inoperative for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event any provision of the Contract becomes less than fully enforceable and operative, the remaining provisions of the Contract nevertheless shall remain in full force and effect and the arbitrator(s) or court shall give the offending provision the fullest meaning and effect permitted by law.

§13.10 Additional Provisions

§13.10.1 All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neutral gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of Articles and sections are for convenience only, and neither limit nor amplify the provisions of this Agreement in itself. The use herein of the word “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as “without limitation,” or “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§13.10.2 Any specific requirement in this Agreement that the responsibilities or obligations of Contractor also apply to a subcontractor is added for emphasis and is also hereby deemed to include a subcontractor. The omission of a reference to a subcontractor in connection with any of Contractor’s responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a subcontractor under the Contract Documents.

§13.10.3 This Agreement shall not be interpreted as creating any third party or class of persons not parties hereto or expressly designated herein, any right or benefits of any kind or nature whatsoever.

§13.10.4 The Agreement and Contract Documents, to the extent they were prepared by counsel for the parties hereto, shall not be construed against any party as a consequence of its role, or the role of its counsel, in the preparation of the Agreement, the General Conditions, or any of the other Contract Documents.

§13.11 Other Provisions

§13.11.1 ORS Chapter 279, more specifically 279a, 279b and 279c, and the most current version of the Attorney General’s Model Rules for Public Contracting (“Model Rules”) at OAR 137-046, 137-047, 137-048, 187-049 and the provisions of the Deschutes County Contracting Code (DCC 2.37) contain provisions more specifically, ORS 279C.505, 279C.515, 279C.520, 279C.525, 279C.530 and 279C.540. The required contract provisions are incorporated herein by this reference. Furthermore, Contractor and Owner agree to comply with all requirements of ORS Chapter 279, the model Rules and other Oregon laws whether or not any such provisions are excised.

§13.11.2 All notices given under the Contract Documents shall be in writing and shall be deemed properly given when delivered in person or by facsimile transmission to the individual to whom it is addressed or four (4) days after it is sent postage prepaid by certified mail return receipt requested to the addresses set forth above.

§13.11.3 Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Workers shall be paid not less than the specified minimum hourly rate of wage as provided in the Oregon Bureau of Labor and Industries (BOLI) publication (which publication is available at web address http://www.boli.state.or.us/BOLI/WHDPWR/pwr_book.shtml) titled “Prevailing Wage Rates for Public Works Contracts in Oregon” (subject only to state law) in effect on the date bids are opened.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§14.1 Termination by Contractor

§14.1.1 Contractor may terminate the Contract if, after written notice by Contractor and fourteen (14) days’ opportunity to cure, Owner fails to make payments to Contractor as set forth in the Contract Documents, subject to all rights and remedies of Owner.

§14.1.2 and §14.1.3 [DELETED]

§14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of Contractor or a subcontractor or their agents or employees or any other persons performing portions of the Work under the contract with Contractor because Owner has persistently failed to fulfill Owner’s obligations under the Contract Documents with respect to matters important to the progress of the Work, Contractor may, upon fourteen (14) days’ written notice and opportunity to cure, terminate the Contract and recover from Owner for all Work performed up to the date of termination, plus all reasonable and unavoidable expenses directly attributable to termination for which Contractor is not otherwise compensated. Contractor shall in no case be entitled to compensation of any kind, including, but not limited to, profit and overhead, on any unperformed Work.

§14.2 Termination by Owner for Cause

§14.2.1 Owner may terminate the Contract if Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials or equipment;
- .2 fails to make payment to subcontractors for materials or equipment or labor in accordance with the respective agreements between Contractor and the subcontractors;
- .3 disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;
- .4 disregards the instructions of Architect/Engineer or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 breaches any warranty made by Contractor under or pursuant to the Contract Documents;

- .6 fails to furnish Owner with assurances satisfactory to Owner evidencing Contractor’s ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .7 fails to proceed diligently and continuously with the construction and completion of the Work in accordance with the Contract Time or the approved schedule;
- .8 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor’s creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor’s act, or to reorganize under bankruptcy or similar laws, or fails or is unable to provide Owner timely and adequate assurance of future performance of the Work in accordance with the terms and conditions of the Contract Documents; or
- .9 otherwise does not fully comply with the Contract Documents.

§14.2.2 When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner and after giving Contractor and Contractor’s surety, if any, fourteen (14) day’s written notice, terminate employment of Contractor, and may:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method Owner may deem expedient. Upon request of Contractor, Owner shall furnish to Contractor a detailed accounting of the costs incurred by Owner in finishing the Work.

§14.2.3 When Owner terminates the Contract for one of the reasons stated in Paragraph 14.2.1, above, Contractor shall not be entitled to receive further payment until the Work is finished.

§14.2.4 In the event of termination of the Contract for cause under Paragraph 14.2.1, the compensation of the parties shall be determined as follows:

- .1 For lump sum projects using the A101 Agreement, determine the value of the work performed as of the time of termination by reviewing the percentage of completion for each item and the approved schedule of values, provided that this amount shall not exceed the Contract Sum, and add in Contractor’s percentage markup on that value for overhead and profit as used by Contractor in preparing its bid. For purposes of this Section 14.2.4, the term “earned Contract Sum” shall mean the sum determined under this Item .1, or .2, below.
- .2 For cost-plus projects using the A111 Agreement, add the amount of the Cost of the Work for the Work performed as of the time of the termination to the amount of Contractor’s Fee computed upon that Cost of the Work, provided that this sum shall not exceed the

Guaranteed Maximum Price as of the time of the termination. For purposes of this Section 14.2.4, the term “Earned Contract Sum” shall mean the sum determined under this Item .2, or .1, above.

- .3 Determine the amount of all costs incurred by Owner in completion of the Work. For purposes of this Section 14.2.4, the term “Owner’s Costs” shall mean the sum determined under this Item .3. Owner’s Costs shall include, but not be limited to, the cost of any additional design, construction management, and Project administrative costs required to facilitate completion with another contractor, any costs incurred in retaining another contractor or other subcontractors, any additional interest or other fees paid by Owner, any attorneys’ fees and other legal expenses related to the termination of Contractor and transactions to arrange for the completion of the Project with another contractor, and any and all other costs, expenses, and damages incurred by Owner by reason of the termination of Contractor, the completion of the Work and of the Project, and delay in the completion of the Project.
- .4 For cost-plus projects using the A111 Agreement, determine the amount of Owner’s share of the savings that Owner would have received under Paragraph 5.2.2.1 of the Agreement, but for the Contractor’s failure to perform or the other occurrence(s) that resulted in the termination under Section 14.2.1. For the purposes of this Section 14.2.4, the term “Owner’s Lost Savings” shall mean the sum determined under this Item .4.
- .5 Subtract the Earned Contract Sum from the Guaranteed Maximum Price (when using A111) or Contract Sum (when using A101). This item shall be called “Unearned Contract Sum.”
- .6 If Owner’s Costs exceed the Unearned Contract Sum, then Contractor shall pay Owner the amount of the excess, plus Owner’s Lost Savings (when using A111 only), less the amount of the Earned Contract Sum not yet paid, if any. If this sum is a negative number, then Owner shall pay Contractor any unpaid portion of the Earned Contract Sum up to the amount of the negative number arrived at in this Item In no event will Contractor be entitled to compensation of any kind, including, but not limited to, profit or overhead, on any unperformed Work.
- .7 If the Unearned Contract Sum exceeds Owner’s Costs, then Owner shall pay Contractor the amount of difference minus Owner’s Lost Savings, if any; provided, however, that if this sum is a negative number, the Contractor shall pay Owner that sum.

§14.2.5 Conversion of Owner’s Termination for Cause

§14.2.5.1 In the event Owner terminates the Contract for cause under Section 14.2 and such termination subsequently is determined in a final arbitrated award or a final judgment to have been wrongful, the termination shall automatically be converted to a termination for Owner’s convenience pursuant to Section 14.4, below, and damages will be limited to those described in Paragraph 14.4.3.

§14.3 Suspension by Owner for Convenience

§14.3.1 Owner may, without cause or prior notice and at any time, order Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as Owner may determine.

§14.3.2 The contract Sum and Contract Time shall be adjusted for increases, if any, if the cost and time caused by suspension, delay, or interruption as described in Paragraph 14.3.1, above. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which Contractor is responsible;
- .2 that an equitable adjustment is made or denied under another provision of the Contract; or
- .3 the suspension, delay, or interruption was made necessary by Contractor or anyone for whose acts Contractor was responsible.

§14.4 Termination by Owner for Convenience

§14.4.1 Owner may, without prior notice and at any time, terminate the Contract for Owner’s convenience and without cause.

§14.4.2 Upon receipt of written notice from Owner of such termination for Owner’s convenience, Contractor shall:

- .1 cease operations as directed by Owner in the notice;
- .2 take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

§14.4.3 In case of termination for Owner’s convenience, Contractor shall be entitled to receive compensation for Work performed prior to termination, together with reasonable and unavoidable expenses directly attributable to termination for which Contractor was not otherwise compensated. In no event shall Contractor be entitled to recover compensation, including, but not limited to, profit and overhead, on Work not performed, for alleged damage to reputation, for interference with contractual relations, or for consequential damages or losses on other projects.

§14.5 Actions Upon Termination

§14.5.1 Upon termination of the Contract for either cause or convenience, Contractor shall:

- .1 forthwith withdraw its employees, workmen, machinery, and equipment from the Project in an orderly manner, as directed by Owner;

- .2 within thirty (30) days after such termination, furnish Owner with a complete accounting of the costs incurred to the date of termination, together with a final status report updating the progress of the Work up to the date of termination;
- .3 within thirty (30) days after said termination, deliver to Owner all those items enumerated in Paragraph 9.10.2, above, to the extent that said items are available, and all Shop Drawings, Project Data and Samples available, and all other of Contractor’s engineering, procurement, accounting and construction documents and record relating to the work performed under the Contract; and
- .4 within fourteen (14) days after said termination, assign to Owner all Contractor’s interest in any subcontracts and purchase orders that Owner so designates in writing.

Application No: _____
 Date: _____

SUBCONTRACTOR PROGRESS PAYMENT WAIVER AND RELEASE OF LIENS AND CLAIMS

Project Name: _____ Subcontractor: _____

Project Location: _____ Payment Amount: _____

Owner: _____ Payment Period: _____

Contractor: _____ Prior Application No.: _____

For the purpose of inducing payment by the Contractor identified above (“Contractor”) to Subcontractor, and in consideration thereof, and with the recognition that this instrument (this “Waiver”) is to be delivered to and will be relied upon by Contractor and Owner, together with their respective directors, officers, managers, members, employees, subcontractors, vendors, attorneys, sureties, lenders, title companies, representatives, successors and assigns, subsidiaries, parents, and affiliates, (the “Released Parties”), Subcontractor hereby agrees and acknowledges as follows:

1. Subcontractor hereby represents and warrants to and for the benefit of the Released Parties that: (a) the work, or labor or services performed or material or equipment (including rented materials and equipment) furnished by Subcontractor (“Work”) for which payment is being requested is Work actually supplied to, performed on, or used in connection with the Project; (b) all federal, state and local taxes and contributions required to be withheld from employees of Subcontractor in connection with the Work have been withheld in the manner provided by law; (c) Subcontractor has been paid in full for all Work previously furnished for the Project or for the benefit of Contractor or Owner through the last date of the Payment Period identified above except for the Payment Amount and any retainage allowed under the Contract; (d) all Work covered by the Application has been incorporated into the Project and title thereto has been passed to the Owner, or, in the case of materials or equipment stored at the site or some other location previously agreed to by Contractor, title will pass to the Owner upon receipt of the Payment Amount, in each case free and clear of any lien, claim, security interest or other encumbrance; and (e) all Work furnished on behalf of Subcontractor to the Project for which Subcontractor has previously received payment has been fully paid for by Subcontractor and there are no amounts unpaid in favor of any employee, subcontractor, materialman, supplier, vendor or any other person or entity furnishing or supplying such Work to said Project or to Subcontractor for utilization in the Project or in the performance of the obligations of Subcontractor with respect to the Project.

2. Subcontractor hereby represents and agrees that the entire amount owed to it as consideration for entering into this Waiver is the Payment Amount identified above. Upon receipt by Subcontractor of (i) one or more checks payable to Subcontractor in the aggregate amount of the Payment Amount, when the check(s) has been paid by the bank upon which it is drawn, or (ii) a wire transfer for said Payment Amount, and in consideration therefor, this instrument shall become effective to unconditionally release and waive all liens, claims, or causes of action against the Released Parties, or against bonds or related to the failure to require bonds, now existing or that may hereafter arise, related in any way to the Project, or Work furnished, supplied or performed by Subcontractor in connection with the Project through the last date of the Payment Period identified above.

3. This Waiver shall not operate as an acceptance by any of the Released Parties of any incomplete Work or Work not in conformance with the contract documents, nor shall it relieve Subcontractor of its continuing obligations under such contract documents, including, but not limited to any guarantees, warranties, achievement of final completion of the Work pursuant to such contract documents, all of which are hereby agreed to be for the benefit of and enforceable by any of the Released Parties. It is specifically understood that this instrument shall not operate to waive, discharge, alter or affect in any way any obligation pursuant to any payment or performance bonds provided for the Project or any guaranty in favor of a Released Party.

4. At the request of Contractor, Subcontractor further agrees to promptly furnish a good and sufficient waiver of liens and claims in the form hereof from every person or entity furnishing or performing any portion of the Work by, through or under Subcontractor.

5. Subcontractor shall indemnify, defend and hold harmless the Released Parties from and against any and all claims, demands, costs and expenses (including attorneys' fees) against any of the Released Parties or their property, arising out of or related in any way to the breach of any representation, warranty or covenant set forth herein or the failure of the Subcontractor to pay any sums owed for Work furnished or performed by, through or under Subcontractor through the date hereof.

Subcontractor: _____

By: _____

Name (printed): _____

Title: _____

Application No: _____
Date: _____

SUBCONTRACTOR FINAL PAYMENT WAIVER AND RELEASE OF LIENS AND CLAIMS

Project Name: _____ **Contractor:** _____

Project Location: _____ **Subcontractor:** _____

Owner: _____ **Final Payment Amount:** _____

For the purpose of inducing payment by the Contractor identified above (“Contractor”) to Subcontractor, and in consideration thereof, and with the recognition that this instrument (this “Waiver”) is to be delivered to and will be relied upon by Contractor and Owner, together with their respective directors, officers, managers, members, employees, subcontractors, vendors, attorneys, sureties, lenders, title companies, representatives, successors and assigns, subsidiaries, parents, and affiliates, (the “Released Parties”), Subcontractor hereby agrees and acknowledges as follows:

1. Subcontractor hereby represents and warrants to and for the benefit of the Released Parties that: (a) the work, or labor or services performed or material or equipment (including rented materials and equipment) furnished by Subcontractor (“Work”) for which payment is being requested is Work actually supplied to, performed on, or used in connection with the Project; (b) all federal, state and local taxes and contributions required to be withheld from employees of Subcontractor in connection with the Work have been withheld in the manner provided by law; (c) Subcontractor has been paid in full for all Work for the Project or for the benefit of Contractor or Owner except for the Final Payment Amount identified above; (d) all Work covered by the Application has been incorporated into the Project and title thereto has been passed to the Owner, or, in the case of materials or equipment stored at the site or some other location previously agreed to by Contractor, title will pass to the Owner upon receipt of the Final Payment Amount, in each case free and clear of any lien, claim, security interest or other encumbrance; and (e) all Work furnished on behalf of Subcontractor to the Project for which Subcontractor has previously received payment has been fully paid for by Subcontractor and there are no amounts unpaid in favor of any employee, subcontractor, materialman, supplier, vendor or any other person or entity furnishing or supplying such Work to said Project or to Subcontractor for utilization in the Project or in the performance of the obligations of Subcontractor with respect to the Project.

2. Subcontractor hereby represents and agrees that the entire amount owed to it as consideration for entering into this Waiver is the Final Payment Amount identified above. Upon receipt by Subcontractor of (i) one or more checks payable to Subcontractor in the aggregate amount of the Final Payment Amount, when the check(s) has been paid by the bank upon which it is drawn, or (ii) a wire transfer for said Final Payment Amount, and in consideration therefor, this instrument shall become effective to unconditionally release and waive all liens, claims, or causes of action against the Released Parties, or against bonds or related to the failure to require bonds, now existing or that may hereafter arise, related in any way to the Project, or Work furnished, supplied or performed by Subcontractor in connection with the Project.

3. This Waiver shall not operate as an acceptance by any of the Released Parties of any incomplete Work or Work not in conformance with the contract documents, nor shall it relieve Subcontractor of its continuing obligations under such contract documents, including, but not limited to any guarantees, warranties, achievement of final completion of the Work pursuant to such contract documents, all of which are hereby agreed to be for the benefit of and enforceable by any of the Released Parties. The Subcontractor further agrees that if it hereafter performs any labor or furnishes any materials, tools, equipment, supplies or services pursuant to such guaranty or warranty, it will fully pay for the same, will pay any and all taxes and charges in connection therewith and will release, discharge, defend and hold harmless the Released Parties and their real and personal property, from any and all claims, demands and liens arising in connection therewith, all in a like manner and to the same extent as is herein provided with respect to the Work. It is specifically understood that this instrument shall not operate to waive, discharge, alter or affect in any way any obligation pursuant to any payment or performance bonds provided for the Project or any guaranty in favor of a Released Party.

4. At the request of Contractor, Subcontractor further agrees to promptly furnish a good and sufficient waiver of liens and claims in the form hereof from every person or entity furnishing or performing any portion of the Work by, through or under Subcontractor.

5. Subcontractor shall indemnify, defend and hold harmless the Released Parties from and against any and all claims, demands, costs and expenses (including attorneys' fees) against any of the Released Parties or their property, arising out of or related in any way to the breach of any representation, warranty or covenant set forth herein or the failure of the Subcontractor to pay any sums owed for Work furnished or performed by, through or under Subcontractor.

Subcontractor: _____

By: _____

Name (printed): _____

Title: _____

Deschutes County Warehouse**Bid Estimate**

10/28/2021

Project Area... 4,250

**SunWest Builders**

CCB #59850

Estimate Summary		Cost
DIVISION 1 - TEMPORARY SERVICES & LOGISTICS	\$6 / sf	\$26,347
DIVISION 1 - INTERIOR DEMOLITION	\$3 / sf	\$14,425
DIVISION 2 - SITE WORK	\$0 / sf	\$0
DIVISION 3 - CONCRETE	\$0 / sf	\$0
DIVISION 4 - MASONRY	\$0 / sf	\$0
DIVISION 5 - STRUCTURAL & MISCELLANEOUS STEEL	\$1 / sf	\$2,864
DIVISION 6 - ROUGH CARPENTRY & INTERIOR TRIM	\$19 / sf	\$82,468
DIVISION 7 - THERMAL & MOISTURE PROTECTION	\$2 / sf	\$7,150
DIVISION 8 - DOORS & WINDOWS	\$3 / sf	\$11,124
DIVISION 9 - FINISHES	\$17 / sf	\$73,313
DIVISION 10 - ARCHITECTURAL ACCESSORIES	\$0 / sf	\$0
DIVISION 11 - EQUIPMENT & APPLIANCES	\$0 / sf	\$0
DIVISION 12 - FURNISHINGS	\$0 / sf	\$0
DIVISION 13 - SPECIAL CONSTRUCTION	\$0 / sf	\$0
DIVISION 14 - ELEVATORS / CONVEYING EQUIPMENT	\$0 / sf	\$0
DIVISION 15 - MECHANICAL	\$0 / sf	\$0
DIVISION 16 - ELECTRICAL	\$9 / sf	\$37,300
Subtotal Direct Costs	\$60 / sf	\$254,990
3.00%	Estimate / Construction Contingency	\$7,650
7.00%	Overhead & Profit	\$18,385
0.95%	Liability Insurance	\$2,670
0.57%	Oregon Student Success Act Fee	\$1,617
1.44%	Payment and Performance Bonds	\$4,085
TOTAL CONSTRUCTION ESTIMATE	\$68 / sf	\$289,397

Clarifications:

- 1) Changes to scope caused by City plan review & inspections - Not Included
- 2) City Planning, Engineering and Building Department fees - Not Included
- 3) Material Price Escalation Due to Volatile Lumber and Steel Markets - Not Included

**Deschutes County Warehouse
Bid Estimate**

TASK	COUNT	UNIT	\$/UNIT	COST	TOTAL PER DIVISION	COMMENTS
Estimate based on Site Walks & Pinnacle Permit Drawings dated 2-19-21						
Remodeled Area...	4,250					
Engineered Design				Excluded		By Owner
Permits, Plan Review Fees & SDC				Excluded		By Owner
Hazardous Materials Testing, Abatement and Removal				Excluded		By Owner
Geotechnical / Soils Report				Excluded		By Owner
Third Party Special Inspections and Testing				Excluded		By Owner
Monthly Utility Usage Costs (power, gas, water, network, etc.)				Excluded		By Owner
Builder's Risk Insurance				Excluded		By Owner
DIVISION 1 - TEMPORARY SERVICES & LOGISTICS						
Project Supervision	2.0	month	\$6,495.00	\$12,990		
Project Management	2.0	month	\$4,113.50	\$8,227		
Project Coordinator / Assistant	1.5	month	\$476.30	\$714		
Plans & Specs	1	estimate	\$250.00	\$250		
Cellular / Network	1.0	month	\$135.00	\$135		
Portable Toilets	2.5	month	\$125.00	\$313		
Temporary Office (Includes Mob/Demob.)				Excluded		
Tempory Storage	1.0	month	\$250.00	\$250		
Miscellaneous Labor and Construction Clean-up	1.0	month	\$768.00	\$768		
Equipment and Supplies	1.0	month	\$1,500.00	\$1,500		
Dumpsters / Trash Haul-off	1.0	month	\$550.00	\$550		
Fencing & Barricades				Excluded		
Temp Electrical and Heat				Excluded		
Weather Protection				Excluded		
Safety Manager & Supplies	1.0	month	\$250.00	\$250		
Closeout / As-builts / O&M's	1	estimate	\$400.00	\$400		
					\$26,347	
DIVISION 1 - INTERIOR DEMOLITION						
Demolition - Soft Demo (Doors, Cabs, Wall Openings)	1	bid	\$6,975.00	\$6,975		
Haul Off Demo Debris	1	each	\$1,000.00	\$1,000		
Protection of Finishes - Labor for Dust Wall	1	estimate	\$6,450.00	\$6,450.00		Included per site walk with owner
Protection Material				Excluded		Excluded per Add 4 - By Owner
					\$14,425	
DIVISION 2 - SITE WORK						
				Excluded		
					\$0	

**Deschutes County Warehouse
Bid Estimate**

TASK	COUNT	UNIT	\$/UNIT	COST	TOTAL PER DIVISION	COMMENTS
DIVISION 3 - CONCRETE						
				Excluded		
					\$0	
DIVISION 4 - MASONRY						
				Excluded		
					\$0	
DIVISION 5 - STRUCTURAL & MISCELLANEOUS STEEL						
Mezz. Guardrail System						
New Rails - Furnish				Excluded		Excluded per Add 4 - By Owner
New Chain & Lags - Furnish				Excluded		Excluded per Add 4 - By Owner
Install / Reconfigure				Excluded		Excluded per Add 4 - By Owner
Stair Hand/Guardrail	53	lf	\$38.00	\$2,014		
Steel Install / Welding at Existing Column	1	estimate	\$850.00	\$850		
					\$2,864	
DIVISION 6 - ROUGH CARPENTRY & INTERIOR TRIM						
Wood Framing - Material	1	quote	\$81,200.00	\$81,200		
Wood Framing - Labor	1	bid	\$0.00	Included		
Equipment and Supplies				Included		
Blocking & Misc Wood Frmng - Labor	16	mh	\$48.00	\$768		
Blocking & Misc Wood Frmng - Material	1	estimate	\$500.00	\$500		
Cabinetry & Countertops - Reinstall Existing				Excluded		Demo Only; Owner Reinstall (Add 3)
Interior Running Trim - Base, Case, Sills, etc.				See Div. 09		
					\$82,468	
DIVISION 7 - THERMAL & MOISTURE PROTECTION						
Insulation - Sound insulation at ACT and new walls	1	bid	\$7,150.00	\$7,150		
Insulation - Thermal				Excluded		None shown
Insulation - Sound insulation at ceilings and existing walls				Excluded		None shown
Roof Patching - Mech. Penetrations (exhaust fans, vent, line sets)				Excluded		Owner-contracted MEP
					\$7,150	
DIVISION 8 - DOORS & WINDOWS						
Windows - HM Frames Install	1	bid	\$70.00	\$70		Type A - Frame Only
Windows - Glazing	1	bid	\$3,030.00	\$3,030		Excludes Storefront - By Owner
HM-Framed Windows				Included		
Door Lites				Included		
Doors (HM Frames) - Furnish				Excluded		Supplied by owner
Doors (HM Frames) - Grout & Deliver	1	estimate	\$2,074.00	\$2,074		
Doors (HM Frames) - Install	1	bid	\$5,950.00	\$5,950		
Re-Used Doors	6	leaf		Included		

**Deschutes County Warehouse
Bid Estimate**

TASK	COUNT	UNIT	\$/UNIT	COST	TOTAL PER DIVISION	COMMENTS
New HM Doors	1	leaf		Included		
New HM Doors (SC)	1	leaf		Included		
New HM Door (Fire-Rated)	1	leaf		Included		Assumes existing to remain
New Wood Doors	10	leaf		Included		
New Wood Doors (SC)	2	leaf		Included		
Access Control Hardware & Frame Premium				Excluded		Door 136
					\$11,124	
DIVISION 9 - FINISHES						
Gypsum board assemblies	1	bid	\$33,200.00	\$33,200		
Wall repair/texture at existing walls				Included		
Acoustical Ceiling - Armstrong 2x4	1	bid	\$17,000.00	\$17,000		
Painting	1	bid	\$18,650.00	\$18,650		Paint supplied by owner
Staining of any Wood				Excluded		
Final Cleaning / Interior Window Washing	4,250	sf	\$0.55	\$2,338		
Protection of Finishes	4,250	sf	\$0.50	\$2,125		
Flooring				Excluded		Owner-furnished & installed (Add 3)
Carpet Tile (Labor)				Excluded		Owner-furnished & installed
Sheet Vinyl (Labor)				Excluded		Owner-furnished & installed
Resilient Rubber Base (Labor)				Excluded		Owner-furnished & installed
Floor Preparation (Labor)				Excluded		Owner-furnished & installed
Warehouse Floors				Excluded		
					\$73,313	
DIVISION 10 - ARCHITECTURAL ACCESSORIES						
Mirrors & Grab Bars at Restroom - Furnish				Excluded		In Alternate 1 and 2
Mirrors & Grab Bars at Restroom - Install				Excluded		In Alternate 1 and 3
					\$0	
DIVISION 11 - EQUIPMENT & APPLIANCES						
Break Room Appliances, Copiers, IT & AV Equipment				Excluded		
					\$0	
DIVISION 12 - FURNISHINGS						
Window Coverings & Office Furniture				Excluded		
					\$0	
DIVISION 13 - SPECIAL CONSTRUCTION						
Special Purpose Rooms				Excluded		
					\$0	

**Deschutes County Warehouse
Bid Estimate**

TASK	COUNT	UNIT	\$/UNIT	COST	TOTAL PER DIVISION	COMMENTS
DIVISION 14 - ELEVATORS / CONVEYING EQUIPMENT						
Elevators, Escalators, Lifts				Excluded		Forklift access to Warehouse Mezz.
					\$0	
DIVISION 15 - MECHANICAL						
HVAC				Excluded		Owner-contracted MEP
Plumbing				Excluded		Owner-contracted MEP
New Restrooms at Warehouse				See Alt 2		Scope removed
Fire Sprinkler				Excluded		Owner-contracted MEP
					\$0	
DIVISION 16 - ELECTRICAL						
Distribution and Receptacles	1	bid	\$27,500.00	\$27,500		
Lighting & Light Controls				Included		Owner email says supply fixtures for Tomco to install.
Voice/Data	1	bid	\$9,800.00	\$9,800		
Fire Alarm				Excluded		
Relocate Existing Infrastructure				Excluded		
A/V Equipment / Access Control / Security / Cameras				Excluded		
Design & Plan Submittal				Excluded		
Permits				Excluded		By Owner (Addendum 3)
					\$37,300	
SUB-TOTAL HARD COSTS				\$254,990	\$254,990	



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 12, 2022

SUBJECT: American Rescue Plan Funding Update

RECOMMENDED MOTION:

A to-be-determined motion will be required if the Board chooses to fund additional projects from ARPA funds.

BACKGROUND AND POLICY IMPLICATIONS:

This is a recurring agenda item to provide the Board of County Commissioners updates on the status of ARPA funds and the opportunity to review eligible project requests for funding consideration.

Discussion items for today's update:

- 1. Specific items for discussion will be presented prior to or at the time of the meeting.
- 2. Review other ARPA funding requests.

BUDGET IMPACTS:

None. Budget appropriations for the entire \$38 million ARPA funding award are included in the FY 2021-22 Adopted Budget.

ATTENDANCE:

Greg Munn, Treasurer and Chief Financial Officer
Dan Emerson, Budget Manager

	A	B	C
1	Deschutes County American Recovery Plan Act		
2	Eligible Project Requests - revised 01.05.22		
3			
4			
5	Category/Project Request	Outstanding Request	BOCC Approved
6			
10	Administrative		437,935
11	ARPA Administration		392,000
12	COIC "CARES extreme risk" grant distribution contract		10,935
13	COIC Business/Non-profit assistance grant distribution contract		35,000
14	Affordable Housing	4,100,000	7,800,000
15	Affordable Home Ownership - Kor Community Land Trust	100,000	500,000
16	Expand Affordable and Workforce Housing in Sisters - Reserve		500,000
17	Habitat for Humanity La Pine Sunriver Affordable Housing in South County	300,000	900,000
18	Habitat for Humanity La Pine Sunriver Emergency/Critical Home Repairs in South County		100,000
19	Habitat for Humanity-Bend 12 Townhomes 27th Street	2,000,000	1,150,000
20	Habitat for Humanity-Bend 8 Townhomes WaterCress Way	1,500,000	850,000
21	Habitat for Humanity-Sisters Woodland Project	200,000	800,000
22	Hayden Homes Affordable Housing Project		1,000,000
23	Housing Works Redevelopment and Expansion of Spencer Court in Redmond		2,000,000
24	Aid to Other Impacted Industries	699,000	
25	Bend Parks & Recreation District - Recruitment and Retention	699,000	
26	Broadband Infrastructure		300,000
27	Regional Broadband Needs Assessment and Action Plan		300,000
28	Business Support	456,000	
29	Opportunity Foundation Increased Personnel costs due to pandemic	456,000	
30	Childcare		7,675,000
31	Infrastructure - Little Kits (Bend East: OSU)		600,000
32	Infrastructure - Little Kits (Bend East: St. Charles)		1,500,000
33	Infrastructure - Little Kits (Bend West: OSU)		1,000,000
34	Infrastructure - MountainStar (La Pine, Redmond)		600,000
35	Infrastructure - Re-Village (Sisters, Bend, Redmond)		350,000
36	Infrastructure - Small Center Capacity Fund (Various, TBD)		500,000
37	Workforce Development - COCC Business Accelerator		125,000
38	Workforce Development - Contingency Reserve		906,000
39	Workforce Development - NI Childcare Sustainability Pathway Program		284,000
40	Workforce Development - NI FastTrack		1,060,000
41	Workforce Development - OSU Little Kits Internship Program		750,000
42	Food Assistance	1,900,000	3,000,000
43	Food Insecurity for Older Adults -- Partnership with Council on Aging & Redmond Senior Center	300,000	

	A	B	C
1	Deschutes County American Recovery Plan Act		
2	Eligible Project Requests - revised 01.05.22		
3			
4			
5	Category/Project Request	Outstanding Request	BOCC Approved
6			
44	High Desert Food and Farm Alliance		50,000
45	NeighborImpact warehouse expansion	1,400,000	2,400,000
46	Nutritional assistance		
47	The 1017 Project		50,000
48	The Giving Plate	200,000	500,000
49	Homelessness	4,177,500	5,272,050
50	Bend Heroes Vets Village construction support		100,000
51	Bethlehem Inn Redmond		900,000
52	Construction of Cleveland Avenue Project	2,200,000	2,000,000
53	Homeless Outreach County-wide Services		1,065,000
54	Managed Camp - City of Bend	750,000	750,000
55	Master Plan assistance for homeless service campus in east Redmond		32,050
56	New facility in Redmond		
57	Operating Support for Existing Sisters Cold Weather Shelters	50,000	
58	Redmond Oasis Village Project	367,500	
59	Saving Grace Infrastructure		
60	Shepherd's House Redmond Kitchen		300,000
61	Sisters Cold Weather Shelter Reserve	800,000	
62	St. Vincent De Paul Emergency Shelter	10,000	125,000
63	Public Health	15,856,602	5,165,184
64	Additional County cleaning supplies and labor (annual)	168,000	
65	Additional County cleaning supplies and labor FY21	49,000	
66	Circuit Court COVID prevention	428,754	
67	Covid Testing	250,000	
68	COVID testing - Dr. Young		15,000
69	Expanding Local Public Health Workforce	191,548	
70	Health Care Hub in South Deschutes County	5,000,000	
71	Health Unintended Consequences		1,500,000
72	Higher rated HVAC filters for County facilities		
73	Isolation motel liability insurance		8,184
74	Mobile morgue expansion unit		82,000
75	Mobile technology upgrade for the Clerk	6,600	
76	North county health facility-acquisition and remodel	8,300,000	
77	North county health facility-furniture, fixtures and equipment	897,700	

	A	B	C
1	Deschutes County American Recovery Plan Act		
2	Eligible Project Requests - revised 01.05.22		
3			
4			
5	Category/Project Request	Outstanding Request	BOCC Approved
6			
78	Outreach Van	85,000	
79	Public Health Response Contingency		1,500,000
80	South County Quick Response Unit and gurneys	280,000	
81	Technology enhancements for telemedicine and collaboration	200,000	
82	Temporary Staffing for COVID-19 Response and Outreach (Contact Tracers, Case Investigators, and Call Center staff)		2,000,000
83	The Shield free counseling to Veterans		20,000
84	UV sanitizer for jail		40,000
85	Small Business & Non-profit Assistance	2,246,820	1,600,000
86	Boys and Girls Club Bend-economic impact	619,464	
87	Business Assistance Placeholder		1,500,000
88	La Pine Chamber of Commerce	25,900	
89	Redmond Chamber - lost revenue	84,069	
90	Redmond Chamber - Redmond Parklet	40,000	
91	Redmond Rotary	90,000	
92	Ronald McDonald House Charities		100,000
93	School of Enrichment - Economic Hardship	520,002	
94	Sisters Chamber of Commerce	49,060	
95	Sisters Rodeo Association	100,000	
96	Small business grants - Sisters COC	350,000	
97	Sunriver Area Chamber of Commerce pandemic economic impact	18,325	
98	Sunriver Area Small Business Assistance Grant Program and Hiring Campaign	350,000	
99	Water Infrastructure	2,750,000	2,250,000
100	Deschutes River Conservancy On-farm Efficiency Water Conservation Project-Smith Rock/King Way		1,075,000
101	Deschutes Soil and Water Conservation District On-farm Efficiency Water Conservation Projects		375,000
102	NeighborImpact south county septic replacement program	1,000,000	
103	Terrebonne Wastewater System	1,750,000	300,000
104	Tumalo Sewer System - Reserve/placeholder		500,000
105	Wastewater investments in South County		
106	Grand Total	32,185,922	33,500,169



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, January 12, 2022

SUBJECT: Preparation for Public Hearing: Central Oregon Irrigation District (COID) Plan Amendment and Zone Change

RECOMMENDED MOTION:

Move approval of the Hearings Officer's recommendation for approval of file no. 247-21-000400-PA, 401-ZC pursuant to DCC 22.28.030.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will provide background and prepare the Board for a Public Hearing on January 26, 2022 to consider a request for a Plan Amendment and Zone Change (file no. 247-21-000400-PA, 401-ZC) for a 36.65-acre property to the East of the City of Bend, submitted by COID.

BUDGET IMPACTS:

None

ATTENDANCE:

Tarik Rawlings, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Tarik Rawlings, Associate Planner

DATE: January 5, 2022

SUBJECT: Central Oregon Irrigation District (COID) Plan Amendment and Zone Change – Work Session

The Board of County Commissioners (Board) is conducting a work session on January 12, 2022 in preparation for a public hearing on January 26, 2022, to consider a request for a Plan Amendment and Zone Change (file nos. 247-21-000400-PA, 401-ZC) for a 36.65-acre property to the east of the City of Bend.

I. BACKGROUND

The applicant, COID, is requesting a Comprehensive Plan Amendment to redesignate the subject property from Agriculture to Rural Residential Exception Area and a Zoning Map Amendment to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant’s reasoning for the request is that the property was mistakenly identified as farmland, does not contain high-value soils or other characteristics of high value farmland, and therefore should be redesignated and rezoned for residential use. The applicant has provided a soil study that identifies non-high value soils on a majority (~64%) of the subject property. Additionally, the applicant has provided findings within the burden of proof that demonstrate compliance with state and local requirements and policies.

II. HEARINGS OFFICER RECOMMENDATION

Staff received twelve (12) public comment letters from neighboring property owners and residents located within the surrounding area of the subject property. These comments expressed concern and opposition related to growth impacts, wildlife concerns, open space values, recreational access, ability to farm, traffic impacts along 27th Street, driveway access to the subject property, property addressing, property value impacts, impacts to irrigation water sources and availability, and the potential of marijuana production on the property.

The Deschutes County Hearings Officer held a public hearing on August 31, 2021. Three (3) individuals (Patrick McCoy, Matt Carey, and Kecia Weaver) stated their opposition to the subject application and

concerns regarding growth management, the perceived limitation of hobby farm opportunities, wildlife habitat impacts, and access to the subject property.

On October 13, 2021, the Hearings Officer issued a recommendation of approval for the proposed Plan Amendment and Zone Change.

III. BOARD CONSIDERATION

As the property includes lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the application to be heard de novo before the Board, regardless of the determination of the Hearings Officer. The record is available for inspection at the Planning Division and at the following link: [247-21-000400-PA, 401-ZC Central Oregon Irrigation District \(COID\) Plan Amendment and Zone Change | Deschutes County Oregon](#). Moreover, the complete record will be available at the public hearing.

IV. NEXT STEPS

The Board will hold a public hearing on January 26, 2022. The legal description of the subject property will be provided to the Board at the soonest availability.

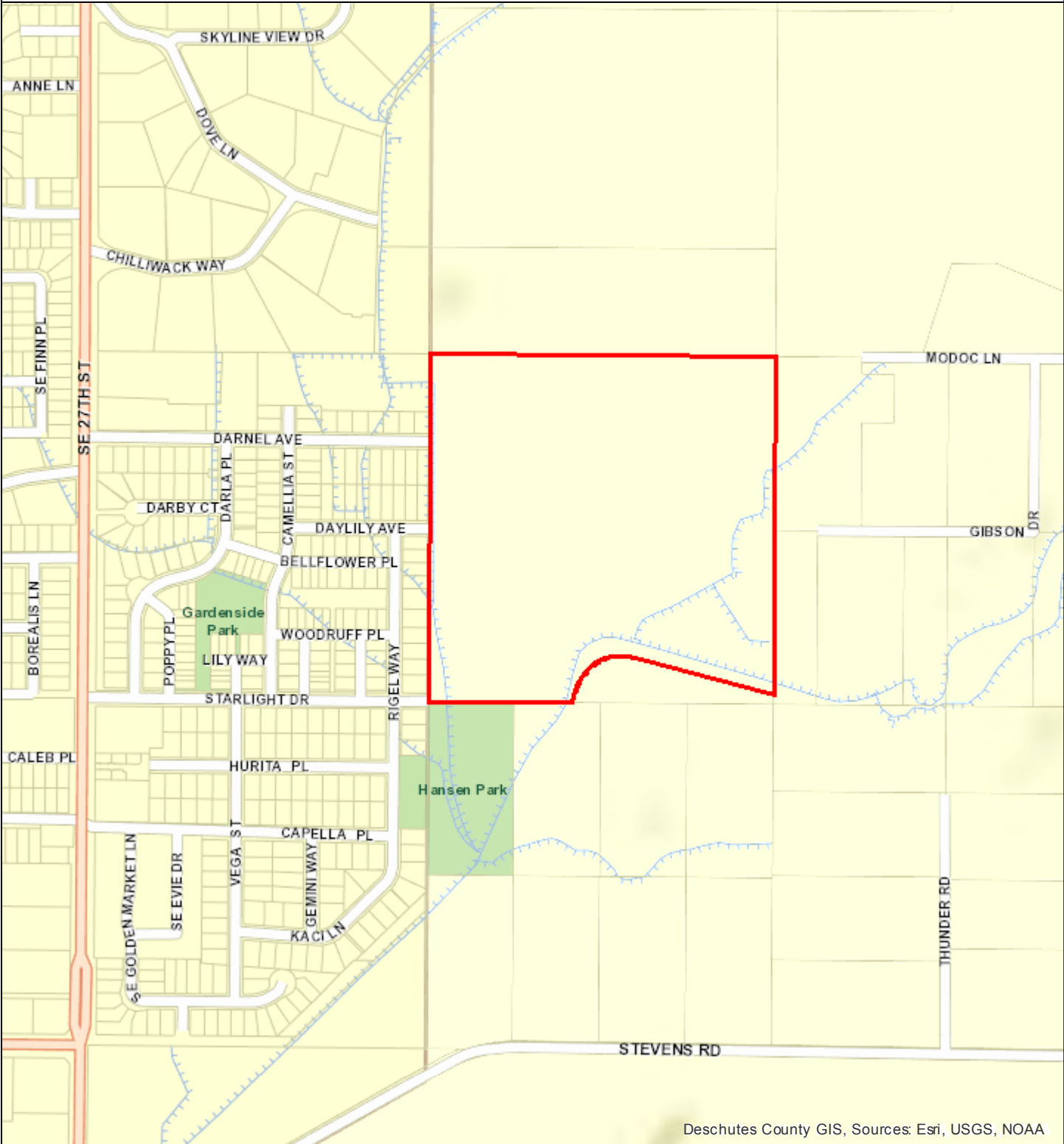
ATTACHMENTS:

- 1. Area Map
- 2. Draft Ordinance and Exhibits
 - Exhibit A: Proposed Comprehensive Plan Map
 - Exhibit B: Proposed Zoning Map
 - Exhibit C: Comprehensive Plan Section 23.01.010, Introduction
 - Exhibit D: Comprehensive Plan Section 5.12, Legislative History
 - Exhibit E: Hearings Officer Recommendation/Decision

FORTHCOMING ATTACHMENTS:

- 1. Exhibit F: Legal Description

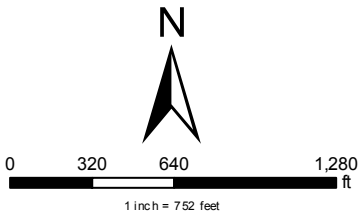
247-21-000400-PA, 401-ZC



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 8/5/2021



REVIEWED

LEGAL COUNSEL

01/12/2022 Item #6.

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	*	ORDINANCE NO. 2022-001
Plan, to Change the Comprehensive Plan Map	*	
Designation for Certain Property From Agriculture to		
Rural Residential Exception Area.		

WHEREAS, Central Oregon Irrigation District (COID) applied for a Comprehensive Plan Amendment (247-21-000400-PA) to Deschutes County Code (“DCC”) Title 23, to change the Comprehensive Plan Map Designation for the subject property from an Agricultural (AG) designation to a Rural Residential Exception Area (RREA) designation; and

WHEREAS, after a duly noticed hearing, on October 12, 2021 the Deschutes County Hearings Officer recommended approval of the Comprehensive Plan Map change; and

WHEREAS, because no appeal was filed, the Board of County Commissioners (“Board”) did not initiate review of the application and the decision does not require an exception to the goals or concern lands designated for forest or agricultural use, pursuant to DCC 22.28.030(B), the Board must approve the comprehensive plan designation change from Agriculture (AG) to Rural Residential Exception Area (RREA); and

WHEREAS, Deschutes County Ordinance 2000-017 ordained the Plan Map to be a component of Title 23 and, therefore, any amendment to the Plan Map is an amendment to Title 23;

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 “F” and depicted on the map set forth as Exhibit “A”, with both exhibits attached and incorporated by reference herein, from Agriculture (AG) to Rural Residential Exception Area (RREA).

Section 2. AMENDMENT. DCC Section 23.01.010, Introduction, is amended to read as described in Exhibit "C" attached and incorporated by reference herein, with new language underlined.

Section 3. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached as Exhibit “E” 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.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18, the Deschutes County Zoning Map, to * ORDINANCE NO. 2022-002
Change the Zone Designation for Certain Property *
From Exclusive Farm Use to Multiple Use *
Agricultural. *

WHEREAS, Central Oregon Irrigation District (COID) applied for a Deschutes County Comprehensive Plan Map and Deschutes County Zoning Map change, to rezone certain property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10); and

WHEREAS, after notice was give in accordance with applicable law, a public hearing was held on August 31, 2021 before the Deschutes County Hearings Officer and, on October 12, 2021 the Hearings Officer recommended approval of the comprehensive plan map and zone change; and

WHEREAS, on this same date, the Board of County Commissioners (“Board”) adopted Ordinance 2022-001 amending DCC Title 23, changing the plan designation of the property from Agriculture (AG) to Rural Residential Exception Area (RREA); and

WHEREAS, a change to the Deschutes County Zoning Map is necessary to implement the amendment adopted in Ordinance

WHEREAS, because no appeal was filed of Ordinance 2022-002 and the Board did not initiate review of the application, pursuant to DCC 22.28.030(B), the Board must approve this zone change, which changes the zone to conform to the newly adopted plan amendment;

NOW, THEREFORE,

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

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from Exclusive Farm Use (EFU) to Rural Residential Exception Area (RREA) for certain property described in Exhibit “F” and depicted on the map set forth as Exhibit “B”, with both exhibits attached and incorporated by reference herein.

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached to Ordinance 2022-001 as Exhibit “E”, 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

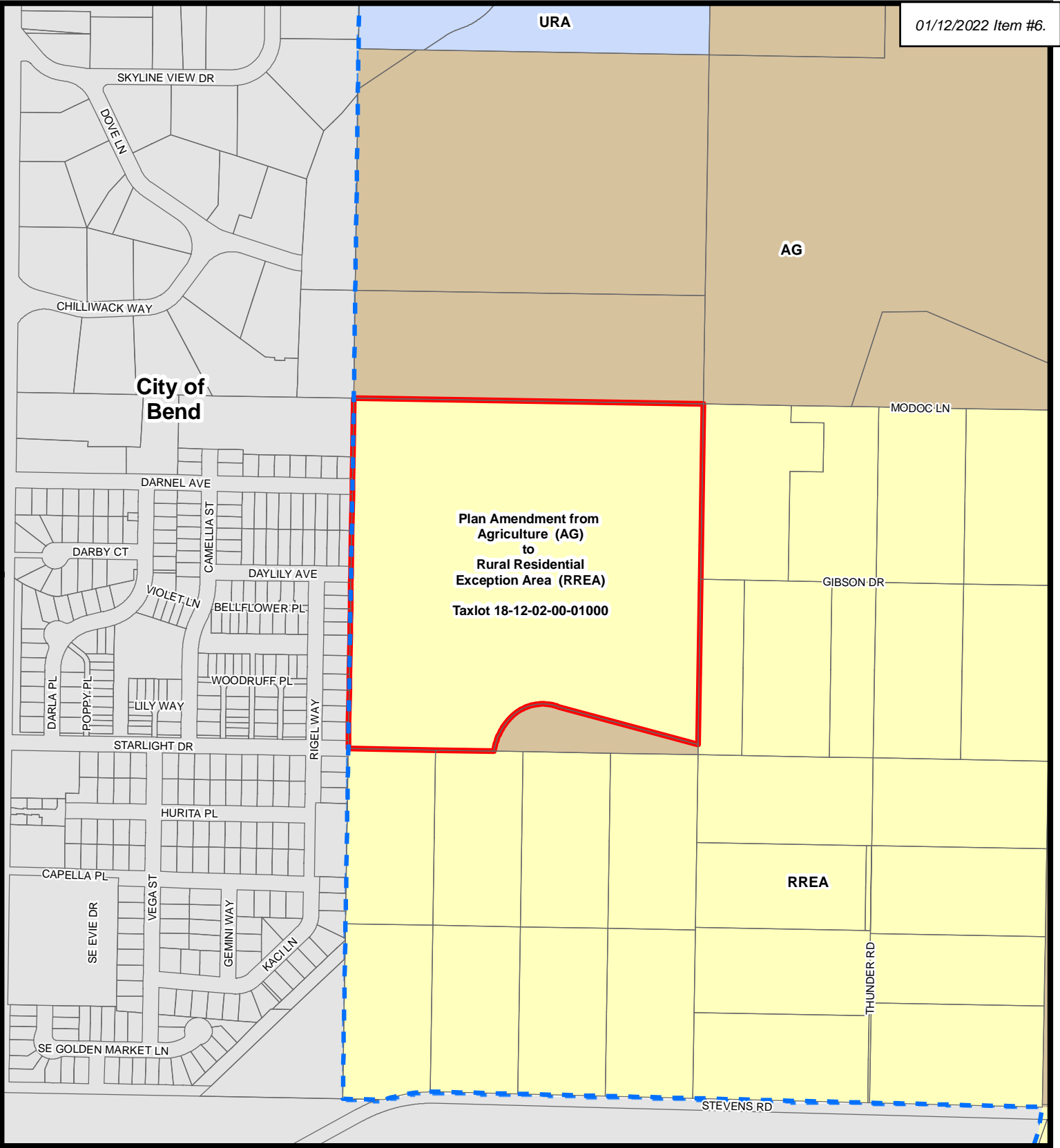
Date of 1st Reading: _____ day of _____, 2022.

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

Record of Adoption Vote:

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

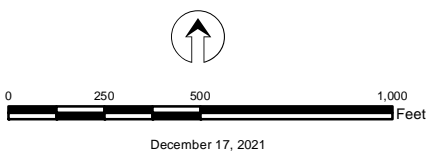
Effective date: _____ day of _____, 2022.



PROPOSED COMPREHENSIVE PLAN MAP

Exhibit "B"
to Ordinance 2022-001

- Legend**
- Proposed Plan Amendment Boundary
 - Comprehensive Plan Designation**
 - AG - Agriculture
 - RREA - Rural Residential Exception Area
 - URA - Urban Reserve Area
 - Bend Urban Growth Boundary



BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

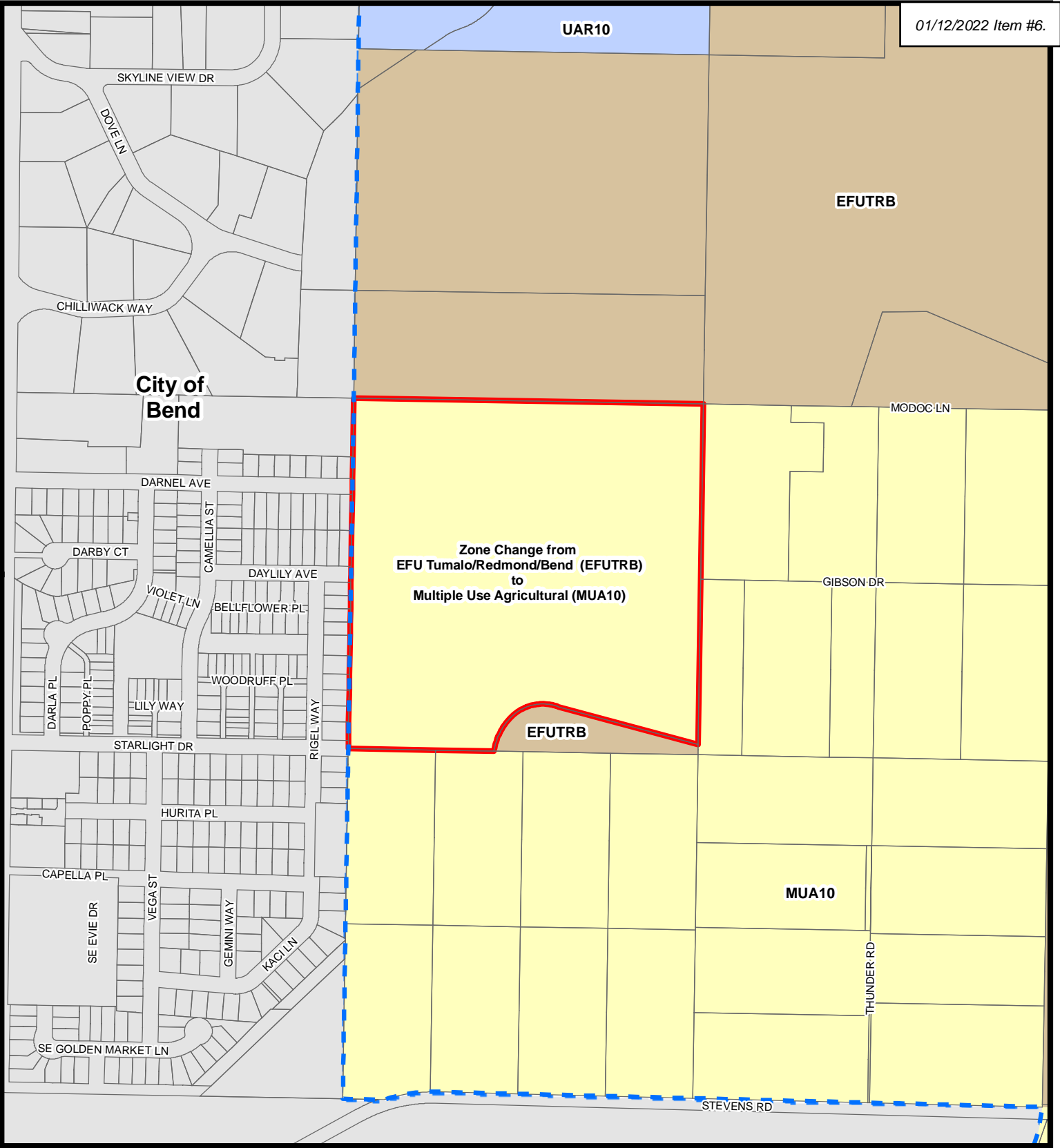
Patti Adair, Chair

Tony DeBone, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 2021
Effective Date: _____, 2021



**Zone Change from
EFU Tumalo/Redmond/Bend (EFUTRB)
to
Multiple Use Agricultural (MUA10)**

Legend

Proposed Zone Change Boundary

Zoning

EFUTRB - Tumalo/Redmond/Bend Subzone

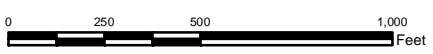
MUA10 - Multiple Use Agricultural

UAR10 - Urban Area Reserve

Bend Urban Growth Boundary

**PROPOSED
ZONING MAP**

Exhibit "C"
to Ordinance 2022-002



December 17, 2021

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Patti Adair, Chair

Tony DeBone, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 2021
Effective Date: _____, 2021

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.

(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/compplan>)

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 II (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
<u>2022-001</u>	<u>TBD/TBD</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)</u>

DECISION OF THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: 247-21-0000400-PA, 401-ZC

HEARING: August 31, 2021, 6:00 p.m.
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

**APPLICANT/
OWNER:** CENTRAL OREGON IRRIGATION DISTRICT

LOCATION: Map and Taxlot: 1812020001000
61781 WARD RD, BEND, OR 97702

**ATTORNEY
FOR APPLICANT:** Tia M. Lewis
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702

**TRANSPORTATION
ENGINEER:** Joe Bessman
Transight Consulting, LLC

REQUEST: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

HEARINGS OFFICER: Stephanie Marshall

STAFF CONTACT: Tarik Rawlings, Associate Planner¹
Phone: 541-317-3148
Email: Tarik.Rawlings@deschutes.org

RECORD CLOSED: September 23, 2021

¹ This matter was originally assigned to Brandon Herman, Assistant Planner. It was re-assigned to Mr. Rawlings prior to the public hearing.

I. STANDARDS AND APPLICABLE CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance:

- Chapter 18.04, Title, Purpose, and Definitions
- Chapter 18.16, Exclusive Farm Use Zones (EFU)
- Chapter 18.32, Multiple Use Agricultural Zone (MUA10)
- Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

- Deschutes County Comprehensive Plan
 - Chapter 2, Resource Management
 - Chapter 3, Rural Growth Management
 - Appendix C, Transportation System Plan

- Oregon Administrative Rules (OAR), Chapter 660
 - Division 6, Forest Lands
 - Division 12, Transportation Planning
 - Division 15, Statewide Planning Goals and Guidelines
 - Division 33, Agricultural Land

- Oregon Revised Statutes (ORS)
 - Chapter 215.211, Agricultural Land, Detailed Soils Assessment

II. FINDINGS OF FACT

A. LOCATION: The subject property has a situs address of 61781 Ward Road, Bend, and is further identified as Tax Lot 1000 on Assessor’s Map 18-12-02.²

B. LOT OF RECORD: Tax Lot 1000 is 36.65 acres in size and has not previously been verified as a legal lot of record. Per DCC 22.04.040 Verifying Lots of Record, lot of record verification is required for certain permits:

- B. Permits requiring verification**
 - 1. Unless an exception applies pursuant to subsection (B)(2) below,**

² Several commentators expressed concern regarding the address of the subject property, particularly related to future access if and when the property is developed in the future. Staff stated at the public hearing that an address coordinator will be assigned with respect to future development permit application(s) and the address(es) will be vetted through emergency services.

verifying a lot parcel pursuant to subsection (C) shall be required to the issuance of the following permits:

- a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);**
- b. Any permit for a lot or parcel that includes wetlands as show on the Statewide Wetlands Inventory;**
- c. Any permit for a lot or parcel subject to wildlife habitat special assessment;**
- d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel'**
- e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;**

In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior Zone Change Decision (*Belveron* ZC-08-04) that a property's lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the applicant will be required to receive lot of record verification prior to any development on the subject property. Therefore, the Hearings Officer finds this criterion does not apply.

C. ZONING AND PLAN DESIGNATION: The subject property is zoned Exclusive Farm Use (EFU) and is designated Agricultural (AG) in the Deschutes County Comprehensive Plan. The property does not have any Goal 5 resource designations.

D. PROPOSAL: The applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from an Agricultural (AG) designation to a Rural Residential Exception Area (RREA) designation. The applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant asks that Deschutes County change the zoning and the plan designation because the subject property does not qualify as "agricultural land" under Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) definitions. The applicant states that no exception to Statewide Planning Goal 3, Agricultural Land, is required because the subject property is not agricultural land. The application does not include a development proposal. The applicant notes that it could subdivide the property under Title 17 or through the County's cluster subdivision rules in Title 18, or could hold the property for future urbanization consistent with the development pattern of the surrounding lands.

The applicant's attorney stated at the public hearing that the proposed re-designation and rezoning would allow the property to be considered in the next UGB expansion by the City of Bend. She stated there were no immediate plans to develop the property in the near future.

Submitted with the application is an Order 1 Soil Survey of the subject property, titled "Soil Assessment for 37.7-Acre Parcel Lot 1000, Bend, Oregon" (hereafter referred to as the "soil study") prepared by soil scientist Andy Gallagher, CPSSc/SC 03114 of Red Hill Soils. The applicant also submitted a traffic analysis prepared by Transight Consulting, LLC titled "61781 Ward Road Rezone" hereby referred to as "traffic study." Additionally, the applicant submitted an application form, a burden of proof statement, and other supplemental materials, all of which are included in the record for the subject applications.

E. SITE DESCRIPTION: The subject property is approximately 36.65 acres in size and is adjacent to both Bend's city limits and Urban Growth Boundary (UGB) to the west. The property is relatively level with mild undulating topography and collapsed lava tube features. Vegetation consists of juniper, sage brush, and grasses. A portion of the site was historically mined for dirt and fill for maintenance purposes of Central Oregon Irrigation District's (COID) delivery systems. The site is undeveloped except for COID's main canal located along the southern border and offshoot irrigation ditches in the southwestern and southeastern portions of the subject property. Access to the site is provided by stubbed local street connections including Darnel Avenue and Daylily Avenue, located in residential subdivisions in the City of Bend to the west.

The subject property does not have water rights, and has not been farmed or used in conjunction with any farming operation in the past. The Natural Resources Conservation Service (NRCS) map shown on the County's GIS mapping program identifies two soil complex units on the property: 36A, Deskamp loamy sand and 58C, Gosney-Rock outcrop-Deskamp complex. The predominant soil complex on the subject property is 58C, which is not a high-value soil as defined by DCC 18.04; 36A is not considered a high-value soil when irrigated.

The subject property has no irrigation, no historical use of being farmed, and is overgrown with western Juniper, sagebrush, rabbit brush and bunch grasses. COID has intermittently used the property over the years to mine for dirt that was used for maintenance and repairs of the District's delivery systems.

As discussed in detail below in the Soils section, an Agricultural Soils Capability Assessment (Order 1 soil survey) was conducted on the property by Certified Professional Soil Scientist Andy Gallagher which determined that the property is not agricultural land; Class 3 irrigated and Class 6 non-irrigated soils exist in small pockets interspersed with lava tubes and rocky, shallow soils, creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands.

There is a private easement along the COID canal. In addition, as noted in the Bend Park and Recreation District's public comment, BMPRD has a planned trail, the Central Oregon Historic Canal Trail, identified in its comprehensive plan that runs through the subject property.

F. SOILS: According to Natural Resources Conservation Service (NRCS) maps of the area,

the subject property contains two different soil types as described below. The subject property contains 58C – Gosney-Rock Outcrop-Deskamp complex and 36A – Deskamp loamy sand.

The applicant submitted a soil study report (applicant’s Exhibit 5, Soil Assessment for 37.7-Acre Parcel Lot 1000, Bend, Oregon, dated December 2, 2020), which was prepared by a qualified soils professional approved by the Department of Land Conservation and Development (DLCD), which can be used by property owners to determine the extent of agricultural land as defined in Oregon Administrative Rule (OAR) 660-033 Agricultural Land,

The certified soils scientist and soil classifier conducted field work which included 41 test pits and observations of surface rock outcrops and determined the subject property is comprised of soils that do not qualify as Agricultural Land⁴. The purpose of this soil study was to inventory and assess the soils on the subject property⁵ and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The NRCS soil map units identified on the property are described below.

36A, Deskamp loamy sand, 0 to 3 percent slopes: This soil complex is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with a rapid over moderate permeability, and about 5 inches of available water capacity. Major uses of this soil type are irrigated cropland and livestock grazing. The agricultural capability rating for 36A soils are 3S when irrigated, and 6S when not irrigated. This soil is high-value when irrigated. Approximately 33.7 percent of the subject parcel is made up of this soil type.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 66.3 percent of the subject parcel is made up of this soil type..

58C is not a high value soil as defined by DCC 18.04 (“High Value Farmland”). 36A is considered a high value soil when irrigated. There is no irrigation on the property.

³ As defined in OAR 660-033-0020, 660-033-0030

⁴ As defined in OAR 660-033-0020, 660-033-0030.

⁵ The canals were not rated for capability class, but for purposes of the assessment were included with the acreage that is not suited to agricultural production.

Through numerous soil test pits and observations on the property Soil Scientist Andy Gallagher remapped the soils using a high intensity Order 1 soil survey and concluded that the subject property is comprised predominantly of Class 7 and 8 soils (nearly 64%) and is not agricultural land. The Class 3 irrigated and 6 non irrigated soils exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands. An excerpt of Mr. Gallagher’s summary and conclusions of his findings follows:

In the revised Order-1 soil mapping, the Deskamp (Class 3 irrigated and 6 nonirrigated) are mapped as a consociation and only make up 29 percent of the parcel. The Gosney soils along with very shallow soils and rock outcrops are mapped as the Gosney-Rock Outcrop Complex because all three components of the complex are capability Class 7 or 8. This complex makes up 63.7 percent of the parcel. The irrigation canals make up 7.4 percent of the area. Based upon the findings of this Order-1 soil survey, the subject parcel is predominantly Class 7 and 8 soils and therefore is not “agricultural land” within the meaning of OAR 660-033-0020(1)(a)(A).

The soil mapping and on-site studies also show the subject property is not agricultural land within the meaning of OAR 660-033-0020(1)(b) as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit. The class 3 irrigated and 6 non irrigated soils on the subject property have not been farmed or utilized in conjunction with any farming operation in the past. These soil units exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use either alone or in conjunction with other lands.

No rebuttal evidence was presented to refute the applicant’s evidence regarding soils. The applicant’s soils study has been verified by DLCD.

G. SURROUNDING LAND USES: The subject property is surrounded by urban development to the west within the Bend city limits; to the east and south are County exception lands zoned MUA10 developed with homes and small-acreage irrigation for pasture and hobby farm uses; and irrigated farmland zoned EFUTRB to the north and northeast. The adjacent properties are outlined below in further detail:

North: North and northeast of the subject property is an area of EFU-zoned property. The adjacent property to the north, Tax Lot 1001 (Assessor’s Map 18-12-02) is a 12.45-acre EFU-zoned property that is partially irrigated and developed with a nonfarm dwelling (approved under County file CU-01-75). Northeast is Tax Lot 201 (Assessor’s Map 18-12-02), a 53.30-acre farm parcel that is irrigated, receiving farm tax deferral, and developed with a single-family dwelling and accessory structures.

East: East of the subject property are two parcels zoned MUA10. Tax Lot 1102 (Assessor’s Map 18-12-02) is a 5.55-acre parcel developed with a single-family dwelling, accessory

structures, and is partially irrigated. Tax Lot 1001 (Assessor’s Map 18-12-02) is a 2.5-acre parcel developed with a single-family dwelling, accessory structures, and is partially irrigated.

West: West of the subject property are residential subdivisions located in the City of Bend and developed to urban standards. These include Rosengarth Estates and Gardenside PUD in the RS Zone. Northwest is a 2-acre parcel zoned RL and developed with a residence.

South: The abutting parcel southeast of COID’s main canal is a 3.34-acre lot zoned EFUTRB and developed with a single-family dwelling and is partially irrigated. Southwest is Hansen Park (Tax Lot 1404 of Assessor’s Map 18-12-02), a 5-acre undeveloped park zoned MUA10 and owned by Bend Metro Parks and Recreation District. East of Hansen Park is a 5-acre parcel zoned MUA10 and developed with a residence (Tax Lot 1407 of Assessor’s Map 18-12-02).

H. PUBLIC AGENCY COMMENTS: The Planning Division mailed notice of the applications on June 11, 2021 to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the Transight April 13, 2021, traffic study to change the comp plan designation from Agriculture to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10) for 36.65 acres at 61781 Ward Rd, aka 18-12-02, TL 1000. Staff finds the study needs to be modified to comply with the Transportation Planning Rule and Deschutes County’s accepted practices to analyze plan amendments and zone changes.

For “reasonable worst-case scenario” the County compares and contrasts the highest trip generator permitted outright in both the current zone and the requested zone. DCC 18.16.020 lists those uses permitted outright in EFU. DCC 18.16.025 lists other outright permitted uses that meet applicable criteria in either DCC 18.16.038, 18.16.042, and review under DCC 18.124. The TIA cites to marijuana production facility, which the County has analyzed under the Warehouse category of the Institute of Traffic Engineers (ITE) Trip Generation Manual. However, the County has opted out of the state’s marijuana processing program and thus this use and its analog of Warehouse should not be used. Instead, staff would utilize Winery (DCC 18.16.025(F)) as a reasonable worst case scenario.

DCC 18.32.020 lists outright permitted uses for MUA-10. The highest trip generator is a cluster development of single-family homes within one-mile of a UGB, per DCC 18.32.040(A), as the traffic study correctly notes.

The study needs to be redone to show the difference between winery and a cluster development to determine if there is a significant effect and any difference in the number of p.m. peak hour trips. This would also require the volumes for the trip distribution figures to be redone as well.

Upon receipt of the County Senior Transportation Planner’s initial comment, above, the applicant submitted a revised traffic study, dated June 8, 2021. No further comments were offered by the County’s Senior Transportation Planner.

Bend Park and Recreation District, Henry Stroud, AICP, Planner

The Bend Park and Recreation District has a planned trail, the Central Oregon Historic Canal Trail, identified in our comprehensive plan that runs through the subject property. While we understand that this application is just for a zoning change, the District would like to work with the applicant to acquire a trail easement for the COHCT prior to any future development of the property.

The following agencies did not respond to the notice: Deschutes County Assessor, Bend Fire Department, City of Bend Planning Department, City of Bend Public Works Department, ODOT Region 4, and City of Bend Growth Management Department.

I. PUBLIC COMMENTS: The Planning Division mailed notice of the conditional use application to all property owners within 750 feet of the subject property on June 11, 2021. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on June 25, 2021. Public comments were received from neighboring property owners. Public comments are summarized as follows:

The first comment was received from Jeff Sundberg, a resident and owner of property located at 61710 Gibson Drive, Bend, OR 97702 on June 15, 2021:

Hi Brandon,

I received a letter from Deschutes County regarding COID applying for new permits. I live at 61710 Gibson Drive, Bend, Or, 97702. I live next to the property in question, 61781 Ward Road. It looks like COID is requesting to go from agricultural and farm use zoning to rural residential exception area and multiple use agricultural zoning.

Does this mean they want to put in a housing development?

I was wondering if this response by email will suffice if I want to be notified of public hearings related to this application or if I still have to write a letter requesting to be notified of any decision or public hearing.

*Does any of this change my easement with COID or should I contact them directly?
Thanks and let me know anything you can about this land change please.*

Staff responded to Mr. Sundberg’s email on June 16, 2021 as follows:

Hi Jeff,

Thanks for reaching out.

As you noted, this is an application for a Comprehensive Plan/Zoning change so I am unaware of what COID intends to do with the property in the future. If they were to take the residential route, a minimum subdivision lot size of 10 acres still applies to the property. Because you received the Notice of Application, you are also on the list to receive the Notice of Public Hearing, which is tentatively set for July 27th.

With regards to your easement agreement, I am not inclined to think this will change anything but contacting COID directly is a good idea.

Let me know if you have any other questions.

Take care,

Brandon

The second comment was received from Kecia Weaver, a resident of 21435 Modoc Lane, Bend, OR 97702 on June 18, 2021:

"My name is Kecia Weaver I live at 21435 Modoc Lane Bend, OR 97702 with my spouse who is listed property owner, Patrick McCoy. On 6/17/21 I read the notice of application for the above listed property. I would like to formally dispute the requested zoning changes. I have several concerns, to include the following:

- 1) *Irrigation/Water Rights – As a small farm operator with seasonal livestock I am concerned that the proposed changes may further draw from my water access which has been limited and may be further limited due to drought conditions. More users in the proposed Multiple Use Agriculture may further draw down water allocations.*
- 2) *Wildlife Habitat – Having lived here for over 6 years. I know the proposed area to be home to deer, rabbits, birds and other wildlife which will be disturbed.*
- 3) *Extensive residential development in the immediate area- Over the past few months, extensive development has been proposed both to the north and south of our neighborhood specifically several hundred acres south of Stevens Road and north of Bear Creek Road adjacent to Ward Road.*
- 4) *Traffic concerns – increased traffic will occur in the area with other proposed developments. I am concerned the points of entrance and egress to this proposed area will add to the impact to our neighborhood as well.*
- 5) *Overall rapid growth concerns for Deschutes County- As observed by pitfalls of the*

rapid growth in the City of Bend over the past decade, I would encourage Deschutes County to adhere to a slower growth model.

- 6) *Decrease in property value- This proposed change will drastically impact the view to the west of my property when it is developed.*

With respect to the natural beauty and appeal of this County we have chosen to call home and as a taxpayer and voter, I implore the Deschutes County planning department to deny this application at this time. I wish to be notified of all public hearings related to this application and any decision. My address is 21435 Modoc Lane Bend, OR 97702."

The third comment was received from Patrick McCoy, a neighboring property owner and resident of 21435 Modoc Lane, Bend, OR 97702 on June 18, 2021:

"My name is Patrick McCoy a home and landowner at 21435 Modoc Lane Bend, OR 97702. On 6/17/21 I received the notice of application for the above listed property. With little time to research to this proposal, based on the information I have obtained, I would like to formally dispute the requested zoning changes. My concerns are numerous and I will highlight the following:

- 1) *Irrigation/Water Rights – As a small farm operator with seasonal livestock I am concerned that the proposed changes may further draw from my water access which has been limited and may be further limited due to drought conditions. More users in the proposed Multiple Use Agriculture may further draw down water allocations.*
- 2) *Wildlife Habitat – Having lived here for over 6 years. I know the proposed area to be home to deer, rabbits, birds and other wildlife which will be disturbed.*
- 3) *Extensive residential development in the immediate area- Over the past few months, extensive development has been proposed both to the north and south of our neighborhood specifically several hundred acres south of Stevens Road and north of Bear Creek Road adjacent to Ward Road.*
- 4) *Traffic concerns – increased traffic will occur in the area with other proposed developments. I am concerned the points of entrance and egress to this proposed area will add to the impact to our neighborhood as well.*
- 5) *Overall rapid growth concerns for Deschutes County- As observed by pitfalls of the rapid growth in the City of Bend over the past decade, I would encourage Deschutes County to adhere to a slower growth model.*
- 6) *Decrease in property value- This proposed change will drastically impact the view to the west of my property when it is developed.*

With respect to the natural beauty and appeal of this County we have chosen to call home and as a taxpayer and voter, I implore the Deschutes County planning department to deny this application at this time. I wish to be notified of all public hearings related to this application and any decision. My address is 21435 Modoc Lane Bend, OR 97702."

The fourth public comment was received from Kyle Weaver on June 18, 2021:

"I am writing to express by objection to the proposed changes east of 27th in the pursuit of yet another neighborhood development. The East side of Bend is the current hotspot for housing expansion but some caution must be taken and not simply rubber stamping these applications through and knocking down yet more trees and eliminating farm lands and mountain views. Neighborhoods are popping up in all directions all over town and the construction industry frenzy is full throttle with little interest in these types of nature/aesthetic concerns. I don't begrudge people making some money and Bend is certainly a desirable place to live, but things need to be planned out in a more thoughtful and deliberate fashion. There is nothing wrong with taking a slower and more measured approach as we all consider Bend's growth in the coming years. I have lived in Bend for just over 20 years and have family and friends in the proposed development area and it would drastically reduce their enjoyment of their property. I urge you to decline this request on behalf of many other community members who feel the same way."

The fifth public comment was received from Treva Weaver on June 18, 2021:

"Re: 1812020001000 Central Or. Irrigation District

I am opposed to the proposed land use change by the above referenced owner.....

The loss of open space in Central Oregon continues as the growth proponents seem mainly interested in jumping on the bandwagon and making as much profit as possible. The East side of Bend, where I have lived the past 21 years, has hundreds, if not thousands of housing sites already started or proposed. Until all this land is developed and houses sold, there is no need to venture east of 27th where this property is located.....My great grandfather came to Oregon at age 9 in 1846 and our family has very deep roots in this state. I spend a large amount of time at my daughter's home which is directly east of the proposed development. We enjoy riding our horses in her arena and also enjoy family gatherings in her backyard. The view would be drastically changed if this land is developed. What is wrong with leaving some land in its natural state? It will be many many years before additional housing is needed in this area. Please decline this request change and leave some land in its more natural state."

The sixth public comment was received from John Schaeffer, a neighboring property owner at 61677 Thunder Road, Bend, OR 97702 on June 19, 2021:

"I am writing on behalf of myself and several neighbors in the Stevens Road – Thunder Road neighborhood. We are opposed to COID's proposed changes to the Comprehensive Plan and Zoning for taxlot 1812020001000. We realize this is not a request for development but know that it will lead to development in the next few years, that it is the first step in making the property more marketable, should it be brought into the UGB during the next update.

Development has been increasing in this area, especially with the inclusion of the Stevens Road tract in the current UGB, and its subsequent sale by the state. We feel it is important to leave some natural open areas for people and animals near the city limits. This is especially critical now that the Stevens Road tract is being developed, along with all the other development in this area. A few years ago, it was possible to take our dogs walking in the Stevens Road tract and meet few people. The use in this area has increased remarkably over the last several years, consistent with Bend's growth.

The COID parcel is isolated and not readily accessible by cars, with varied topography, including a small canyon. It has significant native vegetation and, when I was there a couple of days ago, there were many birds, much more than in the nearby areas where there are houses and the vegetation has been cleared.

Right now, the average size of the parcels between the city limits to the west and Ward Road to the east, and between Stevens Road to the south and to approximately where Skyline View Drive would be if extended into the area on the north, is 8 acres. If you consider only the MUA zoned parcels, the average size is 4.8 acres. If the COID property was developed to that level, this would mean 7-8 houses in the area. I do not know what would be allowed under the Rural Residential Exception area but suspect it would probably be even denser housing.

As Bend continues to grow at what may be an unsustainable pace the value of open space increases. We urge you to consider open space as a relevant and beneficial resource when you weigh the issues inherent in this kind of a zoning change.

*Sincerely,
John Schaeffer and Patti Bailey
James and Janet Lake
Julie Naslund, Michael, and Miles Nevill
Mike Quick
Jill Harrell and Mike King"*

The seventh public comment was received from Cathy DeCoursey, a property owner and resident of 61718 Rigel Way, Bend, OR 97702 on June 21, 2021:

"I am responding to a letter I received regarding COID's application to rezone the property behind me. File # 247-21-0000400-PA, 401-ZC. 36.65 Acres. My understanding is they want to change the zoning from Agriculture and Exclusive Farm Use Zone to Rural Residential Exception Area and Multiple Use Agricultural. I've read the Application prepared by Tia M. Lewis. I have 3 concerns:

- 1. The water supply says wells are to be drilled for household use. There are 2 very old (55yrs) Well Reports included in her submission. I find this very odd that 7 new homes will be drilling and using well water for approximately 5 acre mini ranches. Surely the water table has lowered over time? The depth of one shows 619 feet. One report seems to be missing*

the gallons per minute amount. Would you explain where the household and irrigation water will be coming from for these 7 lots?

- 2. *At what point can the MUA-10 Zoning be changed to create a subdivision of smaller sized lots?*
- 3. *Will there be more than 7 lots created? The stubbed access roads listed are already narrow and congested with parked cars and traffic coming and going to 27th which has no turn lanes onto or off of Darnel.*

Thank you for your time and response."

The eighth public comment was received from Jennifer Neil, a property owner and resident of 61723 Rigel Way, Bend, OR 97702 on June 21, 2021:

"My name is Jennifer Neil, and I am Bend homeowner concerned about the above-mentioned proposed land use. The proposed land use will change what is a small, open space next to the Central Oregon canal from farm use to more residential use. I'm saddened to not only lose the space I walk on twice a day, but to see it turned into more overpriced homes that the city and the community is not able to support. The area of SE Bend where this property is located has already out-grown all of the infrastructure to support more housing. It has become extremely difficult to access my home because of the traffic and congestion along 27th street. This congestion will only increase with the addition of the new High School. Finally, I'm also very concerned that 4 of my neighbors, who are also homeowners and have properties directly next to this proposed land use change, did not receive any notice of this land use. I notified them! I hope that the city planners will consider the impact more houses will have in this area, and improve the infrastructure first that is already necessary before destroying more open space."

The ninth public comment was received from Brent N. Wilkins, an owner and resident of property at 61764 SE Camellia Street, Bend, OR 97702, on June 21, 2021:

"I am a resident of the Rosengarth Subdivision. I am submitting these written comments relating to the proposed zoning changes by the Central Oregon Irrigation District ("COID") for the real property located at 61781 Ward Road, Bend, OR 97702 ("Property").

For the reasons noted below, including due to the level of development in East Bend in close proximity to the Property, the Property's rural nature that serves as a place of recreation, and the high level of traffic and lack of a left-hand turn lane from the major arterial (27th Street) that will likely service the Property if/once developed, I ask that the Deschutes County Planning Division ("Planning Division") not approve COID's application. I request to be notified of any decision or public hearing related to this application, and this notice may be sent to:

*Brent N. Wilkins
61764 SE Camellia Street
Bend, OR 97702*

As noted on page 3 of COID's Burden of Proof Statement, COID will have the ability to attempt to develop and subdivide the Property into a subdivision if the permit is granted. This would potentially occur through Title 17 or Title 18 of Deschutes County's rules. This permit should not be granted as further development in the proximity of the Property will not serve the County or community.

A. Development & Traffic Impacts

The Property at issue is surrounded by areas that have been recently developed. This includes the DR Horton subdivision off of Pettigrew Drive, the Hayden Homes Subdivision off of Pettigrew Drive, as well as the Rosengarth Subdivision. 27th Street has not been able to keep up resulting increased traffic flow as a result of the development to date. Excluding this Property, there is now significant further development occurring in this immediate area that 27th Street will service. The development at this time includes a new commercial lot being developed at 27th Street and Reed Market that will consist of multiple businesses, a new subdivision between Reed Market and Starlight Drive on the east side of 27th Street, and significant development off of 27th Street on Stevens Road. The Property will also heavily utilize 27th Street through the likely extension of Darnel Avenue and/or Daylily Avenue.

The collective effect of all of this development is that the rural nature of East Bend is being lost and 27th Street is becoming unsafe. 27th Street at this time does not adequately handle the levels of traffic that occur each morning around 8:00 am, each afternoon around 5:00 pm as well as when school lets out, and during the weekends. I have routinely sat in my car for more than two minutes trying to turn left onto 27th Street. I have also waited more than a minute to even to try to turn right onto 27th Street. A photograph showing the line of traffic on 27th Street is enclosed. (See Ex. 1). Also, there is no left turn lane when turning left from 27th Street onto Darnel Avenue from 27th. This has resulted in unsafe conditions, including vehicles passing the turning vehicle on the right where there is no developed shoulder or lane. There are tracks on the ground where this happens, and it is not safe for those vehicles, the turning vehicle, or oncoming traffic. Eastside Gardens is also located at 27th Street and Darnel Avenue. Vehicles pull in and out of that parking lot at that intersection and from the parking lot itself. This cause an irregular, unsafe traffic flow that will only be exacerbated by further use.

Moreover, due to Darnel Avenue serving as a primary access point for homes throughout the existing neighborhoods and Gardenside Park, there is already a high level of traffic and vehicles often driving fast. There is also significant on street parking that restricts views for drivers and pedestrians. This includes large 'sprinter' vans, large trucks, and sometimes trailers. (See Ex. 2). There are numerous young families in the neighborhoods, including along Camellia Street, Darnel Avenue and Gardenside Park. These families have children that run, play, skateboard, ride scooters, and bike throughout the neighborhood, including on the streets. The existing neighborhood traffic levels poses a danger to children. The proposed permit will likely result in increased traffic within the neighborhood and pose additional risk to these young families and

children. Any consideration of the Permit, and any possible approval, must address this dynamic.

Finally, with the recent approval of the Southeast Area Plan for the 'Elbow', the level of traffic in East Bend and 27 Street will only increase. This will also result in the displacement of birds and other wildlife, which is further covered below, and will need a place to go.

B. Preservation

The Property at issue is an area that is highly utilized for recreation and embodies Central Oregon high desert landscape. In the winters, the area can serve as a place for cross-country skiing. (See Ex. 3). People regularly ride bikes, run, and go for walks. The aerial photo that was enclosed with the Notice of Application also shows the walking path through the middle of the Property. The wildlife that calls this place home includes ducks, jackrabbits, geese, and numerous other birds. There is also a rimrock canyon on the Property that is quite unique and should be preserved (See Ex. 4). The Property also has views of the Cascades, Powell Butte, and Newberry Caldera (See Ex. 5). It is also quite peaceful and has a gentle, rolling landscape full of trees, grasses, and sagebrush. (See Ex. 6). During the mornings and evenings one can go for walks and hear the songs of birds and enjoy an escape from the busy work day and pace of life. In other words, changing the Property's zoning classification and leading to the possibility (if not the eventual or imminent likelihood) of development that will further change the rural nature of Bend is not in the public's interest for rezoning standards or otherwise.

C. Conclusion

The existing development and use of 27 Street, the development already approved and under construction, and the future development of Stevens Road and the 'Elbow' makes changing the Property's zoning classification to not be in the public interest. There simply is not adequate infrastructure to support all of these additions in a safe manner. Until the access to the neighborhoods from 27th Street is improved, no further development or changes of zoning classifications should occur. Approving the permit will also likely result in the irreparable loss of rural landscape and habitat once the Property is developed, including possibly without any restrictions or preservation criteria.

In sum, the proposed permit application should be denied, or at least not approved in its current form. At a minimum, a hearing should be set for in person comments and for further deliberation to occur."

The public comment from Mr. Wilkins includes 10 photographs depicting the various conditions outlined in his written comment. These photographs and the full written comment are included in public record for the subject application.

The tenth public comment was received from Crystal Garner on June 22, 2021:

"I would like to request a hearing for the proposed land development for 61781 Ward Rd, Bend, OR 97702. We live about 4 houses down from this property, it is a great and safe place for our family and so many others in the neighborhood to take walks, ride bikes, and walk dogs. The thought of this land being developed on and losing those opportunities, as well as possibly compromising the safety of our children in our neighborhood bring a heavy heart to so many of us. Please consider a hearing to recant this decision."

The eleventh public comment was received from William Kepper on June 29, 2021:

"Sorry for the late response to the changes associated with Map and Taxlot: 1812020001000. The notification was not received timely. The notification is vague to exactly what changes will occur. If the changes have anything to do with the cultivation of marijuana or hemp we and our neighbors are against it. It would destroy ours and our neighbors quality of life. There are numerous small children and teenagers in the neighborhoods who should not be subjected to these types of grow farms. Also there is a child day care facility close by off 27th Street. I hope I'm wrong about the 'Rural Residential Exception Area and Multiple Use Agricultural, respectively' statement. Thanks for listening to my concerns. I'd appreciate additional information on exactly what Multiple Use Agricultural Zone (MUA10) means."

The twelfth public comment was received from David Morrison on August 30, 2021:

Tarik,

I may wish to participate in this hearing if I have questions or concerns not addressed by others. I plan to participate via Zoom. My wife is dealing with serious health issues and may require attention at any time which might cause me to miss all or some.

So, I would like to go on record as 100% against re-zoning said COID property at this time. I feel that with the already in the works developments south of Stevens Rd and north of Bear Creek Rd, that the road system is already severely inadequate. Also, with the drought conditions and worsening water supplies in not just Bend but all of Deschutes and surrounding counties, I would like to see this request 'tabled', to be revisited in no fewer than 5 years. The county needs to greatly improve roads and water supply issues before allowing more and more building and deteriorating areas that will make this area more desirable to live in. I enjoy watching all of the natural wildlife that lives in this space, they will disappear with development, as will our natural view that was the biggest reason for us purchasing our property which is immediately adjacent to said property.

I am also concerned about the stated address of said property, Ward Rd is no where near the property. If it should be re-zoned, where exactly will it be accessed?

I fear the continued rapid growth will quickly and severely deteriorate the quality of life for all of Bend.

Thank you for considering my our [sic] concerns, David & Nancy Morrison

J. LAND USE HISTORY: There is no history of prior land use permits having been granted for the subject property.

K. UTILITY SERVICES: The subject property is served by Pacific Power and water will be provided by a well (see Exhibit 7 for will serve letter and well logs).

L. PUBLIC SERVICES: The subject property is in the Deschutes County Rural Fire Protection District #2 (Exhibit 6). The Bend Rural Fire Protection Station 304 is located a few miles northeast of the subject property near the corner of Hamby and Neff Roads. The Pilot Butte Station on NE 15th Street and Highway 20 is also within a few miles of the subject property. The Deschutes County Sheriff provides police and public safety services. Access to the subject property is provided from the stubbed local street connections of Darnel Avenue and Daylily Avenue to the west. The Bend Municipal Airport is located several miles northeast of the property. The property is within the Bend-La Pine School District and is in the Buckingham Elementary School boundary, the Pilot Butte Middle School boundary and the Bend High School boundary. The property is outside of the Bend Parks and Recreation District boundary; however, Bend Parks and Recreation District has plans to develop Hansen Park Trailhead located south of the subject property that will serve the Central Oregon Historic Canal Trail system.

M. NOTICE REQUIREMENT: On August 6, 2021, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property and agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, August 8, 2021. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on July 26, 2021.

The applicant complied with the posted notice requirements of DCC 22.24.030(B). The applicant submitted a Land Use Action Sign Affidavit, dated June 25, 2021, indicating the applicant posted notice of the land use action on June 25, 2021.

Deschutes County sent notice of the proposed change to its comprehensive plan and land use regulation to the Oregon Department of Land Conservation and Development, received by DLCD on July 26, 2021.

N. REVIEW PERIOD: The subject applications were submitted on April 20, 2021, and deemed complete by the Planning Division on May 20, 2021. According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

III. **CONCLUSIONS OF LAW**

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: The applicant, also the property owner, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The applicant filed the required Planning Division’s land use application forms for the proposal. The application is reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code. The Hearings Officer finds these criteria are met.

Section 18.136.020, Rezoning Standards

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

- A. That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.***

FINDING: The applicant provided the following response in its submitted burden of proof statement:

Per prior Hearings Officers decisions [Powell/Ramsey (file no. PA-14-2 / ZC-14-2) and Landholdings (file no. 247-16-000317-ZC, 318-PA)] for plan amendments and zone changes on EFU-zoned property, this paragraph establishes two requirements: (1) that the zone change conforms to the Comprehensive Plan and (2) that the change is consistent with the plan's introductory statements and goals. Both requirements are addressed below:

- 1. Conformance with the Comprehensive Plan: The applicant proposes a plan amendment to change the Comprehensive Plan designation for the subject property from Agriculture to Rural Residential Exception Area. The proposed rezoning from EFU-TRB to MUA-10 will need to be consistent with its proposed new plan designation.***

- 2. *Consistency with the Plan's Introductory Statement and Goals. In previous decisions, the Hearings Officer found the introductory statements and goals are not approval criteria for the proposed plan amendment and zone change. However, the Hearings Officer in the Landholdings decision found that depending on the language, some plan provisions may apply and found the following amended comprehensive plan goals and policies require consideration and that other provisions of the plan do not apply as stated below in the Landholdings decision:*

"Comprehensive plan statements, goals and policies typically are not intended to, and do not, constitute mandatory approval criteria for quasi-judicial/and use permit applications. Save Our Skyline v. City of Bend, 48 Or LUBA 192 (2004). There, LUBA held:

'As intervenor correctly points out, local and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. [Citations omitted.] Local governments and this Board have frequently considered the text and context of cited parts of the comprehensive plan and concluded that the alleged comprehensive plan standard was not an applicable approval standard. [Citations omitted.] Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. [Citation omitted.] Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. [Citations omitted.]'

LUBA went on to hold in Save Our Skyline that it is appropriate to 'consider first whether the comprehensive plan itself expressly assigns particular role to some or all of the plan's goals and policies.' Section 23. 08. 020 of the county's comprehensive plan provides as follows:

The purpose of the Comprehensive Plan for Deschutes County is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affected by development in the County and provide a general guide to the various decision which must be made to promote the greatest efficiency and equity possible, while managing the continuing growth and change of the area. Part of that process is identification of an appropriate land use plan, which is then

interpreted to make decision about specific sites (most often in zoning and subdivision administration) but the plan must also consider the sociological, economic and environmental consequences of various actions and provide guidelines and policies for activities which may have effects beyond physical changes of the land (Emphases added by applicant.)

The Hearings Officer previously found that the above-underscored language strongly suggests the county's plan statements, goals and policies are not intended to establish approval standards for quasi-judicial land use permit applications.

*In Bothman v. City of Eugene, 51 Or LUBA 426 (2006), LUBA found it appropriate also to review the language of specific plan policies to determine whether and to what extent they may in fact establish decisional standards. The policies at issue in that case included those ranging from aspirational statements to planning directives to the city to policies with language providing 'guidance for decision-making' with respect to specific rezoning proposals. In Bothman LUBA concluded the planning commission erred in not considering in a zone change proceeding a plan policy requiring the city to '[r]ecognize the existing general office and commercial uses located * * * [in the geographic area including the subject property] and discourage future rezonings of these properties.' LUBA held that:*

**** even where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require *** consistency with applicable plan provision.' (Emphasis added.) The county's comprehensive plan includes a large number of goals and policies. The applicant's burden of proof addresses goals for rural development, economy, transportation, public facilities, recreation, energy, natural hazards, destination resorts, open spaces, fish and wildlife, and forest lands. The Hearings Officer finds these goals are aspirational in nature and therefore are not intended to create decision standards for the proposed zone change."*

Hearings Officer Karen Green adhered to these findings in the Powell/Ramsey decision (file nos. PA-14-2/ZC-14-2), and found the above referenced introductory statements and goals are not approval criteria for the proposed plan amendment and zone change. This Hearings Officer also adheres to the above findings herein. Nevertheless, depending upon their language, some plan provisions may require "consideration" even if they are not applicable approval criteria. Save Our Skyline v. City of Bend, 48 Or LUBA 192, 209 (2004). I find that the following amended comprehensive plan goals and policies require such consideration, and that other provisions of the plan do not apply:"

The comprehensive plan goals and polices that the Landholdings Hearings Officer found to apply include the following...

The applicant utilizes the analysis provided in prior Hearings Officers' decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed below in the Comprehensive Plan section of this Decision. The Hearings Officer finds the above provision is met, based on Comprehensive Plan conformance as set forth in subsequent findings.

B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

FINDING: The applicant provided the following response in the submitted burden of proof statement:

The applicant is proposing to change the zone classification from EFU to MUA-10. Approval of the application is consistent with the purpose of the MUA-10 zoning district, which stated in DCC 18.32.010 as follows:

"The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use."

The subject property is not suited to full-time commercial farming as discussed in the findings above. The MUA-10 zone will allow property owners to engage in hobby farming. The low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources. In the Landholding's case, the Hearings Officer found:

I find that the proposed change in zoning classification from EFU is consistent with the purpose and intent of the MUA-10 zone. Specifically, the MUA-10 zone is intended to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area. Approval of the proposed rezone to MUA-10 would permit applications for low-density development, which will comprise a transition zone between EFU rural zoning, primarily to the east and City zoning to the west.

The maximum density of the approximately 36.65-acre property if developed with a cluster development under Title 18 is 7 lots. This low density will preserve open space, allow owners to engage in hobby farming, if desired, and preserve natural and scenic resources and maintain or improve the quality of air, water, and land resources. The MUA-10 zoning provides a proper transition zone from City, to rural zoning to EFU zoning.

The applicant’s burden of proof statement also includes analysis in the Introduction section at pages 1-2. There, the applicant stated, in relevant part:

For the past several years, Deschutes County has recognized the value in rezoning non-productive agricultural lands and has issued decisions in support of plan amendments and zone changes where the applicant demonstrates the property is not agricultural land and, therefore, Statewide Goal 3, Agricultural Lands, does not apply. These cases are the foundation for the subject request. Cases pertinent to the proposed request include:

Kelly Porter Burns Landholdings LLC (“Landholdings”)/File nos. 247-16-000317-ZC/318-PA

On November 1, 2017, the Board approved Kelly Porter Burns Landholdings LLC’s request to change the plan designation on certain property from Agricultural to Rural Residential Exception Area and to change the zone designation from EFU-TRB to MUA-10 zone. The property consists of about 35 acres and abuts the applicant’s property to the west (Exhibit 1).

Based on the Order 1 soil survey for the property and the submitted evidence, the Hearings Officer found that the Landholdings property does not constitute agricultural land and does not merit protection under Goal 3, and therefore, approved the change in Plan designation and Zoning of the property from Agriculture/EFU-TRB to RREA/MUA-10.⁶

Division of State Lands Decision/File Nos. PA-11-7 and ZC-11-2

The Division of State Lands case was a 2013 approval by the Board for a plan amendment from Agriculture to Rural Residential Exception Area and a zone change from EFU-TRB to Multiple Use Agricultural (MUA-10). Based on the Order 1 soil survey for the property and the submitted evidence, the Board found that the property was not agricultural land and therefore, Goal 3 did not apply (Exhibit 2).

⁶ The Board adopted as its findings the Hearings Officer’s decision with one exception: that if the property is divided, it must be developed as a cluster development and the two irrigation ponds must be included in the common area. In addition, the Board required the applicant to sign a Conditions of Approval agreement to “assure that future residential development of the property will be harmonious with existing development in the area and so that a part of the property may be developed at urban densities if and when the property is annexed to the City of Bend.”

Paget Decision/File Nos. PA-07-1, ZC-07-1

The Paget decision was a 2007 approval of a plan amendment from Agriculture to Rural Residential Exception Area and a zone change from EFU to MUA-10. The Board adopted the Hearings Officer’s decision, which found that the property did not constitute “agricultural land” and therefore, the plan amendment and zone change to MUA-10 was consistent with Goal 3 (Exhibit 3).

The Daniels Group/File Nos. PA-08-1, ZC-08-1

The Daniels Group decision was a 2011 Board decision approving a change to the Comprehensive Plan map from Surface Mine and Agriculture to Rural Residential Exception Area and a zone change from EFU-LB and Surface Mining to Rural Residential (RR-10). The Board found that the property did not constitute “agricultural land” as defined in Goal 3, was not subject to protection under Goal 3, and therefore, the plan amendment and zone change did not require an exception to Goal 3. (Exhibit 4).

The Hearings Officer finds the applicant has demonstrated the change in classification is consistent with the purpose and intent of the MUA-10 Zone. A change in classification will preserve the rural character of the subject property, due to the low density of development allowed in the MUA-10 zone, while permitting development consistent with that character. As set forth in the findings below, the subject property is not suited to full-time commercial farming but could be used for hobby farming. Low density development will also conserve open spaces and protect natural and scenic resources. The Hearings Officer finds that approval of the proposed rezone to MUA-10 would permit applications for low-density development, and will comprise a transition zone between the City and EFU zoning to the east.

The Hearings Officer’s findings regarding agricultural land and Goal 3 exception are set forth in the findings below.

- C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:**
 - 1. The availability and efficiency of providing necessary public services and facilities.**

FINDING: There is no proposal to develop the property at this time. The above criterion asks if the proposed zone change will *presently* serve public health, safety, and welfare. The applicant provides the following response in the submitted burden of proof statement:

Necessary public facilities and services are available to serve the subject property, including electrical power from Pacific Power and well logs showing water services are available to serve the property. Exhibit 7.

Transportation access to the property is available from the stubbed local street connections of Darnel Avenue and Daylily Avenue to the west in the City of Bend Urban Growth Boundary. MUA-10 zoning and a standard subdivision would allow the creation of up to 3 residential lots and a cluster development would allow up to 7 residential lots. If developed with a cluster development, the property could generate up to 49 additional daily trips, which according to the traffic report by Transight Consulting is a slight increase in trips, but the impact of these trips is negligible on the transportation system and the functional classification of all the adjacent roadways will not be affected with the proposed rezone. The existing road network is available to serve the use of the property if developed.

The property receives police services from the Deschutes County Sheriff and is in Rural Fire Protection District #2 with the nearest fire station nearby. Neighboring properties contain residential uses, which have water service from a municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

Neighboring properties contain residential and commercial uses, which have water service from a quasi-municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

Public commentators expressed concern about access to the subject property. One commentator stated that Ward Road is $\frac{3}{4}$ mile away and that the property is not accessible other than via a canal road, which is gated. Other commentators stated that access from City of Bend roads (Daylily Avenue and Darnel Avenue) that are currently stubbed at the edge of the eastern boundary of the Bend UGB, through existing subdivisions will be dangerous. The applicant's attorney stated that there are no current plans to develop the property. The applicant may offer the property for sale or develop as MUA-10 zone. Alternatively, the applicant could hold onto the property until the next Bend UGB expansion process.

The Hearings Officer finds that no access to the subject property is required to be established for purposes of consideration of the re-designation and rezoning applications. Any future development will have to establish access in compliance with applicable zoning regulations and the comprehensive plan.

Prior to development of the property, the applicant will be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

The Hearings Officer finds this criterion is met.

2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

FINDING: The applicant’s submitted burden of proof statement addresses potential impacts on surrounding land uses as related to each individual policy and goal item within the County’s Comprehensive Plan in subsequent findings. Analysis of consistency with each applicable goal and policy is set forth in the findings below.

The Hearings Officer finds that the MUA-10 zoning is the same zoning of many other properties in the areas east and south of the subject property. As the Hearings Officer found above, MUA-10 zoning provides a proper transition zone from the City to EFU zoning. The requested zone change will not impose new impacts on EFU-zoned land to the north of the subject property because that property is a small parcel, approximately 12 acres in size, that is not engaged in commercial farm use and is developed with a nonfarm dwelling. Further, MUA-10 zoning will have minimal impacts on EFU-zoned land adjacent to the northeast corner of the subject property.

As determined by the applicant’s soil scientist, Andy Gallagher, it is not practical to farm the subject property because it is comprised primarily of Class 7 and 8 soils and is characterized by a cut-up landscape. The Hearings Officer finds the subject property is not land that could be used in conjunction with the adjacent property. Any future development of the subject property will be subject to building setbacks.

The Hearings Officer finds this criterion is met.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDING: The applicant is proposing to rezone the property from EFU to MUA10 and re-designate the property from Agriculture to Rural Residential Exception Area. The applicant has provided the following response in the submitted burden of proof statement:

1. Mistake: *The EFU zoning designation was likely based on the best available soils data that the County had at the time in the County in the late 1970's when the comprehensive plan and map were adopted and where agricultural zoning was applied to land with no history of farming⁷⁸.*

⁷ Gallagher’s soils analysis report for the subject property determined that the subject property was previously mapped by the USDA-SCS Soil Survey of the Deschutes County Area and compiled by NRCS into the Web Soil Survey. The property was previously mapped at 1:20,000 scale, which is generally too small a scale for detailed land use planning and decision making, according to Gallagher.

⁸ Source: Agricultural Lands Program, Community Involvement Results, Community Development, Deschutes County. June 18, 2014.

2. Change in Circumstances: *There clearly has been a change in circumstances since the property was last zoned in the 1970s:*

Soils: *New soils data provided in the Gallagher soils report shows the property does not have agricultural soils.*

Farming economics and viability of farm uses in Central Oregon *have significantly changed. Making a profit in farming, particularly on smaller parcels such as the subject property, is difficult as stated below in the stakeholder interview of the Deschutes County Farm Bureau in the County's 2014 Agricultural Lands Program, Community Involvement Results:*

Today's economics make it extremely difficult for commercial farmers in Deschutes County to be profitable. Farmers have a difficult time being competitive because other regions (Columbia Basin, Willamette Valley) produce crops at higher yields, have greater access to transportation and consumer markets, and experience more favorable growing climates and soils. Ultimately, the global economy undermines agricultural opportunities in the county because commodities derived from outside the region can be produced at a lower cost. Water limitations also play a role. Junior water right holders are constrained as the summer progresses and they lose their rights to those with higher priority dates.

Decline in farm operations *have steadily declined in Deschutes County between 2012 and 2017, with only a small fraction of farm operators achieving a net profit from farming in 2017. (Exhibit 8).*

Encroaching development *east of Bend's Urban Growth Boundary has brought both traffic and higher density residential uses and congestion to the area.*

The applicant's attorney argued at the public hearing that it is not economical or fiscally responsible to retain the subject property as agricultural/farm land given the fact that it is non-productive land.

Patrick McCoy testified at the public hearing that there are several other parcels/tracts that are "getting ready to do the same thing" as the applicant. He also stated that a 59-acre parcel was allowed to "go dead" to meet requirements for a rezone. He is concerned about slowing down growth in this area and further expressed concerns that the subject property is landlocked. Mr. McCoy stated that there is a lot of development occurring within a 2-mile radius of his property.

Matt Carey testified at the public hearing that development is increasingly encroaching on green space and animals are getting pushed out. He also expressed concerns about access to the subject property.

Kecia Weaver testified that high schoolers participate in 4H and FFA, raising animals and that smaller parcels of land are used for agriculture on a small scale. She values slow growth and maintaining the rural concept, to preserve open spaces. Ms. Weaver is concerned about the rapid development of large acreage and the impact on deer, rabbits, hawks, eagles and bats. She stated that Ward Road is .75 miles away from the subject property, which is not accessible other than via a gated canal road. Ms. Weaver requested that the applications be denied to slow the growth. She further stated that the applications could be considered at the time the UGB expansion is underway.

The Hearings Officer makes the following findings. First, whether or not owners of other properties may, or may not, request a change of comprehensive plan designation and zoning is not relevant to the Hearings Officer's consideration of the current applications. Each application must be considered on its own merits.

Second, concerns regarding development encroachment support a finding of change of circumstances. Given the evidence that shows the subject property is not comprised of agricultural soils, and is not land that could be used in conjunction with adjacent property, the requested rezone will provide an appropriate transition between urban City development and rural EFU properties.

Third, the Hearings Officer does not have authority to deny the requested applications on the basis of concerns about growth. While understandable, the applications may be granted where, as here, all applicable criteria are met.

Fourth, the applicant's attorney commented at the public hearing that delaying the applications until the City considers its next urban growth boundary (UGB) expansion will preclude the subject property from consideration.

Fifth, with respect to 4H and FFA activities, the Hearings Officer finds that the requested rezone to MUA-10 will continue to allow for hobby farming.

Sixth, concerning wildlife concerns, the Hearings Officer finds the subject property is not within a Wildlife Area combining zone; there are no specific wildlife preservation regulations applicable to the property. There is no evidence that the requested rezone, and and of itself, will impact wildlife.

Finally, with respect to access, the Hearings Officer finds that no development is proposed at this time and, therefore, access need not be finally determined. If the subject property is developed in the future, the record shows that access from stubbed streets to the west may be considered.

For all the foregoing reasons, and based on evidence in the record that shows declining farm operations and limited numbers of financially successful farm operations (Exhibit 8), the

Hearings Officer finds that a change of circumstances since the time the property was last zoned exists. This criterion is met.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

Goal 1, Preserve and maintain agricultural lands and the agricultural industry.

FINDING: The applicant provided the following response in the submitted burden of proof statement:

The applicant is pursuing a plan amendment and zone change on the basis that the subject property does not constitute "agricultural lands," and therefore, the subject lands are not necessary to preserve or maintain as such. In the Landholdings decision (and Powell/Ramsey decision) the Hearings Officer found that Goal 1 is an aspirational goal and not an approval criterion.

As demonstrated in this application, the subject property does not constitute "agricultural land" and therefore, is not necessary to preserve and maintain the County's agricultural industry. The Gallagher soils report shows the subject property to consist predominantly (63.7%) of Class 7 and 8 non-agricultural soils (Gosney-Rock Outcrop complex). According to Mr. Gallagher, these soils have severe limitations for agricultural use as well as low soil fertility, shallow and very shallow soils, abundant rock outcrops and lava tubes, low available water capacity, and major management limitations for livestock grazing. In addition, the minor amount of Deskamp soils (Class 3 irrigated and 6 nonirrigated) are in small isolated pockets and severely restricted by lava tubes, shallow rocky soils, irrigation ditches and property lines that they cannot be used in farming in conjunction with the non-productive Gosney-Rock outcrop. The property also is physically remote from productive farmland as it is adjacent to the City of Bend's urban development to the west and rural residential development to the east and south. Mr. Gallagher concludes that the "landscape is so cut up it is impractical to farm".

The Hearings Officer finds Mr. Gallagher's report supports a finding that the subject property does not constitute agricultural land. The subject property is not land that could be used in conjunction with the adjacent property. The requested plan amendment and rezone will not contribute to loss of agricultural land in the surrounding vicinity. The agricultural industry will not be negatively impacted by re-designation and rezoning of the subject property. Therefore, the Hearings Officer finds the applications are consistent with Section 2.2, Goal 1, "preserve and maintain agricultural lands and the agricultural industry."

Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal

findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.

FINDING: The applicant is not asking to amend the subzone that applies to the subject property; rather, the applicant is seeking a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to MUA10. The Hearings Officer finds this Policy is inapplicable.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

FINDING: The applicant is seeking approval of a plan amendment and zone change to re-designate and rezone the property from Agricultural to Rural Residential Exception Area. The applicant is not seeking an exception to Goal 3 – Agricultural Lands, but rather seeks to demonstrate that the subject property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

The applicant provided the following response in the submitted burden of proof statement:

Deschutes County has allowed this approach in previous Hearings Officer’s decisions including Porter Kelly Burns Landholdings (247-16-000317-ZC/318-PA), Department of State Lands (PA-11-7/ZC-11-2), Pagel (PA-08-1/ZC-08-1), and the Daniels Group (PA-08-1, ZC-08-1). Additionally, the Land Use Board of Appeals (LUBA) allowed this approach in Wetherell v. Douglas County, 52 Or LUBA 677 (2006), where LUBA states, at pp.678-679:

“As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 nor Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990).”

LUBA’s decision in Wetherell has appealed to the Oregon Court of Appeals and the Oregon Supreme Court but neither court disturbed LUBA’s ruling on this point. In fact, the Oregon Supreme Court changed the test for determining whether land is agricultural land to make it less stringent. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007). In that case, the Supreme Court stated that:

“Under Goal 3, land must be preserved as agricultural land if it is suitable for ‘farm use’ as defined in ORS 215.203(2)(a), which means, in part, ‘the current employment of land for the primary purpose of obtaining a profit in money’ through specific farming-related endeavors.” Wetherell, 342 Or at 677.

The Wetherell court held that when deciding whether land is agricultural land “a local government may not be precluded from considering the costs or expenses of engaging in those activities.” Wetherell, 342 Or at 680. The facts presented in the subject application are sufficiently similar to those in the Wetherell decisions and in the above-mentioned Deschutes County plan amendment and zone change applications. The subject property is primarily composed of Class 7 or 8 nonagricultural soils making farm-related endeavors not profitable. This application complies with Policy 2.2.3.

The Hearings Officer finds that the facts presented by the applicant in the burden of proof for the subject applications are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County plan amendment and zone change applications. Therefore, the Hearings Officer finds the applicant established the property is not agricultural land and does not require an exception to Goal 3 under state law. The Hearings Officer finds the applications are consistent with Policy 2.2.3.

Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.

FINDING: This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. The policy is not directed to an individual applicant, as the Hearings Officers found in the *Landholdings* decision and *Powell/Ramsey* decision. The Hearings Officer finds that, based on the County’s previous determinations in plan amendment and zone change applications, the proposal is consistent with this Policy.

Goal 3, Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: This plan policy requires the County to identify and retain agricultural lands that are accurately designated. The policy is not directed to an individual applicant, as the Hearings Officers found in the *Landholdings* decision and *Powell/Ramsey* decision. The Hearings Officer finds that the subject property was not accurately designated as demonstrated by the soil study, NRCS soil data, and the applicant’s burden of proof. Further discussion on the soil analysis provided by the analysis is set forth in the findings under the OAR Division 33 criteria below. The Hearings Officer finds the proposal is consistent with this Policy.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.

FINDING: The applicant is not proposing a specific development application at this time. Therefore, the Hearings Officer finds the applicant is not required to demonstrate water impacts associated with development. Rather, the applicant will be required to address this criterion during development of the subject property, which would be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). The Hearings Officer finds this Policy does not apply to the subject applications.

Chapter 3, Rural Growth

Section 3.2, Rural Development

Growth Potential

As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.

- ...
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. In response to this section, the applicant’s burden of proof provides the following:

As shown above, the County’s Comprehensive Plan provisions anticipate the need for additional rural residential lots as the region continues to grow. This includes providing a mechanism to rezone farm lands with poor soils to a rural residential zoning designation. While the rezone application does not include the creation of new residential lots, the applicant has demonstrated the subject property is comprised of poor soils that are adjacent to rural residential MUA-10 zone uses to the east and south as well as urban residential zones within the Bend city limits to the west. Rezoning the subject property to MUA-10 is consistent with this criterion, as it will provide for an orderly and efficient transition from the Bend Urban Growth Boundary to rural and agricultural lands.

The MUA-10 Zone is a rural residential zone and as discussed in the Findings of Fact above, there are many adjacent properties to the south and east that are zoned MUA-10. Additionally, the properties to the west are within urban residential zones within the city limits of Bend. The Hearings Officer notes this policy references the soil quality, which is discussed above.

The Hearings Officer finds that rezoning the subject property to MUA-0 is consistent with Section 3.2, Chapter 3 of the Deschutes County Comprehensive Plan as it will provide for an orderly and efficient transition from the Bend UGB to rural and agricultural lands.

Section 3.3, Rural Housing

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

FINDING: The applicant provided the following response in the burden of proof:

Prior Hearings Officer's decisions have found that Section 3.3 is not a plan policy or directive⁹. Further, no goal exception to Statewide Planning Goal 3 is required for the rezone application because the subject property does not qualify as farm or forest zoning or agricultural lands under the statewide planning goals. The County has interpreted the RREA plan designation as the proper "catchall" designation for non-resource land and therefore, the Rural Residential Exception Area (RREA) plan designation is the appropriate plan designation to apply to the subject property¹⁰.

⁹ See PA-11-17/ZC-11-2, 247-16-000317-ZC, 318-PA, and 247-18-000485-PA, 486-ZC

¹⁰ The Hearings Officer's decision for PA-11-17/ZC-11-2 concerning this language of Section 3.3 states:
To the extent that the quoted language above represents a policy, it appears to be directed at a fundamentally different situation than the one presented in this application. The quoted language addresses conversions of "farm" or "forest" land to rural residential use. In those cases, the language

Based on past Deschutes County Hearings Officer interpretations, the Hearings Officer finds that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Hearings Officer finds the proposed RREA plan designation is the appropriate plan designation to apply to the subject property.

Section 3.7, Transportation

**Appendix C – Transportation System Plan
ARTERIAL AND COLLECTOR ROAD PLAN**

...

Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.

...

Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.

FINDING: This plan policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County will comply with this direction by determining compliance with the Transportation Planning Rule (TPR) aka OAR 660-012, as described below in subsequent findings.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

indicates that some type of exception under state statute and DLCD rules will be required in order to support a change in Comprehensive Plan designation. See ORS 197.732 and OAR 660, Division 004. That is not what this application seeks to do. The findings below explain that the applicant has been successful in demonstrating that the subject property is composed predominantly of nonagricultural soil types. Therefore, it is permissible to conclude that the property is not “farmland” as defined under state statute, DLCD rules, and that it is not correctly zoned for exclusive farm use. As such, the application does not seek to convert “agricultural land” to rural residential use. If the land is demonstrated to not be composed of agricultural soils, then there is no “exception” to be taken. There is no reason that the applicant should be made to demonstrate a reasons, developed or committed exception under state law because the subject property is not composed of the type of preferred land which the exceptions process was designed to protect. For all these reasons, the Hearings Officer concludes that the applicant is not required to obtain an exception to Goal 3.

- (7) "Forest lands" as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:**
 - (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and**
 - (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.**

FINDING: The subject property is not zoned for forest lands, nor are any of the properties within a two-mile radius. The property does not contain merchantable tree species and there is no evidence in the record that the property has been employed for forestry uses historically. None of the soil units comprising the parcel is rated for forest uses according to NRCS data. The Hearings Officer finds that the subject property does not constitute forest land.

Division 33 - Agricultural Lands & Statewide Planning Goal 3 - Agricultural Lands;

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

FINDING: Goal 3 defines "Agricultural Land," which is repeated in OAR 660-033-0020(1). The Hearings Officer's findings below are incorporated herein by reference.

OAR 660-033-0020, Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

- (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon¹¹;***

¹¹ OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

FINDING: The applicant’s decision not to request an exception to Goal 3 is based on the premise that the subject property is not defined as “Agricultural Land.” In support, the applicant offers the following response in the submitted burden of proof statement:

The subject property is not properly classified as Agricultural Land and does not merit protection under Goal 3. The soils are predominately Class 7 and 8 soils as shown by the more detailed soils report prepared by soils scientist Andy Gallagher, which State law, OAR 660-033-0030, allows the County to rely on for more accurate soils information. Mr. Gallagher found that approximately 64% of the soils on the subject property (about 24 acres) is Land Capability Class 7 and 8 soils that have severe limitations for farm use. He also found the site to have low soil fertility, shallow and very shallow soils, abundant rock outcrops and rock fragments in the surface, lava tubes, and irrigation ditches, low available water capacity, and limiting areas suitable for grazing and restricting livestock accessibility, all of which are considerations for the determination for suitability for farm use. Because the subject property is comprised predominantly of Class 7 and 8 soils, the property does not meet the definition of “Agricultural Lands” under OAR 660-033-0020(1)(a)(A) listed above, that is having predominantly Class I-VI soils.

The Hearings Officer finds that the soil study provided by Mr. Gallagher of Red Hill Soils is an accurate representation of the data for the subject property. Therefore, the Hearings Officer finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class 7 and 8 soils and, therefore, does not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(A) above.

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

FINDING: The applicant’s decision not to request an exception to Goal 3 is based on the premise that the subject property is not defined as “Agricultural Land.” The applicant provides the following analysis of this determination in the burden of proof.

This part of the definition of "Agricultural Land" requires the County to consider whether the Class 7 and 8 soils found on the subject property are suitable for farm use despite their Class 7 and 8 classification. The Oregon Supreme Court has determined that the term "farm use" as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors. The costs of engaging in farm use are relevant to determining whether farm activities are profitable and this is a factor in determining whether land is agricultural land. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007).

The subject property does not have water rights, has not been farmed, or used in conjunction with any farming operation in the past. The Natural Resources Conservation Service (NRCS) map shown on the County's GIS mapping program identifies two soil complex units on the property: 36A, Deskamp loamy sand and 58C, Gosney-Rock outcrop-Deskamp complex. The predominant soil complex on the subject property is 58C. 58C is not a high value soil as defined by Deschutes County Code. 36A is considered a high value soil when irrigated. However, as discussed in detail below, there is no irrigation on the property and an Agricultural Soils Capability Assessment (Order 1 soil survey) conducted on the property by soil scientist, Andy Gallagher, determined that the property is not agricultural land; that the class 3 irrigated and 6 non irrigated soils exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands. (See Exhibit 5 for Mr. Gallagher's Soil Assessment Report).

A review of the seven considerations listed in the administrative rule, below, shows why the poor soils found on the subject property are not suitable for farm use that can be expected to be profitable:

Soil Fertility:

Mr. Gallagher made the following findings regarding soil fertility on the subject property:

*"Important soil properties affecting the soil fertility and productivity of the soils are **very limiting to crop production** [emphasis added by applicant] on this parcel. The soils here are low fertility, being ashy sandy loams with a low cation exchange capacity (CEC) of 7.5 meq/100 gm and organic matter is very low for Gosney 0.75% and low for Deskamps 1.5%. These soils do not have a large capacity to store soil nutrients especially cations, and nitrogen fertilizers readily leach in sandy soils. The soil depth is further limiting because it limits the overall volume of soil available for plant roots and limits the size the overall nutrient pool. Additionally, the soil available water holding capacity is very low for Gosney less than 1.8 inches for the whole soil profile, and for the very shallow soils it is half this much. The Deskamps soils have only about 2 to 4 inches AWHC translate into low productivity for crops. NRCS does not provide any productivity data for non-irrigated crops on these soils. The productivity of irrigated alfalfa is 4 tons per acre for Deskamps, and no rating for Gosney is same as a zero. There are perhaps 7 acres that could produce alfalfa with irrigation that could produce 28 tons alfalfa under irrigation and high fertility but after costs this would amount to no profit."*

The fact that these soils are low fertility unless made fertile through artificial means supports the applicant's position that the Class 7 soils and the entire property is not suitable for farm use. The costs to purchase and apply fertilizer and soil amendments and the costs to sample and test soils are a part of the reason why it is not profitable to farm the subject property.

Unsuitability for Grazing:

Mr. Gallagher also reviewed whether the parcel is suitable for grazing and found:

*"This 37.7-acre parcel is **not suited to grazing on a commercial scale** [emphasis added by applicant]. The soils here have major management limitations including ashy and sandy surface texture. The majority of the area has soils that are very shallow to shallow with many rock outcrops and rock fragments in the surface. Wind erosion is a potential hazard is moderately high when applying range improvement practices. Because the soil is influenced by pumice ash, reestablishment of the native vegetation is very slow if the vegetation is removed or deteriorated. Pond development is limited by the soil depth. The restricted soil depth limits the choice of species for range seeding to drought-tolerant varieties. Further, range seeding with ground equipment is limited by the rock fragments on the surface. The areas of very shallow soils and rock outcrop limit the areas suitable for grazing and restrict livestock accessibility.*

Total Range Production from NRCS Websoil survey and estimate based soil percentages in revised soil map units

Soil Map Unit	Total annual range production pounds per acre		
	Unfavorable year	Normal year	Favorable year
36A	700	900	1100
58C	411	558	705
Dk	700	900	1100
GR ¹	315	441	567

¹ Estimated based on weighted average of soils

Total range production is the amount of vegetation that can be expected to grow annually in a well-managed area that is supporting the potential natural plant community. It includes all vegetation, whether or not it is palatable to grazing animals. It includes the current year's growth of leaves, twigs, and fruits of woody plants. It does not include the increase in stem diameter of trees and shrubs. It is expressed in pounds per acre of air-dry vegetation. In a normal year, growing conditions are about average. Yields are adjusted to a common percent of air-dry moisture content. The productivity provided for Dk map unit is from Websoil survey for the Deskamp soil and that provided for the GR map unit is based on 40% very shallow soils, 35% Gosney and 25% rock outcrop.

Based on previous NRCS map has a weighted average annual productivity of 669 pounds per acre in a normal year. Based on the revised Order-1 map the annual productivity is even lower, 540 pounds per acre. The animal use months (AUMs) for this 37.7 acre parcel is 5.5 based on the revised soil map and a monthly value of 910 pounds forage per 1 AUM equivalent to pounds per cow calf pair. This model assumes the cow's take to be 25% of annual productivity in order to maintain site productivity and soil health (NRCS 2009). This

limits the grazing to one cow calf pair roughly 5 to 6 months annually. **This is not an economical model for livestock production** [emphasis added by applicant].

Inappropriate grazing causes a reduction in desirable grasses and where present cheatgrass will increase and granite prickly gilia increases and grasses decline. Cheatgrass becomes dominate along with grey rabbitbrush. Ground fire potential increases with increasing cheatgrass. Cutting of juniper leads to an increase in grey rabbitbrush and an increase in cheatgrass with or without grazing. Idaho fescue is eliminated from areas where trees are removed due to harsh microclimate and cheatgrass replaces it. The addition of inappropriate grazing would lead to a decline in the other deep-rooted perennial bunchgrasses and an increase in annuals and granite prickly gilia."

Climatic Conditions

According to Mr. Gallagher, climatic conditions of this area make is [sic] difficult for production of most crops, as stated below:

*"The low annual precipitation, high summer temperature and evapotranspiration rates, and shortened frost-free growing season make this **a difficult climate for production of most crops** [emphasis added by applicant]. Irrigation is needed on area farms to meet crop needs given only 8 to 10 inches precipitation that falls mainly between November and June, with a long summer drought. The soil temperature regime is mesic. The average annual air temperature is 46 degrees F with extreme temperatures ranging from -26 to 104 degrees F. The frost-free period is 50 to 90 days. The optimum period for plant growth is from late March through June. Freeze-free period (average) 140 days. (NRCS 2020) These harsh climatic conditions coupled with very low soil available water holding capacity limits the potential of irrigated crop production to the Deskamps soils."*

Existing and Future Availability of Water for Farm Irrigation Purposes:

No new irrigation water rights are expected to be available to the Central Oregon Irrigation District (COID) in the foreseeable future. In order to obtain water rights, the applicant would need to convince another COID customer to remove water rights from their property and sell them to the applicant and obtain State and COID approval to apply the water rights to the subject property. In such a transaction, water rights would be taken off productive farm ground and applied to the nonagricultural soils found on the subject property. Such a transaction runs counter to the purpose of Goal 3 to maintain productive Agricultural Land in farm use.

Given the poor quality of these soils, it is highly unlikely that Central Oregon Irrigation District would approve a transfer of water rights to this property. In addition, no person intending to make a profit in farming would go to the expense of purchasing water rights, mapping the water rights and establishing an irrigation system to irrigate the lands on the subject property.

Given the dry climate, it is necessary to irrigate the subject property to grow an alfalfa crop and to maintain a pasture. A farmer would need to spend significant sums of money to purchase water rights, irrigation systems, maintain the systems, pay laborers to move and monitor equipment, obtain electricity, pay irrigation district assessments and pay increased liability insurance premiums for the risks involved with farming operations.

Irrigating the soils found on the subject property as described by Mr. Gallagher, that have low fertility, low capacity to store nutrients, and very low available water holding capacity translates into low productivity for crops that would amount to no profit.

Existing Land Use Patterns

Existing land use patterns in the area are primarily non-agricultural related land uses including urban development to the west within the Bend City limits, County exception lands zoned MUA-10 developed with homes and small acres of irrigation for pasture and other hobby farm uses to the east and south, and irrigated farmland zoned EFU-TRB to the north and northeast.

The EFU-zoned properties to the north and northeast include:

North and northeast of the subject property is a pocket of EFU-zoned property. The adjacent property to the north, tax lot 18-12-02-1001, is a 12.45-acre EFU-zoned property that is partially irrigated and developed with a nonfarm dwelling (file no. CU-01-75). Northeast is tax lot 18-12-02-201, a 53.30-acre farm parcel that is irrigated and engaged in hay production, receiving farm tax deferral, and developed with a dwelling and outbuildings.

The close proximity to the City of Bend and residential areas limit the types of agricultural activities that could reasonably be conducted for profit on the subject property. The subject property would not be suitable for raising animals that are disturbed by noise. Additionally, the property owner would bear the burden of paying for harm that might be caused by livestock escape, in particular livestock and vehicle collisions. Any agricultural use that requires the application of pesticides and herbicides would be very difficult to conduct on the property given the numerous homes located in close proximity to the property. In addition, the creation of dust which accompanies the harvesting of crops is a major concern on this property due to the close proximity residential use.

Technological and Energy Inputs Required:

According to Mr. Gallagher:

*“The very shallow and shallow soils and abundant rock outcrops limit practical agricultural crop production on all but about 7 acres out of the 10 acres of Deskamps soils. The Deskamps soils are into four separate delineations that are separated by rocky and shallow soils and rock outcrops and lava tubes as well as irrigation ditches. **The landscape***

is so cut up it is impractical to farm [emphasis added by applicant]. *The best case scenario for crop production is for an area approximately seven acres along the north edge of the parcel that is spotted with rock outcrops and is of a very irregular shape. This area could at most produce about 28 tons of alfalfa under high fertilizer inputs and high irrigation water inputs. Current hay prices are from \$200.00 to \$250.00 per ton which would give an annual gross of about \$5,600.00 to \$7,000.00, before expenses. After expenses are deducted for land costs, site preparation, planting, costs of production like irrigation, fertilizer, weed control, costs of harvest including swath, rake, and bale, stack, and costs of handling, storage and marketing there would be **no profit associated with producing hay crops on such a small area*** [emphasis added by applicant]."

Accepted Farming Practices:

Farming lands comprised of soils that are predominately Class 7 and 8 is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occurs on Class 6 non-irrigated soils that have a higher soils class if irrigated. The applicant would have to go above and beyond accepted farming practices to even attempt to farm the property for dryland grazing. Crops are typically grown on soils in soil class 3 and 4 that have irrigation, which this property has neither.

The Hearings Officer finds that many of the factors surrounding the subject property, such as the proximity to the Bend city limits, current residential and non-agricultural related land uses in the area, soil fertility, spotty/small areas of Class 3 (irrigated) and Class 6 (non-irrigated) soils, and lack of availability of water rights, result in an extremely low possibility of successful farming on the subject property.

The Hearings Officer finds that the subject property, primarily comprised of Class 7 and 8 soils, is not suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration the soil fertility, suitability for grazing, climactic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy outputs required and accepted farming practices. Substantial evidence in the record supports a determination that the subject property cannot be employed for the primary purpose of obtaining a profit in money through farming-related endeavors, considering the costs of engaging in farm use. *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007).

Soils on the subject property can only be made fertile through artificial means, which is cost prohibitive from a profitability standpoint. The subject property is not suitable to grazing on a commercial scale given management limitations and expected low production of suitable vegetation. Climactic conditions result in difficulty for production of most crops. Given the fact that no new irrigation water rights are expected to be available to the COID in the foreseeable future and the poor quality of soils on the subject property, it is unlikely COID would approve a transfer of water rights to the property. Existing land use patterns also limit the suitability of grazing animals on the subject property which is in close proximity to the

City of Bend. A limited, approximately 7-acre portion of the subject property that could, at most, produce 28 tons of alfalfa with high fertilizer and water inputs, would not generate any profit after expenses are deducted for land costs, site preparation, planting and costs of production (irrigation, fertilizer, weed control, cost of harvest and cost of handling storage and marketing). Accepted farm practices in Central Oregon do not include farming lands comprised of soils that are predominantly Class 7 and 8. In order to conduct dryland grazing on the subject property, the applicant would have to take measures beyond accepted farming practices, including attempting to obtain a water rights transfer.

(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

FINDING: The applicant offers the following response in the submitted burden of proof statement:

The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The nearest agriculturally zoned land engaged in farm use to the subject property is located northeast on tax lot 18-12-02-201. This property is a 53.30-acre farm parcel that is irrigated and engaged in hay production, receiving farm tax deferral, and developed with a dwelling and outbuildings. The farm operations on tax Lot 201 operate independently and are not dependent upon the subject property to conduct its farm practices. This is evidenced by the subject property being owned by the applicant since 1930 and has never been farmed, much less combined with tax lot 201 in any way for agricultural purposes. Farming operations on tax lot 201 will be able to continue to occur if the subject property is rezoned to MUA-10. Further, the poor quality soils and lack of irrigation are not suited to agricultural production and make the subject property unsuitable for farm practices on the nearby agricultural land.

The Hearings Officer finds the subject property is not necessary for the purposes of permitting farm practices on the nearby Tax Lot 201 (Assessor’s Map 18-12-02) based on the factors discussed in the previous finding.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

FINDING: The applicant provided the following response in the submitted burden of proof statement:

The subject property is not and has not been a part of a farm unit that includes other lands not currently owned by the applicant. The property has no history of farm use and contains soils that make it unsuitable for farm use and therefore, no basis to inventory the subject property as agricultural land.

Goal 3 applies a predominant soil type test to determine if a property is "agricultural land". If a majority of the soils is Class 1-6 in in Central or Eastern Oregon, it must be classified "agricultural land." 1000 Friends position is that this is a 100% Class 7 -8 soils test rather than a 51% Class 7 and 8 soils test because the presence of any Class 1-6 soil requires the County to identify the entire property "agricultural land." Case law indicates that the Class 1 -6 soil test applies to a subject property proposed for a non-agricultural plan designation while the farm unit rule looks out beyond the boundaries of the subject property to consider how the subject property relates to lands in active farming in the area that were once a part of the area proposed for rezoning. It is not a test that requires that 100% of soils on a subject property be Class 1-6.

The farm unit rule is written to preserve large farming operations in a block. It does this by preventing property owners from dividing farmland into smaller properties that, alone, do not meet the definition of "agricultural land." The subject property is not formerly part of a larger area of land that is or was used for farming operations and was then divided to isolate poor soils so that land could be removed from EFU zoning. As demonstrated by the historic use patterns and soils reports, it does not have poor soils adjacent to or intermingled with good soils within a farm unit. The subject property is not in farm use and has not been in farm use of any kind. It has no history of commercial farm use and contains soils that make the property generally unsuitable for farm use as the term is defined by State law. It is not a part of a farm unit with other land.

The subject property is predominately Class 7 and 8 soils and would not be considered a farm unit itself nor part of a larger farm unit based on the poor soils and the fact that none of the adjacent property is farmed.

As shown by the soils capability study by Mr. Gallagher, the predominant soil type found on the subject property is Class 7 and 8, nonagricultural land (63.7%). The predominance test says that the subject property is not agricultural soil and the farm unit rule does not require that the Class 7-8 soils that comprise the majority of the subject property be classified as agricultural land due to the presence of a small amount of Class 1-6 soils on the subject property that are not employed in farm use and are not part of a farm unit. As a result, this rule does not require the Class 7 and 8 soils on the subject property to be classified agricultural land because a minority of the property contains soils rated Class 6.

The Hearings Officer finds that there are no bases on which to find that the subject property shall be inventoried as agricultural lands under this criterion. The property does not relate to land in active farming, and there are no parcels in the area that were once part of the subject property. A majority of the soils (63.7%) are not Class 1-6. Therefore, under the predominance test, the subject property is not agricultural. The farm unit rule does not mandate a different result. The subject property is not employed in farm use and is not now, nor in the past, part of a farm unit.

- (c) **"Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.**

FINDING: The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4. The Hearings Officer finds this criterion is inapplicable.

OAR 660-033-0030, Identifying Agricultural Land

- (1) **All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.**
- (2) **When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).**

FINDING: The applicant addressed the factors in OAR 660-033-0020(1) above. As the Hearings Officer has found herein, the property is not "agricultural land," as referenced in OAR 660-033-0030(1), and contains barriers for farm use including poor quality soils and lack of irrigation.

The Hearings Officer finds that substantial evidence in the record shows the subject property is not "agricultural land" because the property is predominantly Class 7 and 8 soils. As the Hearings Officer found above, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.

- (3) **Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.**

FINDING: The Hearings Officer finds that evidence in the record, including examination of lands outside the boundaries of the subject property, shows the subject property is not “agricultural land.” Substantial evidence shows that the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.

- (5)(a) *More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.***
- (b) *If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.***

FINDING: The soil study prepared by Mr. Gallagher (Exhibit 5) provides more detailed soils information than contained in the NRCS Web Soil Survey. Exhibit 5 includes the Soil Assessment Completeness Review conducted by DLCD pursuant to OAR 660-033-0045(6)(a), dated February 12, 2021, confirming the report prepared by Mr. Gallagher meets the requirements for agricultural soils capability reporting.

Mr. Gallagher’s soils assessment report provides a high intensity Order-1 soil survey and soil assessment – a detailed and accurate soils assessment on the subject property based on numerous soil samples – to determine if the subject property is “agricultural land” within the meaning of OAR 660-033-0020. As explained in Mr. Gallagher’s report, the NRCS soil map of the subject property shows two general soil mapping units, 58C and 36A. The more detailed Order-1 survey conducted by Mr. Gallagher included 41 soil test pits, in addition to observations of surface rock on the parcel. The results of the previous and revised soils mapping units with land capability class are provided in **Table 1** below.

The soils report is related to the NCRS Land Capability Classification (LCC) system that classifies soils class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS. The soils report provides more detailed soils information than contained on the Web Soil Survey operated by the NRCS, which provides general soils data at a scale generally too small for detailed land use planning and decision making.

The NRCS mapping for the subject property is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the property contains approximately 33.7% 36A soil and contains 66.3% 58C soil. The soils study conducted by Mr. Gallagher finds the soil types on the subject

property vary from the NRCS identified soil types. The soil types described by Mr. Gallagher (as quoted from Exhibit 5) and the characteristics and LCC rating are shown in **Table 1** below.

GR Gosney-Rock Outcrop Complex

Capability Class: 7 and 8 mapped as complex

These soils are mapped together in a complex because both components are Capability Class 7 or greater, and it was not practical to map them separately. These soils are estimated to be about 25 percent Rock Outcrop and 75 percent Gosney. They have lower productivity than NRCS map unit 38B because they do not contain a mappable area of Deskamp soils that were mapped separately. The productivity reported in Table 2 for Gosney-Rock Outcrop are 20 percent less than the 58C map unit to account for more shallow and very shallow soils in the GR map unit in the revised map unit. Based on the observations here, the map unit is about 40 percent very shallow soils, 35 percent Gosney soils, and 25 percent rock outcrops.

Gosney loamy sand and stony loamy sand (0 to 15 percent slopes)

Description: *Gosney series consists of shallow (10 to 20 inches) to hard basalt bedrock, somewhat excessively drained soils on lava plains. These soils have rapid permeability. They formed in volcanic ash over hard basalt bedrock. Slopes are 0 to 15 percent. The mean annual precipitation is less than 12 inches, and the mean annual temperature is about 45 degrees F.*

Capability Class: 7

Soil Variability: *Depth to bedrock is from surface exposures of bedrock to 20 inches depth. There may be small inclusions of soils like Deskamp that are moderately deep (>20 inches to 40 inches). Many of the pedons are very stony. This unit includes very shallow soils <10 inches.*

Very shallow phase 0-15 percent slopes

Description: *This component of the complex is less than 10 inches to basalt.*

Capability Class: 7

Soil Variability: *Depth to bedrock is from 1 to 10 inches. These soils are very shallow and of similar parent material to Gosney. These soils have lower available water holding capacity and an estimated 40 percent lower productivity.*

Rock Outcrop (0 to 15 percent slopes)

Description: *This part of the map unit is areas where bedrock is at the surface.*

Capability Class: 8

Soil Variability: *In places, rocks are right at the surface and often times bedrock is standing several feet above the surface of the adjacent soils. In some areas (borings 39-41) there is rimrock, large boulders and other surface stone where suspected lava tubes collapsed.*

Dk Deskamp loamy sand

Description: *This map unit is mainly moderately deep, somewhat excessively drained soils with rapid permeability on lava plains. These soils formed in ash and have hard basalt at 20 to 40 inches. Slopes are 1 to 15 percent. The A and AB horizon are loamy sand. The 2B is loamy sand and gravelly loamy sand. The NRCS soils survey mapped Deskamp and Gosney in a complex described as 50% Deskamp and 35% Gosney. In this Dk unit I delineated the Deskamp component of the former complex and mapped it as a consociation based on more detailed soil sampling than the NRCS soil survey. This soil covers approximately 11 acres of the parcel and is broken up into several small delineations two of which are less than an acre. These small and isolated areas are impractical to farm. The largest delineation is 8.5 acres and has at least three areas of rock outcrop that were delineated within.*

Capability Class: *3-irrigated and 6 non-irrigated*

Soil Variability: *There are small inclusions of rock outcrop and of deep soils with sandy skeletal family. Any rock outcrop I observed in the field was delineated from the Deskamp unit, but because not all rock outcrops could be resolved at the one boring per acre average sampling intensity, given the brushy conditions.*

CN Irrigation Canals

Description: *These canals are non-soil areas that consist of water and steep banks. When canals are dry they are hard rock bottom.*

Capability Class: *Not Rated*

Based on Mr. Gallagher’s qualifications as a certified Soil Scientist and Soil Classifier, the Hearings Officer finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject property. The state’s agricultural land rules, OAR 660-033-0030, allow the County to rely on the soil capability analysis prepared by Mr. Gallagher, which is more detailed than the NRCS soil maps and soil surveys and the Web Soil Survey operated by the NRCS as of January 2, 2012. The Hearings Officer finds that the Order-1 soil survey is related to the NRCS land capability classification system.

The Hearings Officer finds that the more detailed soils information in the report prepared by Mr. Gallagher assists the County to make a better determination of whether the subject property qualifies as agricultural land. As set forth above, DLCD completed a Soil Assessment Completeness Review pursuant to OAR 660-033-0045(6)(a), confirming the report prepared by Mr. Gallagher meets the requirements for agricultural soils capability reporting.

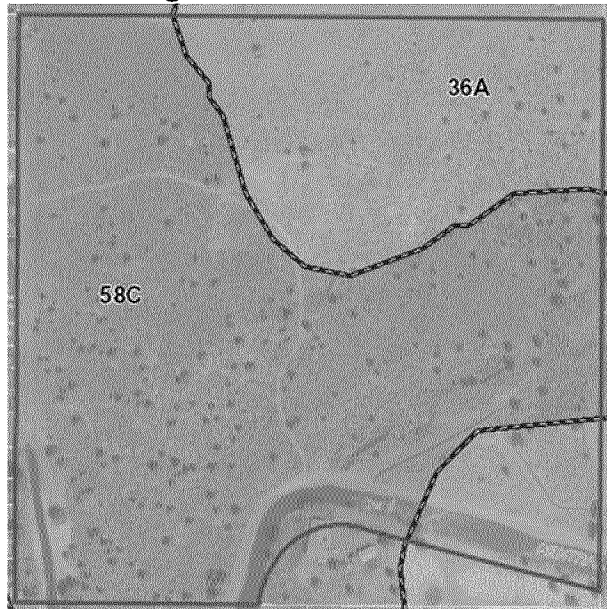
For all the foregoing reasons, the Hearings Officer finds the subject property is not "agricultural land,"

Table 1 - Summary of Order I Soil Survey

Previous Map Symbol	Revised Map Symbol	Soil Series Name	Capability Class	Previous Map*		Revised Map	
				Ac	-%-	Ac	-%-
36A	Dk	Deskamp loamy sand0 to 3 percent slopes	3 irrigated 6 non-irrigated	12.2	32.3	10.9	28.90
58C	--	Gosney-Rock outcrop-Deskamp complex, 0 to 15 percent slopes	6, 7 and 8	25.5	67.7	0	0
--	GR	Gosney-Rock Outcrop Complex	7 and 8	0	0	24	63.7
	CN	Irrigation Canal	not rated	0	0	2.8	7.4
Total				37.7	100	37.7	100

*Soils that were previously mapped as components of a complex that are mapped as consociations in revised map.

Figure 1 - NRCS Soil Data



- (c) This section and OAR 660-033-0045 apply to:**
 - (A) A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and**

FINDING: The applicant is seeking approval of a non-resource plan designation on the basis that the subject property is not defined as agricultural land.

- (d) This section and OAR 660-033-0045 implement ORS 215.211, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.**

FINDING: The applicant submitted a soils study by Mr. Gallagher of Red Hill Soils dated December 2, 2020. The soils study was submitted following the ORS 215.211 effective date. Staff received acknowledgement via email on February 16, 2021, from Hilary Foote, Farm/Forest Specialist with the DLCDC that the soils study is complete and consistent with DLCDC’s reporting requirements.

The Hearings Officer finds this criterion to be met based on the submitted soils study and confirmation of completeness and consistency from DLCDC.

- (e) This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.**

FINDING: The applicant has provided a DLCD certified soils study as well as NRCS soils data. The Hearings Officer finds that the applicant has complied with the soils analysis requirements of OAR 660-033-0045 in order to obtain DLCD certification. DLCD’s certification establishes compliance with OAR 660-033-0045.

The Hearings Officer finds this criterion is met.

DIVISION 12, TRANSPORTATION PLANNING

OAR 660-012-0060 Plan and Land use Regulation Amendments

- (1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:**
 - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**
 - (b) Change standards implementing a functional classification system; or**
 - (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.**
 - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**
 - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the**

- performance standards identified in the TSP or comprehensive plan; or*
- (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.***

FINDING: As referenced in the agency comments section in the Findings of Fact above, the Senior Transportation Planner for Deschutes County initially requested a revised traffic study for the applications. The applicant submitted an updated report from Transight Consulting LLC dated June 8, 2021, to address identified concerns and no further comments were received from the County’s Senior Transportation Planner. The update includes adjustments to the review of potential high impact land use scenarios to include comparisons between a winery and a cluster development, deemed the “worst case scenario” outright uses allowed in EFU and MUA10 Zones, respectively.

In response to these criteria, the applicant’s burden of proof provides the following statement:

Attached as Exhibit 9 is a transportation impact analysis memorandum prepared by traffic engineer, Joe Bessman, PE. Mr. Bessman made the following key findings with regard to the proposed zone change and concluded that a significant affect does not occur with the proposed rezone:

- Rezoning of the 36.65-acre COID property from EFU-TRB to MUA could generate up to 49 additional weekday daily trips, including only five additional trips during the weekday p.m. peak hour.*
- The change in trips does not meet Deschutes County, ODOT, or City of Bend thresholds of significance at any nearby locations.*
- The site will be served with stubbed local street connections west through the Marketplace Subdivision that connect to the SE 27th Street corridor. This access configuration does not impact Deschutes County streets.*
- The nearest classified intersection of SE 27th Street/SE Reed Market Road has a very low crash rate. There are no documented safety needs within the project vicinity.*

Based on this review a significant affect does not occur with the proposed rezone given the minor potential impacts in transitioning from EFU to MUA zoning.

Based on the traffic analysis and findings by Mr. Bessman, the application complies with the TPR.

Updated findings below, submitted by Transight Consulting on June 8, 2021, are set forth in the revised traffic study:

- *Rezoning of the 36.65-acre COID property from EFU-TRB to MUA provides similar potential impacts to the existing zoning, with the potential for a trip reduction within a “worse case” trip generation scenario.*
- *The reduction in trips does not meet Deschutes County, ODOT, or City of Bend thresholds of significance at any nearby locations.*
- *The site will be served with stubbed local street connections west through the adjacent Marketplace Subdivision that connect to the SE 27th Street corridor. This access configuration does not impact Deschutes County streets.*
- *The nearest classified intersection of SE 27th Street/SE Reed Market Road has a very low crash rate. There are no documented safety needs within the project vicinity.*

Based on this review a significant affect does not occur with rezoning from EFU to MUA zoning. With the range of outright allowable uses identified within ORS 215.213(1) and 215.283(1) as a “property right” additional trip generation scenarios could be shown resulting in a trip reduction. Regardless of the scenario, the overall impact of the rezone is negligible on the transportation system and the rezone reflects the more appropriate use of the property given its unsuitability for farming.

Public comments received by the County indicate concerns with potential traffic impacts as a result of the proposed plan amendment and zone change. These comments are non-specific in nature, do not include any findings contrary to the findings set forth in the Transight Consulting, LLC analyses, and do not include any information that is inconsistent with the Transight Consulting, LLC’s reports. Public comments express a generalized concern about traffic impacts associated with additional growth if the subject property is developed. The Hearings Officer notes that additional transportation/traffic review will be required at the time of any future development application(s).

The Hearings Officer finds that the proposed rezone will not significantly affect an existing or planned transportation facility for the following reasons: (1) it will not change the functional classification of an existing or planned transportation facility; (2) it will not change standards implementing a functional classification system; and (3) it will not result in any of the following effects – types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility, degradation of the performance of an existing or planned transportation facility such that it would not meet performance standards identified in the TSP or comprehensive plan, or degradation of the performance of an existing or planned transportation facility that is otherwise projected not to meet performance standards identified in the TSP or comprehensive plan.

The Hearings Officer finds that, based on OAR 660-012-060(1), the County is not required to put in place measures as provided in Section (2) of this rule. The applicant has demonstrated compliance with the TPR. These criteria are met.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDING: The Statewide Planning Goals are addressed below, as set forth in the applicant's burden of proof:

Goal 1, Citizen Involvement. *Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the applicant to post a "proposed land use action sign" on the subject property. Notice of the public hearings held regarding this application will be placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the application.*

Goal 2, Land Use Planning. *Goals, policies, and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.*

Goal 3, Agricultural Lands. *The applicant has shown that the subject property is not agricultural land because it is comprised predominantly of Class 7 and 8 soils that are not suitable for farm use. Therefore, the proposal is consistent with Goal 3.*

Goal 4, Forest Lands. *Goal 4 is not applicable because the subject property does not include any lands that are zoned for, or that support, forest uses.*

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. *Deschutes County DIAL property information and Interactive Map show the subject property has "wetlands" that correspond with COID's irrigation distribution system within the property including the developed canals and ditches. According to the Comprehensive Plan (Chapters 2, Resource Management and 5, Supplemental Sections), in 1992 Deschutes County Ordinance 92-045 adopted all wetlands identified on the U.S. Fish and Wildlife Service National Wetland Inventory (NWI) Maps as the Deschutes County wetland inventory. In addition, as described in the Comprehensive Plan, the NWI Map "shows an inventory of wetlands based on high-altitude aerial photos and limited field work. While the NWI can be useful for many resource management and planning purposes, its small scale, accuracy limitations, errors of omission that range up to 55 percent (existing wetlands not shown on NWI), age (1980s), and absence of property boundaries make it unsuitable for parcel-based decision making."*

The Comprehensive Plan has no specific protections for wetlands; protections are provided by ordinances that implement Goal 5 protections (for example, fill and removal zoning code regulations). In the case of Irrigation Districts performing work within wetlands, DCC

18.120.050(C) regarding Fill and Removal Exceptions allows fill and removal activities as a use permitted outright as stated below:

- C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.

Because the proposed plan amendment and zone change are not development, there is no impact to any Goal 5 resource. Any potential future development of a wetland – no matter what zone the wetland is in – will be subject to review by the County’s fill and removal regulations.

Goal 6, Air, Water and Land Resources Quality. *The approval of this application will not impact the quality of the air, water, and land resources of the County. Any future development of the property would be subject to local, state and federal regulations that protect these resources.*

Goal 7, Areas Subject to Natural Disasters and Hazards. *According to the Deschutes County DIAL property information and Interactive Map the entire Deschutes County, including the subject property, is located in a Wildfire Hazard Area. The subject property is also located in Rural Fire Protection District #2. Rezoning the property to MUA-10 does not change the Wildfire Hazard Area designation. Any future development of the property would need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.*

Goal 8, Recreational Needs. *This goal is not applicable because no development is proposed and the property is not planned to meet the recreational needs of Deschutes County. The Bend Parks and Recreation District has an undeveloped park site, Hansen Park, located to the south of the property with plans to develop the park trailhead that would serve the Central Oregon Historic Canal Trail System. The proposed rezone does not impact the recreational needs of Deschutes County as no development is proposed.*

Goal 9, Economy of the State. *This goal does not apply to this application because the subject property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely affect economic activities of the state or area.*

Goal 10, Housing. *The County’s Comprehensive Plan Goal 10 analysis anticipates that farm properties with poor soils, like the subject property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. Approval of this application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County Comprehensive Plan.*

Goal 11, Public Facilities and Services. *The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Pacific Power has confirmed that it has the capacity to serve the subject property and the proposal will not result in the extension of urban services to rural areas.*

Goal 12, Transportation. *The application complies with the Transportation System Planning Rule, OAR 660-012-0060, the rule that implements Goal 12. Compliance with that rule also demonstrates compliance with Goal 12.*

Goal 13, Energy Conservation. *The approval of this application does not impede energy conservation. The subject property is located adjacent to the city limits for the City of Bend. If the property is developed with residential dwellings in the future, providing homes in this location as opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services provided in the City of Bend.*

Goal 14, Urbanization. *This goal is not applicable because the applicant’s proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 Zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its comprehensive plan. The plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.*

Goals 15 through 19. *These goals do not apply to land in Central Oregon.*

The Hearings Officer finds consistency with Goal 1 (Citizen Involvement) has been established with the public notice requirements required by the County for these applications (mailed notice, posted notice and two public hearings). Similarly, the Hearings Officer finds consistency with Goal 2 (Land Use Planning) based on the applications’ consistency with goals, policies and processes related to zone change applications as set forth in the Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code.

Based on the findings above, the Hearings Officer finds consistency with Goal 3 (Agricultural Lands) has been demonstrated because the subject property is not Agricultural Land. The property is not comprised of Forest Lands; Goal 4 is inapplicable.

With respect to Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), the Hearings Officer finds that the property does not include any scenic and historic areas. Moreover, while the property is currently open and undeveloped, the County Goal 5 inventory does not include the subject property as an “open space” area protected by Goal 5. Members of the public expressed concern regarding potential impact on wildlife. However, the Hearings Officer notes that the property does not include a wildlife overlay (WA)

designation and, more importantly, no development is proposed at this time. Rezoning the subject property will not, in and of itself, impact wildlife on the subject property.

The property does include areas mapped as wetlands by the NWI, which constitute Goal 5 natural resources. Fill and removal activities conducted by an irrigation district are allowed outright under DCC 18.120.050(C). The Hearings Officer again notes that no specific development activities, including fill and removal, is proposed at this time. Because the proposed plan amendment and zone change do not constitute development, there is no impact to any Goal 5 resource. The Hearings Officer finds that future development activities will be subject to local, state and federal regulations that protect delineated wetlands. For these reasons, the Hearings Officer finds consistency with Goal 5.

The Hearings Officer finds consistency with Goal 6 (Air, Water and Land Resources Quality) because there is no demonstrable impact of approval of the application to rezone the subject property from EFU to MUA-10. Future development activities will be subject to local, state and federal regulations that protect these resources.

With respect to Goal 7 (Areas Subject to Natural Disasters and Hazards), the Hearings Officer finds consistency with this Goal based on the fact that rezoning the property to MUA-10 does not change the Wildfire Hazard Area designation that is applicable to the entirety of Deschutes County. The subject property is within the Rural Fire Protection District #2. Any application(s) for future development activities will be required to demonstrate compliance with fire protection regulations.

The Hearings Officer finds consistency with Goal 8 (Recreational Needs) given the fact that no development is currently proposed and that rezoning, in and of itself, will not impact recreational needs of Deschutes County. Members of the public testified regarding concerns of loss of the currently vacant property as open space and for recreational uses. The Hearings Officer notes that the record includes evidence regarding an undeveloped Bend Park and Recreation District park site, Hansen Park, located to the south of the property. There are plans to develop a park trailhead that would serve the Central Oregon Historic Canal Trail System. The Hearings Officer finds that the proposed rezone does not impact these recreational amenity plans.

The Hearings Officer finds Goal 9 (Economy of the State) is inapplicable because the subject property is not designated as Goal 9 economic development land.

The Hearings Officer finds the applications are consistent with Goal 10 (Housing) because the Comprehensive Plan Goal 10 chapter anticipates that farm properties with poor soils will be converted from EFU to MUA-10 or RR-10 zoning, making such properties available to meet the need for rural housing. Although no development of the subject property is proposed at this time, rezoning the subject property from EFU to MUA-10 will enable consideration of the property for potential rural housing development in the future.

The Hearings Officer finds the applications are consistent with Goal 11 (Public Facilities and Services). The record establishes that Pacific Power has capacity to serve the subject property and the proposal will not result in the extension of urban services to rural areas.

Based on the findings above regarding the Transportation System Planning Rule, OAR 660-012-0060, the Hearings Officer finds the applications are consistent with Goal 12 (Transportation).

The Hearings Officer finds the applications are consistent with Goal 13 (Energy Conservation) because there is no evidence approval of the applications will impede energy conservation. Rather, if the property is developed with residential dwellings in the future, energy conservation will be increased – not impeded – as residents will not be required to travel as far to work, shopping and other essential services provided in the City of Bend.

The Hearings Officer finds the applications are consistent with Goal 14 (Urbanization). The subject property is not within an urban growth boundary and does not involve urbanization of rural land because the MUA-10 zone does not include urban uses as permitted outright or conditionally. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The state acknowledged compliance of the MUA-10 zone with Goal 14 when the County amended its comprehensive plan.

The Hearings Officer finds that Goals 15-19 do not apply to land in Central Oregon.

For all the foregoing reasons, the Hearings Officer finds compliance with the applicable Statewide Planning Goals has been demonstrated.

IV. DECISION & RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds the applicant has met the burden of proof necessary to justify the request for a Comprehensive Plan Map Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a corresponding request for a Zone Map Amendment (Zone Change) to reassign the zoning of the subject property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

The Deschutes County Board of Commissioners is the final local review body for the applications before the County. DCC 18.126.030. The Hearings Officer recommends approval of the applications based on this Decision of the Deschutes County Hearings Officer.



Stephanie Marshall, Deschutes County Hearings Officer

Dated this __12th__ day of October, 2021

Mailed this 13th day of October, 2021

owner	agent	inCareOf	address	cityStZip	type	cdd id
Central Oregon Irrigation District			1055 SW Lake Ct	Redmond, OR 97756	HO Decision	21-400-PA, 401-ZC
Tia M. Lewis	Schwabe, Williamson & Wyatt, P.C.		360 SW Bond Street, Suite 500	Bend, OR 97702	HO Decision	21-400-PA, 401-ZC
Joe Bessman	Transight Consulting		Via Email		HO Decision	21-400-PA, 401-ZC



COMMUNITY DEVELOPMENT

NOTICE OF HEARINGS OFFICER'S DECISION

The Deschutes County Hearings Officer has approved the land use application(s) described below:

FILE NUMBERS: 247-21-000400-PA, 401-ZC

LOCATION: The subject property has an assigned address of 61781 Ward Rd, Bend, OR 97702; and is identified on the County Assessor's Map No. 18-12-02, as Tax Lot 1000.

**OWNER/
APPLICANT:** Central Oregon Irrigation District (COID)

**ATTORNEY
FOR APPLICANT:** Tia M. Lewis
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702

SUBJECT: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

STAFF CONTACT: Tarik Rawlings, (541) 317-3148, tarik.rawlings@deschutes.org

RECORD: Record items can be viewed and downloaded from:
www.buildingpermits.oregon.gov

APPLICABLE CRITERIA: The Hearings Officer reviewed this application for compliance against criteria contained in Chapters 18.04, 18.16, 18.32 and 18.136 in Title 18 of the Deschutes County Code (DCC), the Deschutes County Zoning Ordinance, the procedural requirements of Title 22 of the DCC, Chapters 2, 3 and Appendix C of the Deschutes County Comprehensive Plan, Divisions 6, 12, 15, and 33 of the Oregon Administrative Rules (OAR) Chapter 660, and Chapter 215.211 of the Oregon Revised Statutes.

DECISION: The Hearings Officer finds that the application meets applicable criteria, and recommends approval of the applications.

As a procedural note, the hearing on August 31, 2021, was the first of two required de novo hearings per DCC 22.28.030(c). The second de novo hearing will be heard in front of the Board of County Commissioners at a date to be determined.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the base appeal deposit plus 20% of the original application fee(s), and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Board of County Commissioners an adequate opportunity to respond to and resolve each issue.

Copies of the decision, application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

WINDELL, CALEB & JOHNS, MICHELLE
FRUMENTO, AMANDA C
VINOVICH, SEURINA A & MICHAEL
HESTERBERG, MARISSA D & MARK A
BLYTHE, JESSE J & CASSIE J
JOHANSEN, DAVID L & PATRICIA J
CYP CAR NIPPERT LIVING TRUST
FLANNERY, JULIE LINCOLN
BRADSHAW TRUST
SWEET, JUSTIN LEE & KELSEE ANN
UPTAIN, KYLE STEVEN & KIMBERLY ANN
BROOKFIELD, MARGARET
WOOD, JUSTIN & AMBER
SPRINGER FAMILY TRUST
SPRINGER FAMILY TRUST

NIPPERT, JAMES E TTEE ET AL
BRADSHAW, SCOTT HASTINGS TTEE ET AL

SPRINGER, RICHARD L & GEORGIA A TTEES
SPRINGER, RICHARD L & GEORGIA A TTEES

C/O GEORGIA A SPRINGER TTE

21277 DARNEL AVE
21281 DARNEL AVE
21285 DARNEL AVE
21289 DARNEL AVE
21314 SE DAYLILY AVE
4069 CRESSIDA PL
21302 SE DAYLILY AVE
21296 SE DAYLILY AVE
2500 SUNNY GROVE AVE
21284 SE DAYLILY AVE
21278 SE DAYLILY AVE
1414 NW BALTIMORE AVE
21266 SE DAYLILY AVE
3450 SHALLOW SPRINGS TERR
3450 SHALLOW SPRINGS TERR

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BEND, OR 97702
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BEND, OR 97702
BEND, OR 97702
WOODBRIDGE, VA 22192
BEND, OR 97702
BEND, OR 97702
MCKINLEYVILLE, CA 95519
BEND, OR 97702
BEND, OR 97702
BEND, OR 97703
BEND, OR 97702
CHICO, CA 95928
CHICO, CA 95928

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BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 12, 2022

SUBJECT: Transient Room Tax Project Proposals

RECOMMENDED MOTION:

None. This is an informational item only.

BACKGROUND AND POLICY IMPLICATIONS:

In November, staff presented the history and regulations of the county and state TRT programs, comparisons to other city and county TRT programs and permitted uses of the funds.

With the recent and unanticipated increase in TRT collections, following the onset of the pandemic, there has been renewed interest in the history of the program and eligible uses of the funds.

The following two projects will be presented with a request for TRT funding consideration. The presentations are for information purposes only. An item will be placed on the January 24th agenda for the Board to deliberate the project proposals and requests.

- 1. Trails and Trail Related Infrastructure – Deschutes Trails Coalition
- 2. New Public Safety Building – Sunriver Service District

BUDGET IMPACTS:

None.

ATTENDANCE:

Greg Munn, Treasurer and Chief Financial Officer
Jana Johnson, Coordinator, Deschutes Trails Coalition
Bill Hepburn, Chair, Sunriver Service District
Debbie Baker, Administrator, Sunriver Service District

Proposal to Invest Unallocated TRT Funds in Trails and Trail Related Infrastructure in Deschutes County

January 4, 2022

Prepared by Deschutes Trails Coalition

Summary

The Deschutes Trails Coalition (DTC) is proposing that \$1M of unallocated TRT funds be reinvested annually towards trails and trail-related infrastructure throughout Deschutes County, to be distributed through a competitive grant process. Deferred trail maintenance and infrastructure needs throughout Central Oregon exceed \$10M. Existing and predicted financial resources are insufficient to address the basic maintenance needed to sustain our trails in their current state, let alone the growing deferred maintenance backlog. Trails are the reason and means by which millions of people visit and explore Central Oregon and this landscape. Without funding to sustain this resource, we risk compromising the very thing that makes this place so special to so many people. Parables abound about “Killing the Golden Goose” and the “Tragedy of the Commons”, and Deschutes County is so fortunate to have the natural, financial and community resources to influence where our story goes from here.

Need

Central Oregon is a place well known for its diversity of natural beauty and recreation opportunities. As one of the fastest growing areas in Oregon and a place beloved to residents and visitors alike, projections show the population of Deschutes County to increase by 64% over the next 25 years for a total of 311,000 people. In turn, trail use is also forecasted to increase over the next 20 years from an estimated 2.5 million trips on Deschutes National Forest trails alone in 2021 to nearly 3 million annual trips by 2040 (*The Economic and Social Importance of Deschutes National Forest Trails*, ECONorthwest Report, 2021). We have already seen sustained and dramatic increases over the last decade and then the unanticipated surge of use related to COVID during the last 2 years that has given a glimpse of the impacts that can be expected to continue in the years ahead.

Trails are the means through which the majority of visitors experience the natural beauty of Central Oregon; on the Deschutes National Forest, in State and local parks, on BLM lands, and across segments of privately owned land. Through the report referenced above from ECONorthwest - a consulting firm based in the Pacific Northwest that specializes in economics, finance, and planning - we have a clearer view of both the value of trails, economically and socially, and declining financial stability of funds that were once more plentiful to maintain our trails and trail related infrastructure – a financial trend that is at great odds with use trends and increasing associated impacts to an existing infrastructure.

From this report we also know that trails on the Deschutes National Forest bring \$136M to \$200M into the local economy (the range is based on the share of visitor expenses attributed to trail activities) and, in 2021, created 1400 jobs. As those funds re-circulate through the local economy, every \$1 million spent generates nearly \$1.3 million of total economic contribution, supporting \$468,000 in labor income and 12 jobs. We also know that Forest Service gross receipts dropped by more than 75% in the 1990s due to reduced timber receipts and have hovered around the same level since the early 2000s. Federally appropriated dollars are not keeping pace in maintaining the current trails infrastructure and addressing deferred maintenance backlog.

Through both objective data as well as the anecdotal observations that so many of us have had, it is clear that trails are a huge economic driver in Central Oregon. Also, the funds that were once available to maintain and grow this trail network – that is inextricably linked with the culture, allure, and growth

of this geographical area and its economy – are being dramatically outpaced by the declining condition of our trails.

Additionally, there are limited grant opportunities for high value projects and most funding sources require “shovel ready” projects. Because unallocated TRT funds are unrestricted, these monies could help fill a critical gap in funding, and further help to significantly leverage other grant opportunities into the County. There is often substantial work needed to get a project to the implementation (a.k.a. shovel ready) phase and – in addition to funding project implementation itself – TRT funds could move projects forward to the point that they would then be eligible to apply for other grants to fund implementation.

Scope of Work

- **Establish a Grant Program** – There are multiple organizations with proven track records that could successfully take on the administration of a grant program: DTC, VCO, or COIC are all potential administrators. The Central Oregon Intergovernmental Council (COIC) has significant experience and capacity to manage a grant process that is fair and transparent, as could DTC or VCO. Grants would be evaluated and awarded under the guidance of an Advisory Committee (see section below), and monitored by the administering organization.
- **Establish Eligibility Criteria.** The steering team/advisory committee will establish eligibility criteria for the use of the funds. Below is a starter list of potential criteria:
 - The project proposal supports a trail system that is sustainably managed and maintained, and balances the needs of people and nature.
 - The project benefits all members of our visiting and local community, and the project has a useful life of greater than 10 years.
 - All known barriers that would inhibit the start or completion of the project have been cleared.
 - The project will be completed within 18 months or 2 field seasons (whichever is longer), with an opportunity to extend.
 - Eligible uses of the funds will be trail and trail-related infrastructure maintenance and project design, planning, analysis, and implementation within Deschutes County.
 - * *Proposals will also be evaluated based on the degree to which these TRT funds can be leveraged with other funds to complete all phases of a project. Given the restrictions of various funding opportunities, not all funding sources are able to fund every potential phase of a project (planning, design, implementation, etc.). Therefore, these TRT funds contribute to a larger funding matrix that, collectively, can help to bring all phases of a project to completion.*
- **Grant Promotion and Outreach** – The Deschutes Trails Coalition will promote and publicize the grant opportunity and solicit proposals broadly amongst the trails community.
- **Create an Advisory Council** to evaluate grant applications and make award selection recommendations. The proposed composition of this council would be made up of 5-7 people that could include: 1-2 DTC representatives (Executive Director and 1 other), a county seat as determined by the BOCC; representation from various geographic areas within the County, representation from under-served communities, and a local community seat.
- **Convening Regional Trail Community** for project development and review - DTC is well positioned to convene the trails community to identify projects and create proposals that have been vetted and discussed among a multi-stakeholder group representing a diversity of trail user groups, resulting in well-informed projects and a process that all trail users can get behind.

- **Publicize Successes** – DTC will publicize the successes of the grant program, highlighting the County’s role in supporting trail use in the County and how partners, agencies, city and county have successfully come together in this effort.

Geography–Eligible projects would include trail and trail-related infrastructure projects within Deschutes County.

Product – An enduring funding source that enables the completion of high-value, multi-phase trail and trail-related projects across Central Oregon (see below), and is awarded through a fair and transparent grant program administered by a qualified entity, steered by an Advisory Council, and publicized by the Deschutes Trails Coalition.

Potential projects that directly contribute to trail sustainability are too many to list. However, below are general project themes most ripe for this grant opportunity and a range of costs - depending on the scope, scale, and complexity of a given project.

Project Type	Range of Costs	Examples
Trail Maintenance/Construction		
<i>Basic Maintenance</i>	<i>\$200 - 350/mile or 6-person crew for 6 months for \$150K</i>	Brushing, cutting blow down, cleaning drainage
<i>Construction</i>	<i>\$26K - \$125K/mile</i>	Adding new mountain bike trails, relocating trails to improve sustainability
Road Maintenance/Reconstruction		
<i>Maintenance</i>	<i>\$6K/mile</i>	Grading of roads that access trailheads; i.e. 41 Rd to Deschutes River Trail
<i>Reconstruction</i>	<i>\$70K - \$100K/mile</i>	Sparks Lake Rd, 16 Road in Sisters accessing Three Creek area, Swamp Wells Rd to horse camp
Minor Projects	\$2 - 10K	Trailhead kiosks, trail signs, volunteer training, educational efforts, publications, media
Major Projects	<i>Varies depending on project</i>	Replacing trail bridges, backcountry shelter restoration and replacement, paved path maintenance, rehabilitation of user-created trails
Environmental Analysis (NEPA)	<i>\$30 - \$100K</i>	Limited mileage of new trail construction, analysis of a project area such as a comprehensive trail plan for Tumalo Falls or China Hat
Reports, Strategic Trail Planning, etc.	<i>\$30K to \$500K</i>	Studies on e-bikes, strategic planning to assess trail priorities across Deschutes County
Grant Administration	<i>\$20K - 40K</i>	Salary to administer grant process

Partners– In addition to the partners discussed above - the DTC, Deschutes County, local communities, and travel and tourism partners - Central Oregon is rich not only in natural resources but also with volunteer trail clubs and passionate trail enthusiasts. Together, in partnership with Deschutes County Commissioners, these trail user groups have the capability to accomplish a great deal of trail maintenance and projects annually. DTC is composed of representatives from nearly 40 organizations that support a wide variety of trail-based recreation – from snowmobiling to mountain biking, hiking, groomed Nordic and ungroomed backcountry skiing, OHV riding, etc. Due to this diversity of trail

stakeholders, DTC has a unique advantage of having access to a well-rounded perspective from the greater trails community and the ability to mitigate conflict and explore differing needs/desires prior to going public with a project or proposal. This degree of collaboration has been proven to result in well informed project proposals that reflect the voices across the spectrum of trail users.

Budget

\$1M annually allocated for this grant program, with up to \$40,000/year for grant administration, program promotion and outreach, facilitation, and coordination.

The intention of this grant opportunity, given the unrestricted nature of these funds, would be to fund fewer large projects, as opposed to many small projects. Anticipated annual awards will support 3 -6 proposals valued between \$150K and \$350K each, with the opportunity for 3-4 small projects of \$2-10,000 up to a total of \$40K to allow for responsiveness to the community and urgent needs, etc.. DTC will work with Visit Bend/BSF and other funding sources to create a complementary funding opportunity to leverage with these other funding sources.

Summary

By reinvesting unallocated TRT funds in trails and trail-related infrastructure, Deschutes County can ensure that our trail system will continue to provide the world-class recreational experiences that draw visitors to our area and enhance our residents’ quality of life.



United States
Department of
Agriculture

Forest
Service

Deschutes National Forest

63095 Deschutes Market Road
Bend, OR 97701
(541) 383-5300

File Code: 2350
Date: January 4, 2022

Deschutes County Commissioners
1300 NW Wall Street
Bend, OR 97701

Dear Deschutes County Commissioners:

I am writing in support of the Deschutes Trails Coalition’s (DTC) proposal to reinvest Deschutes County Transient Room Tax funds into trails and trail-related infrastructure throughout Deschutes County. As you are aware, trails are a highly-valued recreation opportunity locally and a significant economic driver for Central Oregon, connecting people to the Deschutes National Forest (DNF), as well as to lands managed by the Bureau of Land Management, Oregon State Parks, local communities and Deschutes County.

Continued growth in Deschutes County along with a steady increase in the popularity of trails as a resource for local populations and visitors requires investment in maintenance of trails infrastructure and thoughtful development of opportunities for existing and emerging uses. Community engagement and support, from volunteers to new and flexible funding opportunities, is key to sustainable management of these resources. As highlighted in EcoNorthwest’s recent research, alternative sustainable local funding for trails and trail infrastructure, which complements traditional federal investments, is a critical component to the development and maintenance of responsive, environmentally sound, and community-supported trail systems.

DTC has demonstrated the ability to convene a diversity of trail user groups into a collective voice for the trail’s community in Central Oregon. It is made up of nearly 40 partners representing dozens of local trail organizations. These trail organizations together donate thousands of hours of volunteer labor and equipment to support of local trails. DTC has taken on projects of varying complexity ranging from engaging in the planning and implementation of Forest Service trails projects, to convening user groups, infrastructure, and facilitating the creation of a complex database to inform Trail Master Planning across Deschutes County and the National Forest. Not least, DTC administers a ‘small grants’ program that awards \$30-60K annually to fund trail improvement projects on the DNF.

As established DTC can play an important role in investing the Transient Room Funds into trails planning and maintenance that will keep recreational trail use as a long-term economic driver for Central Oregon. In addition, DTC has the ability to make sure that the significant natural resources and scenic beauty of our federal, state, and Deschutes County public lands remains protected. I hope you will consider their very worthy proposal.



Sincerely,

A handwritten signature in blue ink that reads "Holly Jewkes". The signature is written in a cursive, flowing style.

HOLLY JEWKES
Forest Supervisor

cc: Deschutes Trails Coalition

BOARD MEMBERS

January 3, 2022

City of Madras Councilor
Bartt Brick,
Chair

City of Bend Councilor
Anthony Broadman,
Vice Chair

Crook County Commissioner
Jerry Brummer

Deschutes County
Commissioner
Patti Adair

Jefferson County
Commissioner
Wayne Fording

Confederated Tribes of
Warm Springs,
Tribal Council Member
Brigette McConville

City of Culver Councilor
Gretchen Schlie

City of La Pine Councilor
Vacant

City of Metolius Councilor
Denise Keeton

City of Prineville
Councilor Gail Merritt

City of Redmond Councilor
Jay Patrick

City of Sisters Councilor
Jennifer Letz

APPOINTED MEMBERS

Agribusiness & Agriculture –
Phil Fine

Business & Industry –
Katy Brooks

Timber & Wood Products –
Tim Deboodt

Tourism & Recreation –
James Lewis

Under & Unemployed –
Ron Osmundson

Deschutes County Board of County Commissioners
1300 NW Wall St.
Bend, OR 97701

RE: Deschutes Trails Coalition Request for Unobligated TRT Funds

Dear County Commissioners,

Central Oregon Intergovernmental Council (COIC) respectfully submits this letter in support of the Deschutes Trails Coalition’s (DTC) proposal concerning the administration and use of Transient Room Tax (TRT) dollars to support sustainable trails throughout Deschutes County. COIC’s Comprehensive Economic Development Strategy, which was developed in partnership with community and economic development stakeholders across the region, identifies the natural environment and related recreation amenities as a key component of the region’s economic base. Without world-class recreation offerings, Deschutes County would certainly not have experienced the degree of economic growth spurred by business owners and skilled labor seeking the Central Oregon lifestyle. Ensuring that recreation facilities are well-maintained and that recreation activity does not undermine other resource values, is therefore vital for our economy.

From our discussions with DTC, COIC is aware of DTC’s intention for these funds to be awarded via a competitive grant program and in COIC potentially playing a role in the administration of this grant process. Understanding that there are additional details to be decided upon that pertain to this proposal – such as how the grant would be administered and by whom – I am writing to let you know that COIC is willing to take on such a process, and has the capacity to do so.

Thank you for your time and consideration.

Sincerely,



Scott Aycock
CED Director, Central Oregon Intergovernmental Council (COIC)



January 2, 2022

Board of County Commissioners
Deschutes County
P O Box 6005
Attn: BoCC
Bend, OR 97708-6005

Dear County Commissioners,

The Central Oregon Trail Alliance (COTA) respectfully submits this comment in support of the Deschutes Trails Coalition (DTC) proposal concerning the administration and use of unallocated Transient Room Tax (TRT) receipts to support reinvestment in outdoor recreation resources in Deschutes County.

COTA's mission is to develop, protect, and enhance the Central Oregon mountain bike experience through trail stewardship, advocacy, collaboration, and education. COTA is a nonprofit with more than 2,000 members. Included in our base are Deschutes County chapters in South Deschutes County (Sunriver and La Pine), Sisters, Redmond and Bend. Through these chapters we maintain more than 400 miles of singletrack trails on federal, county and private lands under volunteer agreements with the various land managers. COTA is a DTC partner with members serving on the Steering Committee, as well as the Leadership, Partnership and Programs, and Outreach subcommittees.

COTA strongly supports the DTC proposal for the use of a portion of the unallocated TRT receipts a reinvestment to address critical needs in maintaining and enhancing the recreational trail infrastructure within the county. The DTC proposal contains especially well thought out rules of engagement for administering and managing an effective grant program. It ensures well developed projects are fairly evaluated and successfully implemented via supportive community involvement.

Implementing the measures described in the DTC proposal will indeed help ensure that our trail system will continue to provide the world-class recreational experiences that draw visitors to our area and enhance our residents' quality of life

Respectfully,

Emmy Andrews
Executive Director
Central Oregon Trail Alliance

Travis Holman
Vice President
Central Oregon Trail Alliance



January 3, 2022

Board of County Commissioners
Deschutes County
P O Box 6005
Bend, OR 97708-6005

Dear County Commissioners,

Oregon Equestrian Trails is respectfully submitting this letter to support the Deschutes Trails Coalition’s proposal to annually invest a portion of unallocated Transient Room Tax (TRT) receipts in trails and trail-related infrastructure in Deschutes County.

Oregon Equestrian Trails is an all-volunteer nonprofit organization whose members work hard to maintain our trails. Whether working on the trails or riding our horses, we see firsthand how our scenic trails attract visitors to Deschutes County and enhance our residents’ quality of life.

We also see that our trails need more funding and community support. For example, many forest roads are now in such poor condition that we can no longer reach some trailheads and horse camps without risking damage to our vehicles and injury to the horses we are hauling. In addition, some trails suffer from so much deferred maintenance that they are unsafe to ride. These conditions not only restrict access and degrade the recreational experience for equestrians, but they also affect mountain bikers, hikers, Nordic skiers, and snowmobilers.

The Forest Service’s budget has been cut to where they cannot maintain all our trails. Assistance from volunteers like us helps, but it’s not enough. We would love to see visitors pitch in to help keep the trails in shape. Investing a portion of the County’s unallocated TRT is a great way to accomplish this.

We appreciate your consideration of the Deschutes Trails Coalition’s proposal.

Respectfully,
Kim McCarrel
Kim McCarrel
Central Oregon Chapter
Oregon Equestrian Trails

Board of County Commissioners
Deschutes County
Attn: BoCC
P O Box 6005 Bend, OR 97708-6005

Re: Transient Room Tax Funds

Dear Deschutes County Commissioners,

Central Oregon public lands and trails are one of its most precious commodities. Most people visit our region to recreate and enjoy the outdoors. Our roads, trails, creeks, rivers, and lakes are full of users year round. Local residents and visitors all have an impact on our lands. It is time that the visitors' TRT dollars start supporting the sustainability of our public lands.

Most volunteer trail maintenance, clean-ups, and public land projects are carried out by Central Oregonians. Visitors typically don't have the opportunity to give back to the lands on which they recreate. Allocating TRT funds to trail related projects helps our massive tourism industry give back to its greatest resource.

We support the Deschutes Trails Coalition Proposal for \$1 million of unallocated TRT funds to be annually reinvested towards trails and trail related infrastructure. All types of recreation on public lands have seen a large increase in users. The Motorized community has seen one of the largest increases in users in many years. Existing trails are in need of maintenance, signage, and additional parking/camping. TRT funding for the Motorized/OHV community should be included. The OHV community has a long history in Central Oregon and is an important part of the Central Oregon economy.

Thank you,

Kevin Hopper
centraloregonohv@gmail.com
Central Oregon OHV Association (COOHVA)

PROPOSAL FOR TRANSIENT ROOM TAX SUPPORT SUNRIVER SERVICE DISTRICT

January 12, 2022

An updated Public Safety Building is required to meet the current and future needs of Sunriver and the surrounding communities. The existing facilities do not meet industry standards and safety requirements for professional police and fire departments.

The Sunriver Service District is requesting from Deschutes County, Transient Room Tax funds to support our public safety building project. The Sunriver Police and Fire Departments have significantly increased workloads as a result of tourism on a year-round basis. The summer population can peak at 20,000 necessitating a level of service greater than our community of 1200 full-time residents would require.

The current police and fire facilities do not meet code requirements for an “essential facility” nor the National Fire Protection Association (NFPA) standards for best practices.

- The Police facility is located in an office space which result in inefficiencies and unsafe conditions. DUI and other infractions must be processed in Bend causing police officers to be out of Sunriver for extended periods.
- The Fire Station no longer meets industry and safety standards regarding equipment storage, decontamination and living areas.
- The new building may be utilized by Deschutes County law enforcement and emergency management personnel.

The cost of the project is estimated to be \$16-\$18 million. The Sunriver Owner’s Association board has agreed to transfer the current fire station building, valued at \$2.4 million, to the District at a nominal cost. In addition, the District will be investing \$3 million from their reserves. Finally, we will be asking Sunriver owners to approve a minimum \$5 million, 10-year capital improvement levy to service the debt of the project.

Sunriver generates more than \$4M in annual TRT revenue, about 40-50% of the yearly county total and has generated in excess of \$50 million since 1999. Transient Room Tax (TRT) dollars have been successfully used to promote tourism in Deschutes County. The Sunriver Resort, Owners Association, and the Sunriver Village have invested in their facilities to promote tourism in Sunriver. This has increased the TRT revenue resulting in a significant unallocated fund. At the same time, the Service District has had to rely on just a 3% annual increase in property tax income to support the impact of tourism on critical emergency services in and out of Sunriver. The Service District now has the need to request portions of the TRT fund for our necessary project

The amount requested from the TRT fund for this critical project is:

FY 2021/22 \$5 million

FY 2022/23 \$3 million

FY 2023/24 \$2 million

The Service District would like to place a Capitol Improvement Levy on the May ballot. The Service District's ballot measure must be approved by the Board of Commissioners by February 9th in order to meet the May election date. A commitment from Deschutes County on the amount of TRT contribution is one of the variables that must be determined to establish the levy amount required for the project.

Sunriver Police and Fire Departments are critically important in protecting the residents and visitors to Deschutes County. We need an updated facility that will meet the future and current public safety needs for the next 30 to 50 years. The support of Deschutes County is required to make this necessary project a reality.

APPENDIX

The Sunriver Service District

The Sunriver service District was created by a vote of the electors in 2002 to provide fire prevention & protection, security services by agreement, law enforcement services and emergency medical services, including ambulance services. The Deschutes County Board of Commissioners, as the Governing Body of the District has delegated the management of the District to the Managing Board.

Sunriver Owners Association (SROA) had previously provided these services and continue to own the buildings that house the police and fire departments. The District Managing Board has provided these services to Sunriver and the larger Ambulance Service Area (ASA) in an efficient and professional manner. Both departments utilize Lexipol, a professional policy management tool. The Police Department is accredited through Oregon Accreditation Alliance. All the firefighters are certified paramedics, capable of Basic and Advanced life support emergency medical response. They are also trained in wildfire suppression and mitigation, a significant threat to our community.

Deficiencies

The current fire station was built in 1995 and the police department is housed in an office space. The more significant deficiencies include:

Fire & Police Departments

- Back-up generator for continued operation in an emergency; inadequate for fire and none for police
- Lack of decontamination areas
- Lack of gender-neutral restrooms, showers and lockers. Lack of appropriate sleeping areas for female firefighters
- Emergency Operations Center (EOC)

Fire Department

- Compromised roof trusses from a previous excessive snow load
- Lack of area to store protective turnout firefighting uniforms away from UV light, florescent light and exhaust to be ready for quick response
- Lack of "clean room" to fill tanks of self-contained breathing apparatus (SCBA) away from vehicle exhaust

Police Department

- Lack of security throughout the department
- No interview rooms for suspects or victims
- No holding cell, booking area, Intoxilyzer (which would be available to DCSO & OSP)
- No secure covered parking
- Inadequate evidence processing area

The Sunriver Community

Sunriver Owner’s Association (SROA) is a private HOA providing amenities and safety to homeowners and tourists. The SHARC aquatics facility has been a draw for many visitors. SROA routinely spends \$1 million per year for road and pathway maintenance and ladder fuel reduction. Tourists benefit with the more than 34 miles of paved pathways as a family safe area to enjoy. The ladder fuel reduction program addresses the ever-present wildfire threat in Deschutes County.

The Sunriver Resort has invested millions in amenities to provide visitors with a memorable experience, including the recently completed Cove aquatics facility. The resort also provides golf, operates a popular marina, stables and other attractions. The meeting and convention facilities are one of the best in Oregon for their service, location and tourist amenities.

It is important to note that Sunriver is not a gated community and tourists from all over take advantage of the amenities, even tourists staying in other parts of Deschutes County.

Central Oregon Public Safety Community

Sunriver Police & Fire Departments are critical partners of the public safety community in Deschutes County. A standard of practice through collaboration and mutual training improves the service delivery to county residents.

- The District is part of the county-wide Emergency Operations Plan. Preparation, planning, coordination and training occur with Deschutes County Emergency Management Department.
- Fire Departments rely on mutual aid agreements. Critical and/or emergency incidents can require resources from multiple agencies to ensure life safety. Sunriver Fire assists LaPine Fire often due to proximity and call load.
- Sunriver Police responds to incidents in south Deschutes County, either handling the incident or providing cover for deputies on dangerous calls until additional resources can respond from other parts of the county. In 2021 there were over 750 Sunriver police assists to DCSO.
- The District is an important partner with ODF and USFS in preparation of addressing wildfire threat with equipment and mutual training. The time of year for the greatest wildfire threat is the same time of year with the largest tourist impact. These dynamics create particular logistical challenges if an evacuation is necessary.
- Sunriver Ambulance Service Area (ASA) extends to the Cascade high lakes, which is heavily utilized in the tourist season.
- As Deschutes County recognizes the need for a regional training facility, it is important to recognize Sunriver Police & Fire are part of the bigger public safety community striving to ensure highly trained first responders.
- South Deschutes County sometimes gets overlooked in a variety of ways as compared to the Bend/Redmond areas. With the population growing in south county and the number of visitors combined with wildfire danger, the District is a timely and appropriate investment.



There is no secure holding area in the current station, therefore the back seat of a patrol car must be used.

This creates many logistical difficulties if there are multiple suspects, only a few officers on duty and the need to safely interview and process an arrestee. While a patrol car is being used as a holding area, it is offline to respond to calls or emergencies.



NO HOLDING CELL

NO INTERVIEW ROOM

There is no private interview room and the staff lunch room is the only space available. This is inadequate for children or victim interviews and it is unsafe for suspect interviews. It also inhibits staff from getting food or drinks during their shift.



NO COVERED PARKING

Without covered parking, police officers must clear snow from their vehicles and the parking lot prior to going into service. This delays emergency response.



NO PROPER TURNOUT STORAGE

Turnouts are sensitive to exhaust, UV and fluorescent light. With inadequate storage for this protective equipment, they must be stored in bags. This creates a delay in emergency response. In addition, these bags are very heavy and create a workplace safety issue.

NO SEPERATE SLEEPING QUARTERS

Community sleeping areas house multiple crew members at the same time. It offers no privacy for mixed gender crews and lacks quiet for restful sleep between calls at night.



The Self-Contained Breathing Apparatus (SCBA) bottles firefighters wear ideally should be filled in a room providing the cleanest air possible.

Currently, the fill station is in the apparatus bay, which is next to the EMS and fire engine exhaust fumes.

SCBA STORAGE & CLEAN AIR



NO DECONTAMINATION FACILITIES



Firefighter/Paramedics have already stripped their uniforms for decontamination and are now working on the ambulance, stretcher and backboard. There is not a dedicated area with proper equipment to contain pathogens and must be done in the apparatus bay. A shower and isolated work area is the standard for decontamination.

LETTERS OF SUPPORT



MAINTAINING SUNRIVER AS A PREMIER RESIDENTIAL AND RESORT COMMUNITY PROTECTING AND ENHANCING ITS QUALITY OF LIFE, NATURAL ENVIRONMENT AND PROPERTY VALUES.

December 28, 2021

Deschutes County Board of Commissioners
Tony DeBone, Chair
Phil Chang, Vice Chair
Patti Adair, Commissioner
1300 N.W. Wall Street
Bend, OR 97703

RE Sunriver Service District – Public Safety Facility Funding Request (Transient Room Tax)

Dear Commissioners:

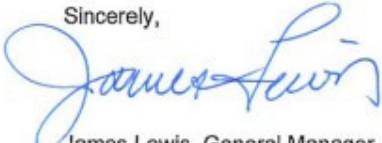
I am writing on behalf of the Sunriver Owners Association (SROA) to express our support for the funding request being made by the Sunriver Service District (SSD) for the construction of a new public safety facility to house both the Fire and Police Departments, and the Service District administrative staff. That request is for the contribution of funds generated through Transient Room Taxes (TRT) collected by Deschutes County – with a substantial portion of the overall TRT dollars being generated through Sunriver rentals/tourism.

As you know, the existing fire station is housed in a 25 year-old building owned by SROA and the police department is housed in office space that is a contiguous part of the SROA Administration building. SROA believes that the proposed project would provide beneficial facility upgrades for both departments and ensure long-lasting protection for Sunriver and other areas in south Deschutes County.

SROA participated in and assisted the SSD with their search for alternative sites and facilities for a new public safety building. Based on a variety of factors, the result was that the location of the existing fire station is best suited for an expansion and remodel to serve the community. Part of the site selection included an appraisal of the existing 12,577 square foot building and a 90,000 square foot portion of the overall property deemed necessary for the project. The appraisal concluded that the structure and land together were valued at \$2,700,000.

At a meeting of the SROA Board of Directors in October, the SROA Board directed me to begin negotiations with the SSD regarding sale of the building for a nominal amount and a perpetual lease of the land. Both the SROA and SSD are working on a purchase option agreement that would specify and solidify the terms of the sale/lease, thereby confirming SROA's support and participation in the project.

Overall, we respectfully request that you contribute unrestricted TRT dollars collected by Deschutes County to help make up the gap in the overall SSD funding and serve as an investment for the SSD Public Safety Facility and Sunriver community as discussed herein. Thank you for your consideration of this matter.

Sincerely,

James Lewis, General Manager
Sunriver Owners Association



Cascara Vacation Rentals

Dear County Commissioners,

I was raised in Sunriver Or and have worked in Sunriver for over 25 years. While this community overall is safe it wasn't quite the Sunriver I grew up in. Our area has always been a travel mecca however since COVID came it has almost tripled the amount of people coming to our area. We see record numbers of travelers each month. With more people there are more problems. We have experienced some bad ones this year with severe damage to our homes. One was a party with a VRBO guest, and the other was criminals that booked our home with a stolen credit card and damaged the home and stole items. The police department has been a great asset to have in our community. I recently went and toured the facility as I tend to dislike government spending, but it was a shock of how small of facility they have and all that they must do in that facility. From the victim standpoint it isn't acceptable to have to interview someone in a lunchroom. As a victim that isn't going to make them feel like they are being taken seriously. Our officers in Sunriver work so hard and deserve an area to efficiently do their job. In today's world not to have basic safety measures of bullet proof glass and secure entry for the staff that work there is not good. Having our fire and police local is a great addition at keeping our community safe. When you here of incidents like Paradise CA, it is crucial to have the staff and facilities necessary to facilitate mass evacuations in cases of emergency. Having many people in our area that don't know where they are staying, how to evacuate or where to go in case of an emergency is critical. As a property manager it would make since that they receive some of the Transient room tax for this project as they are serving the people that are paying that room tax. Please feel free to reach out to me with any questions.

Sincerely
Stacy Wesson
General Manager



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 12, 2022

SUBJECT: Skanska USA Building, Inc. Construction Manager/General Contractor Contract Amendment for Adult Parole & Probation Expansion Project

RECOMMENDED MOTION:

Move approval of Board signature of Document #2021-999 Contract Amendment to establish a Guaranteed Maximum Price for the construction of the Adult Parole & Probation Expansion Project by Skanska USA Building, Inc.

BACKGROUND AND POLICY IMPLICATIONS:

In April of 2020, upon approval of the Board of County Commissioners, Deschutes County entered into a contract with Skanska USA Building, Inc. for Construction Manager/General Contractor (CM/GC) services for the remodel and expansion of the Adult Parole & Probation building on the Public Safety Campus. Subsequently, project design has been completed and the project submitted for permitting. In November of 2021 the project was bid out to subcontractors in order to establish a Guaranteed Maximum Price (GMP) per the original CM/GC contract. Attachment "A" to the contract amendment provides documentation for the GMP in the amount of \$6,356,969 and this amendment is being presented for approval by the Board of County Commissioners. A construction start date of March 15, 2022 will be established upon approval of the proposed contract amendment.

BUDGET IMPACTS:

If approved, the CM/GC contract #2020-219 with Skanska USA Building, Inc. will be amended to establish a Guaranteed Maximum Price (GMP) of \$6,356,969.00. The cost of the work to be performed in FY 2022 is budgeted in Campus Improvement Fund 463. Funds for the completion of the project are allocated in General Capital Reserve Fund 060 for completion of the project in FY 2023.

ATTENDANCE:

Deevy Holcomb, Community Justice Director and Lee Randall, Facilities Director; Chad Young, Project Manager, Skanska USA Building, and Jacob Struck, Superintendent, Skanska USA Building, Inc.

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: January 12, 2022

Department: Facilities

Contractor/Supplier/Consultant Name: Skanska USA Building Inc.

Contractor Contact: Chad Young

Contractor Phone #: 541-233-6292

Type of Document: Contract Amendment

Goods and/or Services:

Background & History:

Skanska to provide Construction Management / General Contractor Construction services for the Parole & Probation/Sheriff's Office Work Center remodel and addition. Construction Services to include remodeled South entrance at Work Center area, remodel and finishes upgrades at existing second level Parole & Probation and new (2) story addition for Parole & Probation expansion, training center and future build-out space.

Agreement Starting Date: March 12, 2020

Ending Date: December 30, 2022

Annual Value or Total Payment: \$6,356,969

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

Special conditions attached to this grant: N/A

Deadlines for reporting to the grantor: N/A

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: N/A

SKANSKA

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022



Skanska USA Building Inc
2275 NE Doctors Drive, Suite 3
Bend, OR 97701

www.skanska.com

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SKANSKA



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- **Executive Summary**

- ***Attachments:***
 - **Attachment A:** Summary of Costs, Dated: January 4th, 2021
 - **Attachment B:** Plans & Specifications
 - **Attachment C:** Allowance Items
 - **Attachment D:** Alternate Prices
 - **Attachment E:** Assumptions and clarifications made in preparing the Guaranteed Maximum Price.
 - **Attachment F:** Project Schedule
 - **Attachment G:** Site Logistics



Section One: Executive Summary

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

Executive Summary

This GMP budget proposal is based upon the following Construction Documents:

- **BLRB Architects Bid / Permit Drawing Set, dated November 2, 2021**

Further project scope definition and various assumptions have been developed by Skanska USA Building Inc., and are described and detailed in this proposal and its attachments.

- **Attachment A:** Summary of Costs, Dated: January 4th, 2021
- **Attachment B:** List of Plans & Specifications
- **Attachment C:** Assumptions and clarifications made in preparing the Guaranteed Maximum Price.
- **Attachment D:** Alternate Prices
- **Attachment E:** Project Schedule
- **Attachment F:** Site Logistics

Please note that the schedule currently has the proposed milestones. We understand that these are tentative dates, and we will adjust once we determine the approval / contracting process and duration:

- **DC Costs Review & Approval to Skanska USA:** January 12th, 2022
- **Early Site Work:** February 15, 2022
- **Start Construction:** March 15, 2022
- **Substantial Completion:** December 12, 2022
- **Final Completion:** January 12th, 2023

The parties agree that the GMP for the Project is **\$6,356,969** consisting of the Estimated Cost of the Work and the CM/GC Fee (stated as a fixed dollar lump sum amount).

For purposes of determining the GMP, the Estimated Cost of the Work includes the CM/GC's Contingency and the Cost for GC Work (stated as a fixed dollar lump sum amount.)



Attachment A: Summary of Costs

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

Bid Package #		Current GMP	Subcontractor
	DIRECT COST OF WORK		
-	General Requirements	\$ 240,784	
1	Sitework, Earthwork, Exterior Improvements, Utilities	\$ 885,004	Tim Bloom
2	Building Demolition	\$ 52,055	Skanska
3	Building Concrete	\$ 159,301	Deschutes Concrete
4	Masonry	\$ 10,186	A&E Masonry
5	Structural Steel Fabrication/Erection	\$ 119,725	Skanska/T-Plus
6	Wood Framing	\$ 601,650	Baxter
7	Casework & Finish Carpentry	\$ 40,000	Sureline
8	Weather Barrier & Exterior Insulation	\$ 120,079	LDC / Insulpro
9	Fiber Cement Siding	\$ 352,000	Skanska
10	Sheet Metal & Flashings	\$ 55,064	Skyline
11	Membrane Roofing	\$ 96,000	Eagle
12	Glazing & Storefront	\$ 150,559	BCG
13	Doors, Frames, & Hardware	\$ 139,420	Bell / DBI
14	Flooring	\$ 80,096	Rubensteins
15	Paint	\$ 59,057	Deschutes Painting
16	Drywall, ACT, & Metal Stud Framing, Insulation	\$ 412,504	DBI
17	Specialties	\$ 20,982	BMS/WHCress
18	Signage	\$ 4,164	Center Pointe
19	Residential Appliances	\$ 3,948	Johnson Brothers
20	Window Coverings	\$ 15,840	Lakeview
21	Conveying Systems	\$ 82,164	TKE
22	Fire Suppression	\$ 88,238	Severson
23	Plumbing	\$ 221,767	Severson
24	HVAC	\$ 268,572	Cascade Heating
25	Electrical	\$ 556,980	Aspen Ridge
26	Final Cleaning	\$ 11,599	Oregon Royal
	Overtime and Off-Hours Work	\$ 20,000	Allowance
	Shoring - Engineering and Installation	\$ 50,000	Allowance
	Gyp-Crete	\$ 31,350	Allowance
	Low-Voltage, Security, and CCTV	\$ 79,982	Allowance
	Landscaping & Repairs	\$ 15,000	Allowance
	Rent Heaters for Temp Heat	\$ 5,000	Allowance
	SUBTOTAL #1: DIRECT CONSTRUCTION COSTS	\$ 5,049,070	
	GENERAL CONDITIONS / CONTINGENCY		
	General Conditions - Lump Sum	\$ 419,838	
	COVID Impacts @ 3% of Subtotal #1	\$ 151,472	
	Design Contingency @ 3.5% of Subtotal #1	\$ -	
	Construction Contingency @ 5.00% of Subtotal #1	\$ 252,454	
	SUBTOTAL #2: GC's/CONTINGENCY	\$ 823,764	
	FEE & INSURANCE		
	CM Fee @ 3.99%	\$ 234,326	
	General Liability Insurance @ 0.95% of Subtotals #1; 2 & Fee	\$ 58,018	
	Builders Risk Insurance @ 0.40% of Subtotals #1; 2 & Fee	\$ -	
	Payment & Performance Bond @ 1.00% of Subtotals #1 & #2, Fee, GLI	\$ 61,652	
	Subcontractor Default Insurance (SDI) @ 1.05% of COW & Contingency	\$ 57,256	
	Preconstruction Services Fee	\$ 45,665	
	Corporate Activity Tax @ 0.43%	\$ 27,218	
	VE Target Indirect	\$ -	
	SUBTOTAL #3: FEE & INSURANCE	\$ 484,135	
	TOTAL GMP	\$ 6,356,969	



Attachment A: Summary of Costs

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

General Conditions		
<u>Site Administration</u>		<u>Hourly Rate</u>
Project Manager	Chad Young	\$ 95.00
Senior Superintendent	Jacob Struck	\$ 125.00
Superintendent	Jason Biever	\$ 95.00
Project Engineer	Taylor Blevins	\$ 75.00
Administrator	Betsy Estrada / Julie Garrett	\$ 50.00
Scheduling Support	Chuck Wilson	\$ 135.00
Safety Manager	Sean Simpson	\$ 95.00
<u>Temporary Facilities</u>		<u>Weekly Rate</u>
Jobsite Trailer		\$ 475.00
Office Furniture/Supplies		\$ 50.00
Internet Service		\$ 75.00
Office Machines		\$ 50.00
Printing Plan Sets		\$ 25.00
Water, Coffee		\$ 65.00
Mail & Shipping		\$ 50.00
Sanitary Facilities		\$ 250.00
First Aid		\$ 17.00

Rates provided for allocation purposes only.



Attachment B: List of Plans and Specifications

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

Drawings & Sketches

Irrigation Improvement Plans

Drawing No.	Description	Rev No.	Date
C10.10	EXISTING CONDITIONS AND REMOVAL PLAN	0	10/14/2021
C10.20	IRRIGATION PLAN AND PROFILE	0	10/14/2021
C10.30	CONSTRUCTION DETAILS	0	10/14/2021

Infrastructure Plans

Drawing No.	Description	Rev No.	Date
C20.10	COVER SHEET	0	11/02/2021
C20.20	GENERAL NOTES	0	11/02/2021
C20.30	EXISTING CONDITIONS AND REMOVAL PLAN	0	11/02/2021
C20.40	EROSION AND SEDIMENT CONTROL PLAN	0	11/02/2021
C20.50	UTILITY PLAN	0	11/02/2021
C20.60	UTILITY PROFILES	0	11/02/2021
C20.70	STANDARD DRAWINGS	0	11/02/2021

Drawing No.	Description	Rev No.	Date
A0.00	COVER SHEET	0	11/02/2021
A0.01	DATA SHEET	0	11/02/2021
AC0.00	CODE COMPLIANCE TABLE SUMMARY	0	11/02/2021
AC0.10	ACCESSIBILITY AND CODE INFO DIAGRAMS	0	11/02/2021
AC2.10	CODE COMPLIANCE PLAN - FIRST FLOOR	1	11/23/2021
AC2.20	CODE COMPLIANCE PLAN - SECOND FLOOR	1	11/23/2021
C1.10	EXISTING CONDITIONS & REMOVAL PLAN	0	11/02/2021
C1.20	GENERAL NOTES	0	11/02/2021
C2.10	EROSION AND SEDIMENT CONTROL PLAN	0	11/02/2021
C3.10	GRADING AND DRAINAGE PLAN	0	11/02/2021
C3.20	DETAIL GRADING PLAN	0	11/02/2021
C4.10	UTILITY PLAN	0	11/02/2021
C4.20	UTILITY PROFILES	0	11/02/2021
C5.10	CONSTRUCTION DETAILS	0	11/02/2021
C5.20	CONSTRUCTION DETAILS	0	11/02/2021



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C5.30	CONSTRUCTION DETAILS	0	11/02/2021
C5.40	CONSTRUCTION DETAILS	0	11/02/2021
AD2.10	DEMOLITION PLAN - FIRST FLOOR	1	11/23/2021
AD2.20	DEMOLITION PLAN - SECOND FLOOR	0	11/02/2021
AD6.10	DEMOLITION RCP - FIRST FLOOR	0	11/02/2021
AD6.20	DEMOLITION RCP - SECOND FLOOR	0	11/02/2021
A1.02	SITE PLAN	1	11/23/2021
A1.05	SITE DETAILS	0	11/02/2021
A1.06	SITE DETAILS	0	11/02/2021
A2.01	ASSEMBLY TYPES	0	11/02/2021
A2.10	REFERENCE FLOOR PLAN - FIRST FLOOR	1	11/23/2021
A2.20	REFERENCE FLOOR PLAN - SECOND FLOOR	1	11/23/2021
A2.30	ROOF PLAN	0	11/02/2021
A3.01	EXTERIOR ELEVATIONS	0	11/02/2021
A4.01	BUILDING SECTIONS	0	11/02/2021
A4.10	WALL SECTIONS	0	11/02/2021
A4.11	WALL SECTIONS	0	11/02/2021
A5.01	MATERIAL FINISH KEY AND ROOM FINISH SCHEDULE	0	11/02/2021
A5.10	ENLARGED PLANS AND INTERIOR ELEVATIONS	1	11/23/2021
A5.11	ENLARGED PLANS AND INTERIOR ELEVATIONS	0	11/02/2021
A6.10	REFLECTED CEILING PLAN - FIRST FLOOR	1	11/23/2021
A6.20	REFLECTED CEILING PLAN - SECOND FLOOR	1	11/23/2021
A7.01	DOOR AND WINDOW SCHEDULES	1	11/23/2021
A7.02	OPENING DETAILS	0	11/02/2021
A8.01	EXTERIOR DETAILS	0	11/02/2021
A8.02	ROOF DETAILS	0	11/02/2021
A8.03	ROOF DETAILS	0	11/02/2021
A8.10	INTERIOR DETAILS	0	11/02/2021
A8.11	INTERIOR DETAILS	0	11/02/2021
A9.10	STAIR PLANS AND SECTIONS	1	11/23/2021
A9.11	ELEVATOR PLANS & SECTIONS	1	11/23/2021
A9.20	INTERIOR STAIR DETAILS	0	11/02/2021
A9.21	EXTERIOR STAIR DETAILS	0	11/02/2021
S0.10	GENERAL STRUCTURAL NOTES & DRAWING INDEX	0	11/02/2021
S0.20	GENERAL STRUCTURAL NOTES & SPECIAL INSPECTION TABLES	0	11/02/2021
S0.50	ABBREVIATIONS & SYMBOLS	0	11/02/2021
S2.10	FOUNDATION PLAN	1	11/23/2021
S2.20	SECOND FLOOR FRAMING PLAN	1	11/23/2021



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S2.30	ROOF FRAMING PLAN	1	11/23/2021
S3.10	MAIN FLOOR SHEAR WALL PLAN	1	11/23/2021
S3.20	SECOND FLOOR SHEAR WALL PLAN	1	11/23/2021
S3.30	SHEAR WALL DETAILS	0	11/02/2021
S4.10	STAIR & CANOPY PLANS	0	11/02/2021
S5.10	STRUCTURAL DETAILS - FOUNDATION	0	11/02/2021
S5.20	STRUCTURAL DETAILS - FOUNDATION	0	11/02/2021
S6.10	STRUCTURAL DETAILS - FRAMING	0	11/02/2021
S6.20	STRUCTURAL DETAILS - FRAMING	0	11/02/2021
S6.30	STRUCTURAL DETAILS - FRAMING	0	11/02/2021
S6.40	STRUCTURAL DETAILS - FRAMING	0	11/02/2021
S6.50	STRUCTURAL DETAILS - FRAMING	0	11/02/2021
M0.10	MECHANICAL - LEGEND	0	11/02/2021
M0.20	MECHANICAL - SCHEDULES	0	11/02/2021
M1.10	MECHANICAL - FIRST FLOOR - DEMO - HVAC	0	11/02/2021
M1.20	MECHANICAL - SECOND FLOOR - DEMO - HVAC	0	11/02/2021
M2.10	MECHANICAL - FIRST FLOOR - HVAC	0	11/02/2021
M2.20	MECHANICAL - SECOND FLOOR - HVAC	0	11/02/2021
M2.30	MECHANICAL - ROOF LEVEL - HVAC	0	11/02/2021
M3.10	MECHANICAL - ENLARGED FIRST FLOOR - HVAC	0	11/02/2021
M3.20	MECHANICAL - ENLARGED SECOND FLOOR - HVAC	0	11/02/2021
M4.10	MECHANICAL - FIRST FLOOR - GAS	0	11/02/2021
M4.20	MECHANICAL - SECOND FLOOR - GAS	0	11/02/2021
M4.30	MECHANICAL - ROOF LEVEL - GAS	0	11/02/2021
M5.10	MECHANICAL - DETAILS	0	11/02/2021
P0.10	PLUMBING - LEGEND	0	11/02/2021
P0.20	PLUMBING - SCHEDULES AND CALCULATIONS	0	11/02/2021
P2.10	PLUMBING - FIRST FLOOR - WASTE AND STORM	0	11/02/2021
P2.20	PLUMBING - SECOND FLOOR - WASTE AND STORM	0	11/02/2021
P2.30	PLUMBING - ROOF LEVEL - WASTE AND STORM	0	11/02/2021
P3.10	PLUMBING - FIRST FLOOR - WATER	0	11/02/2021
P3.20	PLUMBING - SECOND FLOOR - WATER	0	11/02/2021
P4.10	PLUMBING - ENLARGED PLANS	0	11/02/2021
P4.20	PLUMBING - ENLARGED PLANS	0	11/02/2021
P4.30	PLUMBING - ENLARGED PLANS	0	11/02/2021
P4.40	PLUMBING - ENLARGED PLANS	0	11/02/2021
P4.50	PLUMBING - ENLARGED PLANS	0	11/02/2021
P4.60	PLUMBING - ENLARGED PLANS	0	11/02/2021
P5.10	PLUMBING - ISOMETRIC DIAGRAMS	0	11/02/2021



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P6.10	PLUMBING - DETAILS	0	11/02/2021
E0.10	ELECTRICAL - LEGEND	0	11/02/2021
E0.20	ELECTRICAL - LUMINAIRE SCHEDULE	0	11/02/2021
E1.00	ELECTRICAL - SITE DEMO	0	11/02/2021
E1.10	ELECTRICAL - SITE PLAN	0	11/02/2021
E2.10	ELECTRICAL - FIRST FLOOR - LIGHTING	1	11/23/2021
E2.20	ELECTRICAL - SECOND FLOOR - LIGHTING	0	11/02/2021
E2.20	D ELECTRICAL - SECOND FLOOR - DEMOLITION	0	11/02/2021
E3.10	ELECTRICAL - FIRST FLOOR - POWER AND DATA	0	11/02/2021
E3.20	ELECTRICAL - SECOND FLOOR - POWER AND DATA	0	11/02/2021
E3.30	ELECTRICAL - ROOF LEVEL - POWER AND DATA	0	11/02/2021
E4.10	ELECTRICAL - ONE LINE DIAGRAM	0	11/02/2021
E5.10	ELECTRICAL - SCHEDULES	0	11/02/2021
E5.20	ELECTRICAL - SCHEDULES	0	11/02/2021
E7.10	ELECTRICAL - DETAILS	0	11/02/2021
E7.20	ELECTRICAL - DETAILS	0	11/02/2021

Specifications

Specification Section	Description	Rev No.	Date
00 01 00	COVER SHEET	0	11/02/2021
00 01 07	SEALS PAGES	0	11/02/2021
00 01 10	TABLE OF CONTENTS	0	11/02/2021
00 01 12	PROJECT INFORMATION	0	11/02/2021
00 31 00	AVAILABLE PROJECT INFORMATION	0	11/02/2021
00 43 00	SUBSTANTIAL COMPLETION FORM	0	11/02/2021
00 43 22	UNIT PRICES FORM	0	11/02/2021
00 50 00	CONTRACTING FORMS AND SUPPLEMENTS	0	11/02/2021
00 52 00	AGREEMENT FORM	0	11/02/2021
00 52 02	DRAFT - COUNTY STANDARD PROVISIONS 21.130	0	11/02/2021
00 52 03	DRAFT-COUNTY STANDARD CONDITIONS FOR PUBLIC IMPROVEMENTS 21.131	0	11/02/2021
00 61 13	PERFORMANCE AND PAYMENT BONDS	0	11/02/2021
00 61 15	PUBLIC WORKS BOND	0	11/02/2021
00 72 00	GENERAL CONDITIONS	0	11/02/2021
00 73 16	INSURANCE REQUIREMENTS	0	11/02/2021
00 73 17	INSURANCE COVERAGE REQUIRED FORM	0	11/02/2021
00 73 43	PREVAILING WAGE RATES	0	11/02/2021



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02 41 19	SELECTIVE DEMOLITION	0	11/02/2021
03 30 00	CAST-IN-PLACE-CONCRETE	0	11/02/2021
03 36 00	GROUND AND POLISHED CONCRETE	0	11/02/2021
03 45 00	PRECAST ARCHITETURAL CONCRETE	0	11/02/2021
03 54 13	GYPSUM CEMENT UNDERLAYMENT	0	11/02/2021
04 20 00	UNIT MASONRY	0	11/02/2021
05 12 00	STRUCTURAL STEEL	0	11/02/2021
05 40 00	COLD-FORMED METAL FRAMING	0	11/02/2021
05 44 00	COLD-FORMED METAL TRUSSES	0	11/02/2021
05 50 00	METAL FABRICATIONS	0	11/02/2021
05 51 13	METAL PAN STAIRS	0	11/02/2021
05 51 19	METAL GRATING STAIRS	0	11/02/2021
05 52 13	PIPE AND TUBE RAILINGS	0	11/02/2021
06 10 00	ROUGH CARPENTRY	0	11/02/2021
06 16 00	SHEATHING	0	11/02/2021
06 17 33	PRE-FABRICATED PLYWOOD I-JOISTS	0	11/02/2021
06 17 36	METAL-WEB WOOD JOISTS	0	11/02/2021
06 18 00	GLUED-LAMINATED CONSTRUCTION	0	11/02/2021
06 20 23	INTERIOR FINISH CARPENTRY	0	11/02/2021
06 41 16	PLASTIC-LAMINATE-CLAD ARCHITECTURAL CABINETS	0	11/02/2021
06 64 00	PLASTIC PANELING	0	11/02/2021
07 11 13	BITUMINOUS DAMPPROOFING	0	11/02/2021
07 13 26	SELF-ADHERING SHEET WATERPROOFING	0	11/02/2021
07 19 00	WATER REPELLENTS	0	11/02/2021
07 21 00	THERMAL INSULATION	0	11/02/2021
07 27 27	SELF-ADHERING VAPOR-PERMEABLE AIR-BARRIER MEMBRANE	0	11/02/2021
07 46 46	FIBER CEMENT SIDING	0	11/02/2021
07 54 19	POLYVINYL-CHLORIDE (PVC) ROOFING	0	11/02/2021
07 62 00	SHEET METAL FLASHING AND TRIM	0	11/02/2021
07 72 00	ROOF ACCESSORIES	0	11/02/2021
07 84 13	PENETRATION FIRESTOPPING	0	11/02/2021
07 84 43	JOINT FIRESTOPPING	0	11/02/2021
07 92 00	JOINT SEALANTS	0	11/02/2021
07 92 19	ACOUSTICAL JOINT SEALERS	0	11/02/2021
07 95 00	EXPANSION JOINT COVERS	0	11/02/2021
08 11 13	HOLLOW METAL DOORS AND FRAMES	0	11/02/2021
08 14 16	FLUSH WOOD DOORS	0	11/02/2021



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08 31 13	ACCESS DOORS AND FRAMES	0	11/02/2021
08 41 13	ALUMINUM FRAMED ENTRANCES AND STOREFRONTS	0	11/02/2021
08 58 00	STAINLESS STEEL BULLET RESISTANT TRANSACTION WINDOW	0	11/02/2021
08 80 00	GLAZING	0	11/02/2021
08 88 53	SECURITY GLAZING	0	11/02/2021
09 21 16	GYPSUM BOARD SHAFT WALL ASSEMBLIES	0	11/02/2021
09 22 16	NON STRUCTURAL METAL FRAMING	0	11/02/2021
09 29 00	GYPSUM BOARD	0	11/02/2021
09 51 13	ACOUSTICAL PANEL CEILINGS	0	11/02/2021
09 65 00	RESILIENT FLOORING	0	11/02/2021
09 65 13	RESILIENT BASE AND ACCESSORIES	0	11/02/2021
09 68 00	CARPETING	0	11/02/2021
09 91 13	EXTERIOR PAINTING	0	11/02/2021
09 91 23	INTERIOR PAINTING	0	11/02/2021
09 93 00	STAINING AND TRANSPARENT FINISHING	0	11/02/2021
10 11 00	VISUAL DISPLAY SURFACES	0	11/02/2021
10 14 00	SIGNAGE	0	11/02/2021
10 26 00	WALL AND DOOR PROTECTION	0	11/02/2021
10 28 00	TOILET, BATH AND LAUNDRY ACCESSORIES	0	11/02/2021
10 44 13	FIRE EXTINGUISHER CABINETS	0	11/02/2021
10 44 16	FIRE EXTINGUISHERS	0	11/02/2021
11 31 00	RESIDENTIAL APPLIANCES AND EQUIPMENT	0	11/02/2021
12 24 16	PLEATED WINDOW SHADES	0	11/02/2021
12 36 23	PLASTIC-LAMINATE-CLAD COUNTERTOPS	0	11/02/2021
12 48 13	ENTRANCE MATS	0	11/02/2021
13 07 00	BULLET RESISTANT FIBERGLASS	0	11/02/2021
14 24 00	HYDRAULIC PASSENGER ELEVATORS	0	11/02/2021
21 00 00	GENERAL REQUIREMENTS FOR FIRE SUPPRESSION	0	11/02/2021
21 05 48	VIBRATION & SEISMIC CONTROLS FOR FIRE SUPPRESSION PIPING & EQUIPMENT	0	11/02/2021
21 05 53	IDENTIFICATION FOR FIRE SUPPRESSION PIPING AND EQUIPMENT	0	11/02/2021
20 00 00	COMMON WORK RESULTS FOR PLUMBING	0	11/02/2021
22 05 16	EXPANSION FITTINGS AND LOOPS FOR PLUMBING PIPING	0	11/02/2021
22 05 17	SLEEVES AND SLEEVE SEALS FOR PLUMBING PIPING	0	11/02/2021
22 05 19	METERS AND GAUGES FOR PLUMBING PIPING	0	11/02/2021



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22 05 23	GENERAL-DUTY VALVES FOR PLUMBING PIPING	0	11/02/2021
22 05 29	HANGERS AND SUPPORTS FOR PLUMBING PIPING AND EQUIPMENT	0	11/02/2021
22 07 19	PLUMBING PIPING INSULATION	0	11/02/2021
22 11 16	DOMESTIC WATER PIPING	0	11/02/2021
22 13 16	SANITARY WASTE AND VENT PIPING	0	11/02/2021
23 00 00	COMMON WORK RESULTS FOR HVAC	0	11/02/2021
23 05 17	SLEEVES AND SLEEVE SEALS FOR HVAC PIPING	0	11/02/2021
23 05 53	IDENTIFICATION FOR HVAC PIPING AND EQUIPMENT	0	11/02/2021
23 05 93	TESTING, ADJUSTING, AND BALANCING FOR HVAC	0	11/02/2021
23 07 13	DUCT INSULATION	0	11/02/2021
23 11 23	FACILITY NATURAL-GAS PIPING	0	11/02/2021
23 31 00	HVAC DUCTS AND CASINGS	0	11/02/2021
23 33 00	AIR DUCT ACCESSORIES	0	11/02/2021
23 37 00	AIR OUTLETS AND INLETS	0	11/02/2021
26 00 00	COMMON WORK RESULTS FOR ELECTRICAL	0	11/02/2021
26 05 09	EQUIPMENT WIRING	0	11/02/2021
26 05 19	LOW-VOLTAGE ELECTRICAL POWER CONDUCTORS AND CABLES	0	11/02/2021
26 05 26	GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS	0	11/02/2021
26 05 29	HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS	0	11/02/2021
26 05 33	RACEWAYS AND BOXES FOR ELECTRICAL SYSTEMS	0	11/02/2021
26 05 44	SLEEVES & SLEEVE SEALS FOR ELECTRICAL RACEWAYS & CABLING	0	11/02/2021
26 05 53	IDENTIFICATION FOR ELECTRICAL SYSTEMS	0	11/02/2021
26 09 23	LIGHTING CONTROL DEVICES	0	11/02/2021
26 09 25	DIGITAL LIGHTING CONTROLS	0	11/02/2021
26 24 13	SWITCHBOARDS	0	11/02/2021
26 24 16	PANELBOARDS	0	11/02/2021
26 27 13	ELECTRICITY METERING	0	11/02/2021
26 27 26	WIRING DEVICES	0	11/02/2021
26 28 13	FUSES	0	11/02/2021
26 28 16	ENCLOSED SWITCHES AND CIRCUIT BREAKERS	0	11/02/2021
26 32 13	DIESEL EMERGENCY ENGINE GENERATORS	0	11/02/2021
26 36 00	TRANSFER SWITCHES	0	11/02/2021
26 51 00	LIGHTING	0	11/02/2021
27 05 28	PATHWAYS FOR COMMUNICATIONS SYSTEMS	0	11/02/2021

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31 05 13	SOILS FOR EARTHWORK	0	11/02/2021
31 05 16	AGGREGATES FOR EARTHWORK	0	11/02/2021
31 10 00	SITE CLEARING	0	11/02/2021
31 22 13	ROUGH GRADING	0	11/02/2021
31 23 16	EXCAVATION	0	11/02/2021
31 23 17	TRENCHING	0	11/02/2021
31 25 00	EROSION AND SEDIMENTATION CONTROLS	0	11/02/2021
32 11 23	AGGREGATE BASE COURSES	0	11/02/2021
32 12 16	ASPHALT PAVING	0	11/02/2021
32 13 13	CONCRETE PAVING	0	11/02/2021
32 17 23	PAVEMENT MARKINGS	0	11/02/2021
33 05 61	CONCRETE MANHOLES	0	11/02/2021
33 14 16	SITE WATER UTILITY DISTRIBUTION PIPING	0	11/02/2021
33 31 00	SANITARY SEWERAGE PIPING	0	11/02/2021
33 42 00	STORMWATER CONVEYANCE	0	11/02/2021

Addenda

Addendum No.	Description	Rev No.	Date
1	Bid Addendum #01	1	11/23/2021

Other

Document No.	Document Name	Rev No.	Date
B2109507	GEOTECHNICAL INVESTIGATION (CARLSON GEOTECHNICAL)	0	08/11/2021
	DCPP LOGISTICS PLAN		
	DRAINAGE REPORT (HWA)	0	11/02/2021
	ASBESTOS SURVEY (PBS)	0	05/26/2020
	STRUCTURAL CALCULATIONS	0	10/28/2021
	LIGHTING CUTSHEETS		
	PLUMBING CUTSHEETS		



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Contract Allowances		
1	Overtime and Off-Hours Work	\$20,000
2	Shoring - Engineering and Installation	\$50,000
3	Gyp-Crete	\$31,350
4	Low-Voltage, Security, and CCTV	\$79,982
5	Landscaping & Repairs	\$15,000
6	Rent Heaters for Temp Heat	\$5,000
	Total Allowance Value	\$201,332

Whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order executed by both parties in advance of the excess costs being incurred. The amount of the Change Order shall reflect the difference between actual costs and the Allowances.



Attachment C: Qualifications, Assumptions & Clarifications

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General Qualifications:

1. Neither the price nor the project schedule upon which said price is based contemplate any project delays, suspensions, disruptions, cost escalations or other impacts caused, directly or indirectly, by Coronavirus.

The Parties recognize and are aware that the impacts of the COVID-19 Coronavirus pandemic are currently unknown and cannot be predicted. However, it is understood that the effects could negatively impact and delay Skanska's Work in connection with many aspects of the Project. Impacts may result from, for example, labor shortages/unavailability due to vaccination requirements, infection, social distancing required by governmental authorities, new PPE requirements, quarantine, or inability of certain people to work on-site due to medical facility closures. Impacts may also result from equipment and material shortages and delivery delays resulting from the closing or reduced production of manufacturing facilities throughout the United States and elsewhere globally. Skanska has not factored any COVID-19 impacts into the contract time, and the Parties agree that delays or costs arising from or related to the effects of the COVID-19 are beyond the control of Skanska.

This GMP Estimate includes a COVID Impact Contingency of **\$151,472**. This contingency has been included to offset the rapid escalation that is expected to occur between bidding and contracting and to offset costs associated with obtaining vaccinated crews in the event that the State of Oregon issues a mandate. We are currently not requiring vaccinations for our trade partners.

2. This GMP Estimate does not include any costs associated with further scope clarification or documentation beyond what is included in Attachment B: Plans & Specifications. Additional costs, if any, resulting from design changes shall be submitted for review and approval independently as a change to this GMP.
3. This GMP Estimate is based on Subcontractor proposals based on Bid / Permit Construction Documents provided by BLRB dated, November 2nd, 2021.
4. This GMP Estimate includes a Contractor's Contingency of **\$252,454**. The Contractor's Contingency that is included in the Construction GMP is for the Contractor's exclusive use and benefit, and to be used for any and all unforeseen risks assumed by the Contractor that fall within the scope of Work of the Project, that would not otherwise be subject to a change order. Use of this contingency includes, but is not limited to: buy-out overruns and scope gaps; mechanical, electrical, plumbing and fire ("MEPF") routing issues that can be coordinated without impacting architectural or structural design; minor MEPF misses and conflicts; acceleration/schedule recovery (not caused by Owner or Weather Delay); overtime/trade-stacking; trade damage (not caused by Owner's agents); costs to prevent damage or injury in emergencies; labor union strikes and other costs described as cost of the work; costs for corrective work not provided for elsewhere; and means, methods, and materials necessary to complete the work of the Guaranteed Maximum Price Agreement, including site logistics, general requirement and general condition items that were not considered when buying out the Work. Contractor's Contingency shall not be used for Scope Changes, changed work, extra work, unforeseen and differing site conditions, code interpretations or other items properly compensable as a Change Order under any other terms and conditions of this Agreement.
5. There are no individual line item guarantees within the GMP Estimate.



Attachment C: Qualifications, Assumptions & Clarifications

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6. This GMP Estimate does not account for any changes to Scope of Work or Project Schedule as a result of Public Agency Reviews, issued comments from Public Agency Reviews, and resulting responses or redesign.
7. This GMP Estimate does not account for the cost for and securing of the Building Permit and SDC's. We have included mechanical, plumbing, electrical, and fire suppression building permits.
8. Property taxes & other taxes related to the Property & the operation of the project are excluded.
9. Builder's Risk insurance is excluded and provided by the Owner. Insurance deductibles to be reimbursable as part of the project and treated as a Cost of the Work.
10. 3rd party and Agency testing and inspection services is provided by the Owner and not included within this Final GMP.
11. This proposal assumes unfettered, legal access to the Project Site at all times. This proposal does not anticipate any stoppage or interruption of Work as a result of present Owner Operations or other Site restrictions or interferences.
12. Professional service fees associated with the project, such as cost of funds, real estate costs, legal, development fees, are not included.
13. Construction utility fees including gas, electrical and water are provided by the Owner and excluded from this GMP.
14. Design Fees and Consultant fees are not included within this GMP.
15. Third-party commissioning fees are not included within this GMP.
16. This GMP does not include any work outside the limits identified in the Construction Documents.
17. This GMP pricing does not take into consideration any tariff or cost escalation that may take place after the date of the GMP Estimate. This GMP Estimate does not include any increases at this time. Skanska reserves all of its rights to include any increase in cost at a later date should such tariff or escalation in cost take place, and such increase shall be included in a Change Order.
18. A Public Right of Way Bond is excluded from this GMP and shall be provided by the Owner, if required.
19. This GMP excludes all unforeseen conditions.
20. The GMP assumes normal working days and hours, Mon-Fri from 7AM-5PM.
21. Hazardous waste abatement and haul off has been excluded.



Attachment C: Qualifications, Assumptions & Clarifications

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

SCOPE SPECIFIC QUALIFICATIONS:

General Conditions

1. General Conditions are Lump Sum and based on a 46-Week Construction Schedule.
2. Skanska's General Conditions includes costs for individuals stationed at the job site and off-site for time working on the Project. Including a field office and all associated furniture, equipment, and supplies.
3. Additional General Conditions for 4-Weeks of the early site package have been included in the Sitework costs for the early work.

General Requirements / Site Logistics

1. General Requirements are Lump Sum and based on a 46-Week Construction Schedule.
2. Skanska's General Requirements include costs for temporary partitions, protection of existing conditions, temporary fencing, periodic cleanup, a storage trailer, temporary utilities, and a forklift.
3. All work is scheduled during normal business hours. An allowance of \$20,000 has been carried outside of the Lump Sum General Requirements to allow for premium time for scopes that may be too disruptive to DCPD staff or visitors.
4. Facility utility outages may be required to make system connections. Skanska will provide a disruption form that will be submitted (7) calendar days prior to the scheduled shutdown.
5. DCPD staff are to be relocated within the existing building during the remodel.
6. An allowance of \$50,000 has been included outside of the Lump Sum General Requirements for the engineering and installation of any shoring that may be required during excavation adjacent to existing foundations.

Construction Staking

1. Coordination between the existing conditions and the CAD files are assumed to have been completed by the design team.

Sitework

1. Excavation for site lighting trenching includes just the G4 light fixtures. The remainder of the site lighting is included as an Add-Alternate.
2. Snow removal has not been included.

Demolition

1. Deschutes County will be responsible to remove any salvaged items prior to demolition.

Masonry

1. A mockup of the CMU trash enclosure has not been included.

Casework

1. Includes white plywood core melamine and plastic-laminate countertops on plywood substrates.

Roofing

1. This GMP includes an 80-mil TPO roof, rather than PVC, due to current lead times.



Attachment C: Qualifications, Assumptions & Clarifications

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

Glazing

1. Water testing of the windows/storefronts has not been included.

Flooring

1. Minor floor prep is included. Extensive floor prep and/or moisture mitigation is excluded.

Specialties and Bathroom Accessories

1. This GMP excludes the supply of items called out as OFOI or OFCI.

Mechanical and Building Controls

1. Vendor pricing for mechanical units are good until January 10th, an allowance for the expected 12% price increase has been included in the mechanical contractor's pricing.
2. Seismic engineering has not been included.

Electrical, Low Voltage and Fire Alarm

1. Site lighting includes just the G4 light fixtures. The remainder of the site lighting is included as an Add-Alternate.
2. This GMP includes raceways for low-voltage scopes. An allowance of \$79,982 has been included for data/communications cabling and boxes, backbone equipment, cable trays, and security cabling/devices.
3. Design-build fire alarm system has been included.
4. Seismic engineering has not been included.

Fire Suppression

1. This GMP includes design and permitting with the city or authority having jurisdiction.
2. Survey, design, and calculation of existing sprinkler system is excluded.
3. Seismic engineering has not been included.



Attachment D: Alternate Prices

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

ALTERNATE #1: Site Lighting		
Civil Contractor		\$ 3,810
Electrical Contractor		\$ 79,400
	Cost of Work Subtotal	\$ 83,210
Markups:		
Construction Contingency @ 5.00% of above line items	\$ 4,161	
CM/GC Fee @ 3.99% of above line items	\$ 3,486	
General Liability Insurance (GLI) @ 0.95% of above line items	\$ 863	
Builders Risk Insurance @ 0.40% of Subtotals #1; 2 & Fee		
Payment & Performance Bond @ 1.00% of GMP	\$ 917	
Subcontractor Default Insurance (SDI) @ 1.05% of Subcontracted work	\$ 917	
	Markup Subtotal:	\$ 10,344
	Total - Alternate No. 1	\$ 93,554

SKANSKA

Attachment E: Project Schedule

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

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Deschutes CO PP / SO Work Center - Current					Print Date: 29-Dec-21, Data Date: 30-Dec-21				
Activity ID	Activity Name	Original Duration	Start	Finish	2022				2023
					Q1	Q2	Q3	Q4	Q1
Deschutes CO P&P / SO Work Center - Current		299	01-Nov-21 A	12-Jan-23					
Executive Summary		210	15-Mar-22	12-Jan-23					
EXE100	Start Construction	0	15-Mar-22						
EXE101	Substantial Completion	0		12-Dec-22*					
EXE102	Final Completion	0		12-Jan-23					
Preconstruction		148	01-Nov-21 A	06-Jun-22					
Project Award		21	10-Dec-21 A	12-Jan-22					
AWD106	Deliver GMP	5	10-Dec-21 A	04-Jan-22					
AWD107	GMP Approval	1	12-Jan-22	12-Jan-22					
Project Permitting		89	01-Nov-21 A	14-Mar-22					
PER100	Building Permit	90	01-Nov-21 A	14-Mar-22					
Subcontractor Buyout		20	13-Jan-22	10-Feb-22					
BUY104	Award - Civil / Foundation / Elevator	5	13-Jan-22	20-Jan-22					
BUY105	Award - Structural Components / MEP	15	13-Jan-22	03-Feb-22					
BUY106	Award - Exterior Enclosure	15	13-Jan-22	03-Feb-22					
BUY107	Award - Interiors	20	13-Jan-22	10-Feb-22					
Critical Material & Equipment Procurement		95	21-Jan-22	06-Jun-22					
PRO100	Submit / Fab / Deliver - Rebar	25	21-Jan-22	25-Feb-22					
PRO104	Submit / Fab / Deliver - Elevator	95	21-Jan-22	06-Jun-22					
PRO101	Submit / Fab / Deliver - Structural Components / MEP	35	04-Feb-22	25-Mar-22					
PRO102	Submit / Fab / Deliver - Exterior Long Leads	60	04-Feb-22	29-Apr-22					
PRO103	Submit / Fab / Deliver - Interior Long Leads	75	11-Feb-22	27-May-22					
Construction		179	15-Mar-22	28-Nov-22					
Mobilization		3	15-Mar-22	17-Mar-22					
MOB110	Temp Fence	1	15-Mar-22	15-Mar-22					
MOB100	Mobilization / Safe Off MEP / Temp Utilities / Site Survey	2	16-Mar-22	17-Mar-22					
Sitework		137	18-Mar-22	29-Sep-22					
SIT100	Demo Hardscapes	2	18-Mar-22	21-Mar-22					
SIT110	Micro Piles	5	22-Mar-22	28-Mar-22					
SIT120	Underground Utilities	2	05-Apr-22	06-Apr-22					
SIT130	Excavate Footings	3	07-Apr-22	11-Apr-22					
SIT140	Establish Building Pad	3	28-Apr-22	02-May-22					
Parking Lot		17	07-Sep-22	29-Sep-22					
PL-174	Demo Curb / Asphalt / Concrete	3	07-Sep-22	09-Sep-22					
PL-175	Curb / Concrete	5	12-Sep-22	16-Sep-22					
PL-177	Grade	3	12-Sep-22	14-Sep-22					
PL-178	Pave	1	15-Sep-22	15-Sep-22					
PL-179	Fence & Gates	5	16-Sep-22	22-Sep-22					
PL-197	Landscaping	10	16-Sep-22	29-Sep-22					
PL-180	Striping & Signs	1	23-Sep-22	23-Sep-22					
Addition		179	15-Mar-22	28-Nov-22					
Foundation		22	12-Apr-22	11-May-22					

█ Actual Work █ Critical Remaining ...
█ Remaining Work ◆ Milestone



Deschutes CO PP / SO Work Center - Current					Print Date: 29-Dec-21, Data Date: 30-Dec-21				
Activity ID	Activity Name	Original Duration	Start	Finish	2022				2023
					Q1	Q2	Q3	Q4	Q1
FND100	Elevator Pit / Foundation Tie to Ext.	4	12-Apr-22	15-Apr-22					
FND110	FRP Footings/Stem Walls	5	18-Apr-22	22-Apr-22					
FND120	Plumbing Underground	5	25-Apr-22	29-Apr-22					
FND130	Electrical Underground	3	02-May-22	04-May-22					
FND140	Slab on Grade	5	05-May-22	11-May-22					
Structure		83	15-Mar-22	11-Jul-22					
STR100	Build Hard Wall Containment	5	15-Mar-22	21-Mar-22					
STR110	Demo Foyer and Exterior Skin	10	22-Mar-22	04-Apr-22					
STR120	1st Floor Framing	8	19-May-22	31-May-22					
STR130	2nd Floor Joists and Decking	8	01-Jun-22	10-Jun-22					
STR140	2nd Floor Framing	10	13-Jun-22	24-Jun-22					
STR150	Trusses	5	27-Jun-22	01-Jul-22					
STR160	Sheet Roof and Parapets	5	05-Jul-22	11-Jul-22					
Exterior Enclosure		58	12-Jul-22	30-Sep-22					
Elevations		58	12-Jul-22	30-Sep-22					
EXT100	Flashing's	10	12-Jul-22	25-Jul-22					
EXT110	WRB	15	26-Jul-22	15-Aug-22					
EXT120	Windows and doors	10	26-Jul-22	08-Aug-22					
EXT130	Fiber Cement Panel System	15	16-Aug-22	06-Sep-22					
EXT140	Ext. Stairs	5	19-Sep-22	23-Sep-22					
EXT150	Steel Canopies	5	26-Sep-22	30-Sep-22					
Roof		16	12-Jul-22	02-Aug-22					
EXT160	Add - Roof - Frame Roof Curbs	5	12-Jul-22	18-Jul-22					
EXT170	Add - Roof - Roofing	6	19-Jul-22	26-Jul-22					
EXT180	Add - Roof - Building Dry In	0		26-Jul-22					
EXT190	Add - Roof - Place & Make Up Mechanical Units	5	27-Jul-22	02-Aug-22					
Interior Buildout		91	19-Jul-22	28-Nov-22					
Level 1		77	08-Aug-22	28-Nov-22					
LVL1-100	MEP Overhead Rough In	8	08-Aug-22	17-Aug-22					
LVL1-110	MEP Rough In Walls	6	18-Aug-22	25-Aug-22					
LVL1-120	MEP Inspections	2	26-Aug-22	29-Aug-22					
LVL1-130	H/T/F Drywall	12	30-Aug-22	15-Sep-22					
LVL1-140	Paint	8	16-Sep-22	27-Sep-22					
LVL1-150	Ceiling Grid	7	28-Sep-22	06-Oct-22					
LVL1-160	MEP Finishes	5	07-Oct-22	14-Oct-22					
LVL1-170	Drop Ceiling Tile	6	17-Oct-22	24-Oct-22					
LVL1-180	Casework	5	25-Oct-22	31-Oct-22					
LVL1-190	Flooring	5	01-Nov-22	07-Nov-22					
LVL1-200	Accessories	3	08-Nov-22	10-Nov-22					
LVL1-210	Final Paint	5	11-Nov-22	17-Nov-22					
LVL1-220	Final Clean	5	18-Nov-22	28-Nov-22					
Level 2		83	19-Jul-22	14-Nov-22					
LVL2-230	Elevator Install	15	19-Jul-22	08-Aug-22					

█ Actual Work █ Critical Remaining ...
█ Remaining Work ◆ Milestone



Deschutes CO PP / SO Work Center - Current		Print Date: 29-Dec-21, Data Date: 30-Dec-21							
Activity ID	Activity Name	Original Duration	Start	Finish	2022				2023
					Q1	Q2	Q3	Q4	Q1
LVL2-100	MEP Overhead Rough In	8	27-Jul-22	05-Aug-22			■		
LVL2-110	MEP Rough In Walls	6	08-Aug-22	15-Aug-22			■		
LVL2-120	MEP Inspections	2	16-Aug-22	17-Aug-22					
LVL2-130	H/T/F Drywall	12	18-Aug-22	02-Sep-22			■		
LVL2-140	Paint	8	06-Sep-22	15-Sep-22			■		
LVL2-150	Ceiling Grid	7	16-Sep-22	26-Sep-22			■		
LVL2-160	MEP Finishes	5	27-Sep-22	03-Oct-22			■		
LVL2-170	Drop Ceiling Tile	6	04-Oct-22	12-Oct-22			■		
LVL2-180	Casework	5	13-Oct-22	19-Oct-22			■		
LVL2-190	Flooring	5	20-Oct-22	26-Oct-22			■		
LVL2-200	Accessories	3	27-Oct-22	31-Oct-22			■		
LVL2-210	Final Paint	5	01-Nov-22	07-Nov-22			■		
LVL2-220	Final Clean	5	08-Nov-22	14-Nov-22			■		
Renovation		66	13-Jun-22	14-Sep-22			←		
Level 1		22	13-Jun-22	13-Jul-22			←		
REN1-100	Demo Ext. Walls	1	13-Jun-22	13-Jun-22					
REN1-110	Demo Concrete	1	14-Jun-22	14-Jun-22					
REN1-120	Plumbing Underground	1	15-Jun-22	15-Jun-22					
REN1-130	Trench Pour back	1	16-Jun-22	16-Jun-22					
REN1-140	Framing	1	17-Jun-22	17-Jun-22					
REN1-150	MEP Rough	2	20-Jun-22	21-Jun-22					
REN1-2120	MEP Inspections	5	22-Jun-22	28-Jun-22			■		
REN1-160	H/T/F Drywall	3	29-Jun-22	01-Jul-22					
REN1-170	Paint	2	05-Jul-22	06-Jul-22					
REN1-180	Ceiling Grid	1	07-Jul-22	07-Jul-22					
REN1-190	MEP Finishes	1	08-Jul-22	08-Jul-22					
REN1-200	Ceiling Tile	1	11-Jul-22	11-Jul-22					
REN1-210	Flooring	1	12-Jul-22	12-Jul-22					
REN1-220	Final Clean	1	13-Jul-22	13-Jul-22					
Level 2		35	27-Jul-22	14-Sep-22			←		
REN2-100	Demo Ext. Walls	1	27-Jul-22	27-Jul-22					
REN2-140	Framing	1	28-Jul-22	28-Jul-22					
REN2-150	MEP Rough	2	29-Jul-22	01-Aug-22					
REN2-230	MEP Inspections	1	02-Aug-22	02-Aug-22					
REN2-160	H/T/F Drywall	3	03-Aug-22	05-Aug-22					
REN2-170	Paint	2	08-Aug-22	09-Aug-22					
REN2-180	Ceiling Grid	1	10-Aug-22	10-Aug-22					
REN2-190	MEP Finishes	1	11-Aug-22	11-Aug-22					
REN2-200	Ceiling Tile	1	12-Aug-22	12-Aug-22					
REN2-210	Flooring	1	15-Aug-22	15-Aug-22					
REN2-220	Final Clean	1	16-Aug-22	16-Aug-22					
REN2-240	Build Containment Core	1	18-Aug-22	18-Aug-22					
REN2-250	Demo Core	2	19-Aug-22	22-Aug-22			■		

■ Actual Work ■ Critical Remaining ...
■ Remaining Work ◆ Milestone



Deschutes CO PP / SO Work Center - Current					Print Date: 29-Dec-21, Data Date: 30-Dec-21				
Activity ID	Activity Name	Original Duration	Start	Finish	2022				2023
					Q1	Q2	Q3	Q4	Q1
REN2-260	2nd Floor Lighting Replacement	10	19-Aug-22	01-Sep-22			■		
REN2-270	Frame Core	2	23-Aug-22	24-Aug-22					
REN2-280	MEP Rough Core	2	25-Aug-22	26-Aug-22					
REN2-290	H/T/F Drywall Core	3	29-Aug-22	31-Aug-22					
REN2-300	Paint Core	2	01-Sep-22	02-Sep-22					
REN2-310	Casework Core	1	06-Sep-22	06-Sep-22					
REN2-320	Ceiling Grid Core	1	07-Sep-22	07-Sep-22					
REN2-330	MEP Finishes Core	2	08-Sep-22	09-Sep-22					
REN2-340	Ceiling Tile Core	1	12-Sep-22	12-Sep-22					
REN2-350	Flooring Core	1	13-Sep-22	13-Sep-22					
REN2-360	Final Clean Core	1	14-Sep-22	14-Sep-22					
Project Closeout		68	04-Oct-22	12-Jan-23				←	
CLS-100	Commissioning	20	04-Oct-22	01-Nov-22				■	
CLS-110	Architectural Punch List	10	29-Nov-22	12-Dec-22				■	
CLS-120	Final Permit	1	13-Dec-22	13-Dec-22					
CLS-130	Document Closeout	20	14-Dec-22	12-Jan-23				■	

■ Actual Work ■ Critical Remaining ...
■ Remaining Work ◆ ◆ Milestone

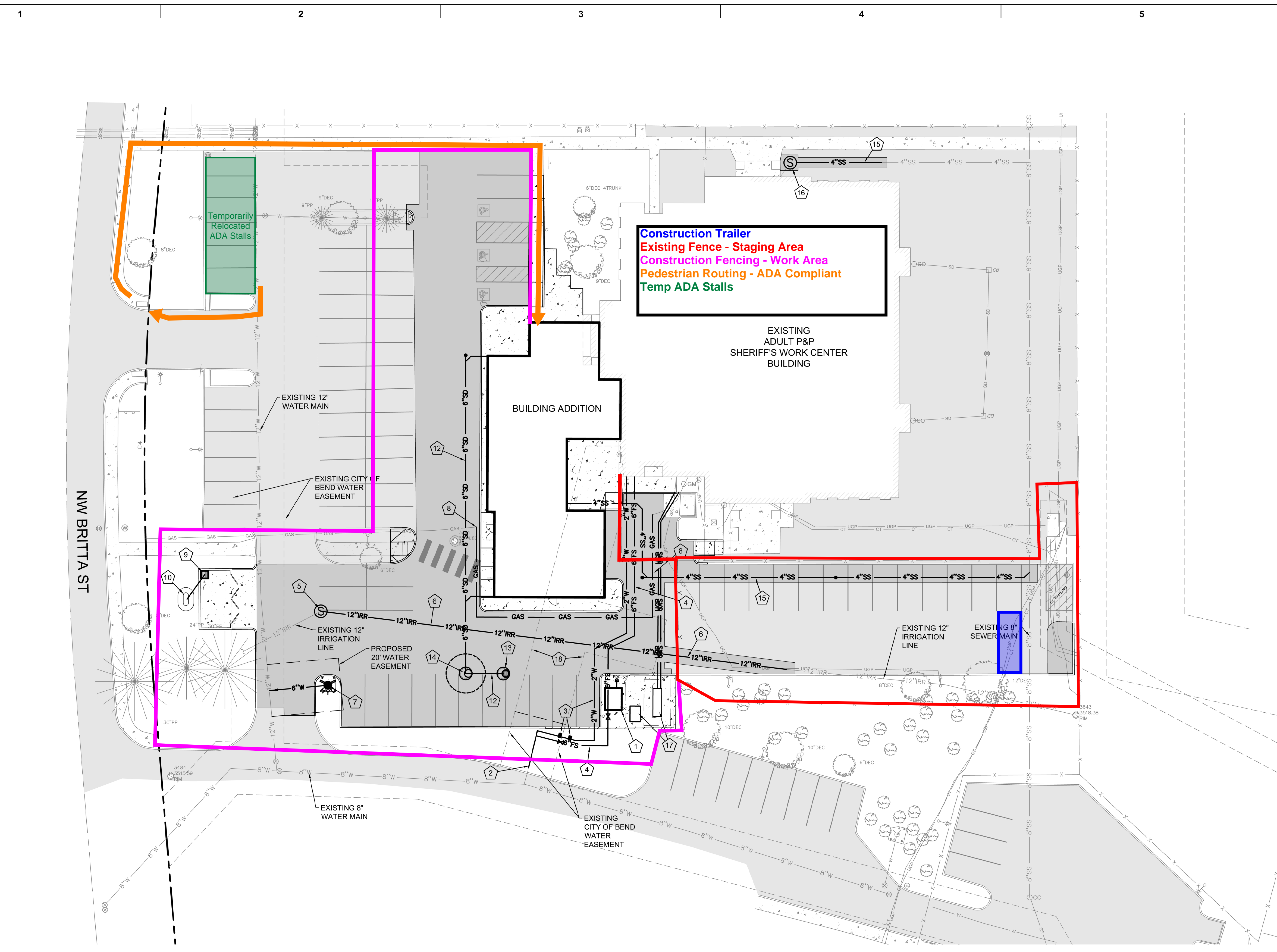


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Attachment F: Logistics

Deschutes County
Parole & Probation Building
GMP Proposal
January 4, 2022

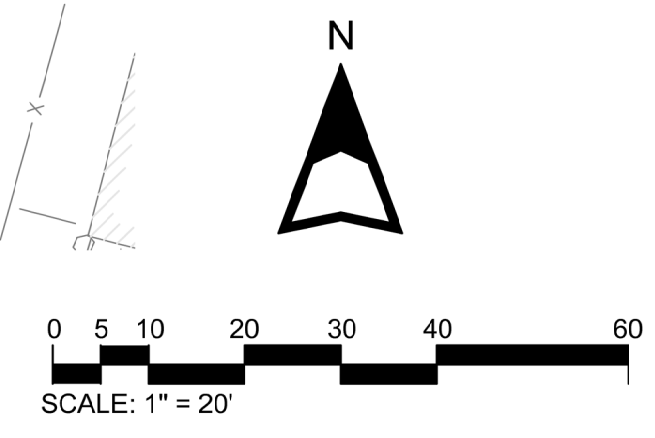
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Construction Trailer
 Existing Fence - Staging Area
 Construction Fencing - Work Area
 Pedestrian Routing - ADA Compliant
 Temp ADA Stalls

- UTILITY KEY NOTES**
- 1 PROPOSED FIRE SERVICE VAULT, PIV, AND FDC
 - 2 PROPOSED 8" D.I. WATER LINE (DEEPEN WITH PROPOSED PARKING GRADES)
 - 3 PROPOSED 2" DOMESTIC WATER LINE, WATER METER, AND DCVA
 - 4 PROPOSED 6" D.I. FIRE SERVICE LINE
 - 5 PROPOSED 48" MANHOLE FOR IRRIGATION LINE
 - 6 PROPOSED 12" PVC IRRIGATION LINE RELOCATION
 - 7 PROPOSED FIRE HYDRANT ASSEMBLY & 6" D.I. WATER LINE
 - 8 PROPOSED GAS LINE RELOCATION
 - 9 PROPOSED CATCH BASIN
 - 10 PROPOSED STORM WATER INFILTRATION SWALE
 - 11 PROPOSED 8" STORM LINE
 - 12 PROPOSED 6" STORM LINE
 - 13 PROPOSED SEDIMENTATION MANHOLE WITH GRATE
 - 14 PROPOSED DRYWELL
 - 15 PROPOSED 4" SANITARY SEWER SERVICE LATERAL
 - 16 PROPOSED MUFFIN MONSTER IN-LINE GRINDER
 - 17 PROPOSED GENERATOR EQUIPMENT (SEE ARCHITECTS PLANS)
 - 18 EXISTING PORTION OF CITY OF BEND WATER EASEMENT TO BE REMOVED

- UTILITY LEGEND**
- 2"W — PROPOSED 2" DOMESTIC WATER LINE
 - 6"FS — PROPOSED 6" FIRE SERVICE LINE
 - 8"W — PROPOSED 8" WATER MAIN
 - GAS — PROPOSED GAS LINE
 - 12"IRR — PROPOSED PRIVATE 12" IRRIGATION LINE
 - ⊗ PROPOSED FIRE HYDRANT
 - ⊕ PROPOSED GATE VALE
 - ⊙ PROPOSED 48" IRRIGATION MANHOLE
 - ⊕ FDC PROPOSED WALL MOUNTED FDC & PIV CONNECTION
 - PROPOSED 2" WATER METER
 - PROPOSED DCVA
 - PROPOSED CATCH BASIN



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Stamp

Date	Description

DESCHUTES COUNTY PAROLE AND PROBATION
 DESCHUTES COUNTY
30% DESIGN DEVELOPMENT

SITE UTILITY PLAN

Drawn By: MITCH MADSEN
 Date: 7/30/2021
 Project No. HWA-190410
 Revised: BLRB-19015A

Sheet No. **C3.0**


Certificate Of Completion

Envelope Id: 990DFFFFDDF46F8ADE03E03F74D9980	Status: Completed
Subject: Please DocuSign: Deschutes County Parole & Probation - GMP Proposal.pdf	
Source Envelope:	
Document Pages: 26	Signatures: 0
Certificate Pages: 5	Initials: 3
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Chad Young
Time Zone: (UTC-05:00) Eastern Time (US & Canada)	4235 South Stream Boulevard
	Suite 200
	Charlotte, NC 28217
	chad.young@skanska.com
	IP Address: 208.100.128.147


Record Tracking

Status: Original	Holder: Chad Young	Location: DocuSign
1/4/2022 11:32:01 AM	chad.young@skanska.com	


Signer Events

Signer Events	Signature	Timestamp
Chad Young chad.young@skanska.com PM Skanska USA Building Inc. Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 208.100.128.147	Sent: 1/4/2022 11:39:27 AM Viewed: 1/4/2022 11:39:38 AM Signed: 1/4/2022 11:39:40 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Robert Moro Robert.Moro@skanska.com Project Executive Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 107.77.205.32 Signed using mobile	Sent: 1/4/2022 11:39:42 AM Viewed: 1/4/2022 12:22:09 PM Signed: 1/4/2022 12:25:29 PM
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Electronic Record and Signature Disclosure:
Accepted: 1/4/2022 12:22:09 PM
ID: e72ea708-25c9-4e05-892e-643d239b7a78

Timothy Johnson Timothy.Johnson@skanska.com Executive Vice President Vice President Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 65.132.106.35	Sent: 1/4/2022 12:25:30 PM Viewed: 1/4/2022 12:35:21 PM Signed: 1/4/2022 12:35:30 PM
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Electronic Record and Signature Disclosure:
Accepted: 1/4/2022 12:35:21 PM
ID: 9eadc26a-d8e6-4af1-8908-cc6b1131c898**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Carbon Copy Events

Status

Timestamp

Lee Randall
Lee.Randall@deschutes.org
Security Level: Email, Account Authentication
(None)

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Sent: 1/4/2022 12:35:32 PM
Viewed: 1/5/2022 10:10:37 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent	Hashed/Encrypted	1/4/2022 11:39:27 AM
Certified Delivered	Security Checked	1/4/2022 12:35:21 PM
Signing Complete	Security Checked	1/4/2022 12:35:30 PM
Completed	Security Checked	1/4/2022 12:35:32 PM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Skanska USA Inc. (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 Skanska USA Inc.:

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: customer.service@skanska.com

To advise Skanska USA Inc. 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 customer.service@skanska.com 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 Skanska USA Inc.

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 customer.service@skanska.com 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 Skanska USA Inc.

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 customer.service@skanska.com 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 Skanska USA Inc. 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 Skanska USA Inc. during the course of your relationship with Skanska USA Inc..

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

**DOCUMENT NO. 2021-999
AMENDING DESCHUTES COUNTY CONTRACT NO. 2020-219**

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2020-219 dated March 12, 2019, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon ("County") and Skanska USA Building Inc. ("Contractor"), is amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the contract remain the same and in full force.

County's performance hereunder is conditioned upon Contractor's compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The above listed contract is amended as follows:

**EXHIBIT 1
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2020-219
STATEMENT OF WORK, COMPENSATION
PAYMENT TERMS and SCHEDULE**

3. Consideration

a. The County and the Construction Manager hereby amend the Contract to establish a Guaranteed Maximum Price. As agreed by the County and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work.

The Contract Sum is guaranteed by the Construction Manager not to exceed **Six Million Three Hundred Fifty Six Thousand Nine Hundred and Sixty Nine Dollars and Zero Cents (\$6,356,969.00)**, subject to additions and deductions by Change Order as provided in the Contract Documents.

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, and the Construction Manager's Fee, and other items: SEE ATTACHMENT "A".

The Guaranteed Maximum Price is based upon Bid & Permit Set plans and specifications prepared by BLRB Architects, dated 11/2/2021. Submitted to City of Bend Building Department on 11/2/2021.

All cost savings in relation to itemized statement ATTACHMENT "A", to be documented and returned to the County as a credit subtracted from the Contract Sum.

Effective Date and Termination Date. The effective date of this Contract shall be March 12, 2020 or the date, on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance,

or on December 30, 2022, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured.

CONTRACTOR: Skanska USA Building Inc.

Authorized Signature

Dated this _____ of _____, 20__.

COUNTY:

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, CHAIR

PHIL CHANG, VICE-CHAIR

PATTI ADAIR, COMMISSIONER



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 12, 2022

SUBJECT: Board consideration of whether to hear appeals 247-21-001115-A and 247-21-001116-A of Hearings Officer's decisions 247-21-000508-SP, 849-A and 247-21-000553-MC, 920-A

RECOMMENDED MOTION:

Move approval of Order 2022-002 an Order denying review of Hearings Officer's Decision in File Nos. 247-21- 001115-A, 247-21-000849-A, and 247-21- 000508-SP.

And

Move approval of Order 2022-003 an Order denying review of Hearings Officer's Decision in File Nos. 247-21- 001116-A, 247-21-920-A, and 247-21- 000553-MC

BACKGROUND AND POLICY IMPLICATIONS:

Please see attached memos and case websites here:

<https://www.deschutes.org/cd/page/247-21-001116-appeal-hearings-officer-decision-247-21-000920-247-21-000553-mc>

<https://www.deschutes.org/cd/page/247-21-001115-appeal-hearings-officer-decision-247-21-000849-247-21-000508-sp>

BUDGET IMPACTS:

None.

ATTENDANCE:

Angie Brewer, Senior Planner



MEMORANDUM

TO: Board of County Commissioners

FROM: Angie Brewer, Senior Planner

DATE: January 5, 2022 for January 12, 2022 Board Session

RE: Board Order 2022-003
Decision whether to hear an appeal of Hearings Officer's approval of an application to amend Conceptual Master Plan/Final Master Plan (CMP/FMP) for Thornburgh Destination Resort to conform to State and County Destination Resort rules regarding Overnight Lodging Units to State and County Destination Resort rules.
File No. 247-21-001116-A

On January 12, 2022, the Board of County Commissioners (Board) will consider whether to hear Appeal No. 247-21-001116-A of Hearings Officer decision 247-21-000920-A (appeal of Staff Decision 247-21-000553-MC). The Hearings Officer decision addresses a limited scope of issues on appeal and approves the request.

I. BACKGROUND

The Thornburgh Destination Resort Master Plan/Conceptual Master Plan was previously approved in File No. M-07/MA-08-6. The applicant has subsequently pursued required land use approvals for specific Site Plan reviews and Tentative Plan reviews to implement the Master Plan in phases.

The subject appeal is in response to amend the previously approved Conceptual Master Plan/Final Master Plan (CMP/FMP) for Thornburgh Destination Resort to conform to State and County Destination Resort rules regarding Overnight Lodging Units to State and County Destination Resort rules. Changes to law include changes to the ratio of overnight lodging units to single-family dwellings and the number of weeks each year an OLU must be available for overnight lodging.

Staff received Application 247-21-000553-MC on June 3, 2021; Staff issued an administrative decision on September 30, 2021, approving the proposed development with conditions. Appeal 920-A, filed by Annunziata Gould was received October 12, 2021. A hearing before the Deschutes County Hearings Officer Gregory Frank was held November 4, 2021. The Hearings Officer Decision was

issued December 21, 2021, responding to the grounds for appeal, modifying the staff report, and approving the proposed amendment. An appeal of the Hearings Officer decision was received December 30, 2021 by Annunziata Gould. The 150th day by which a final local decision must be issued is February 12, 2022. Staff notes Board hearings for land use appeals require 20-day public notice and have a 12-day appeal period.

II. HEARINGS OFFICER DECISION

A public hearing was held November 4, 2021; additional argument and evidence was provided during the open record period.

The Hearings Officer remand decision concludes the following:

- 1. *Appellant's appeal of the Staff Decision is denied.*
- 2. *The Staff Findings and Decision (247-21-000553-MC) is affirmed excepting Conditions D, E, and F which are modified to read as follows:*

A. *Staff Decision Condition D - 21a is revised to read as follows (sections in italics represent newly revised language):*

The resort shall comply with DCC 18.113.060(D)(2). Specifically, DCC 18.113.060(D)(2) requires:

Individually owned residential units that do not meet the definition of overnight lodging in DCC 18.04.030 shall not exceed two and one-half such units for each unit of visitor oriented overnight lodging. Individually owned units shall be considered visitor oriented overnight lodging if they are available for overnight rental use by the general public for 23 at least 38 weeks per calendar year through one or more central reservation and check in service(s) operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.

- B. *Staff Decision Condition D - 21b is deleted.*
- C. *Staff Decision Condition D - 21c is retained.*
- D. *Staff Decision Condition D - 21d is deleted.*
- E. *Staff Decision Condition E is deleted.*
- F. *Condition 33 is retained and revised to read as follows (sections in italics represent newly revised language):*

The Resort shall, in the first phase, provide for the following:

- A. *At least 150 separate rentable units for visitor-oriented lodging as follows:*
 - (a) *The first 50 overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.*

- (b) *The resort may elect to phase in the remaining 100 overnight lodging units as follows:*
- (i) *At least 50 of the remaining 100 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the closure of sale of individual lots or units, and*
 - (ii) *The remaining 50 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the closure of sale of individual lots or units.*
 - (iii) *If the developer of a resort guarantees a portion of the required overnight lodging units required under subsection 18.113.060(A) (1)(b) through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within 4 years of the date of execution of the surety bond or other equivalent financial assurance.*
 - (iv) *The 2.5:1 accommodation ratio required by DCC 18.113.060 (D)(2) must be maintained at all times.*
- (c) *If a resort does not choose to phase the overnight lodging units as described in this condition of approval, then the required 150 units of overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.*
- B. *Visitor-oriented eating establishments for at least 100 persons and meeting room which provide eating for at least 100 persons.*
- C. *The aggregate cost of developing the overnight lodging facilities and the eating establishments and meeting rooms required in DCC 18.113.060(A)(1) and (2) shall be at least \$2,000,000 (in 1984 dollars).*
- D. *At least \$2,000,000 (in 1984 dollars) shall be spent on developed recreational facilities.*
- E. *The facilities and accommodations required by DCC 18.113.060, other than overnight lodging units, must be physically provided or financially assured pursuant to DCC 18.113.110 prior to the closure of sales, rental or lease of any residential dwellings or lots.*
- G. *Staff Decision Condition F is deleted and Condition 35 is retained and revised to read as follows (sections in italics represent newly revised language):*

The contract with the owners of units that will be used for overnight lodging by the general public shall contain language to the following effect: “[Unit Owner] shall make the unit available to [Thornburgh Resort/booking agent] for overnight rental use by the general public at least 38 weeks per calendar year through a central reservation and check-in service.

III. APPEAL

The appellant, Annunziata Gould provided a statement of reasons for the appeal, summarized here:

- 1. Goal Post Rule;
- 2. Raise or Waive It;
- 3. Lot of Record Issue;
- 4. Substantial Change (Final Master Plan Condition 1);
- 5. Judge Lipscomb’s Arguments;
- 6. Conditions of Approval;
- 7. Conclusions and Decision.

The appellant requests the Board hear this matter to review and reverse the Hearings Officer remand decision. The appellant requests a de novo hearing before the Board.

IV. BOARD OPTIONS

There are two versions of Order No. 2022-003 attached to this memo, one to hear the appeal and one to decline to hear the appeal. In determining whether to hear an appeal, the Board may consider only:

- 1. The record developed before the Hearings Officer;
- 2. The notice of appeal; and
- 3. Recommendation of staff¹

In addition, if the Board decides to hear the appeal, it may consider providing time limits for public testimony.

Reasons not to hear:

- The Hearings Officer’s decision is reasoned, well written, and could be supported, as the record exists today on appeal to LUBA.
- Statutory remand timelines require a final local decision by February 12, 2022; insufficient time exists for the Board to hear, deliberate, and decide upon the matter.
- The applicant agrees with the Hearings Officer’s decision and thus requests that the Board not hear the appeal.

Reasons to hear:

- The Board may want to take testimony and make interpretations relating to the Hearings Officer’s decision.

¹ Deschutes County Code (DCC) 22.32.035(B) and (D)

- The appellant recommends the Board hear this matter.

If the Board chooses to hear this matter, the appellant requests the hearing be heard de novo. The applicant has not stated whether they would like the hearing before the Board be heard de novo, limited de novo, or on the record. Under DCC 22.32.027(B)(3) the Board may choose to hear a matter de novo at their sole discretion.

If the Board decides that the Hearings Officer’s remand decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use applications becomes final upon the mailing of the Board’s decision to decline review.

V. STAFF RECOMMENDATION

Staff recommends the Board not hear this appeal because staff believes that the appellants were able to present all relevant evidence at the hearing before the Hearings Officer. Staff agrees with the Hearings Officer’s analysis and decision. Staff also notes that there is not adequate time in the 150-day remand review clock.

VI. 150-DAY LAND USE CLOCK

The County must take final action on this application by February 12, 2022.

VII. RECORD

The record for appeal File 247-21-00116-A (247-21-000920-A and 247-21-000553-MC) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-21-001116-appeal-hearings-officer-decision-247-21-000920-247-21-000553-mc>

Attachments:

Document	Item No.
Order No 2022-003_Accept_1116-A	1
Order No 2022-003_Decline_1116-A	2

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File Nos. 247-21- * ORDER NO. 2022-003
001116-A, 247-21-000920-A, and 247-21-
000553-MC

WHEREAS on June 3, 2021, Central Land and Cattle Co., LLC initiated 247-21-000553-MC with a new land use application; and

WHEREAS, on September 30, 2021, an administrative decision was issued by Deschutes County Community Development Department approving the proposed development with conditions; and

WHEREAS, on October 12, 2021, appeal 247-21-000920-A was submitted by Annunziata Gould, represented by Jeffrey Kleinman; and

WHEREAS, on November 4, 2021, a public hearing was held at 6:00pm in the Barnes and Sawyer Meeting Room and by Zoom for the Deschutes County Hearings Officer review of 247-21-000553-MC and 247-21-000920-A; and

WHEREAS, on December 21, 2021, the Deschutes County Hearings Officer approved Application No. 247-21-000553-MC; and

WHEREAS, on December 30, 2021, Annunziata Gould, the Appellant, appealed (File No. 247-21-001116-A) the Deschutes County Hearings Officer’s Decision on Files 247-21-000920-A and 247-21-000553-MC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officers’ decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

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

Section 1. That it will hear on appeal application 247-21-001116-A, 247-21-000920-A, 247-21-000553-MC pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for file nos. 247-21-001116-A, 920-A, 553-MC as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-001116-appeal-hearings-officer-decision-247-21-000920-247-21-000553-mc>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board’s official repository for the record in this matter.

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, Chair

ATTEST:

PHIL CHANG, Vice Chair

Recording Secretary

PATTI ADAIR, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying Review of Hearings
Officer’s Decision in File Nos. 247-21-
001116-A, 247-21-920-A, and 247-21-
000553-MC.

*
*

ORDER NO. 2022-003

WHEREAS on June 3, 2021, Central Land and Cattle Co., LLC initiated 247-21-000553-MC with a new land use application; and

WHEREAS, on September 30, 2021, an administrative decision was issued by Deschutes County Community Development Department approving the proposed development with conditions; and

WHEREAS, on October 12, 2021, appeal 247-21-000920-A was submitted by Annunziata Gould, represented by Jeffrey Kleinman; and

WHEREAS, on November 4, 2021, a public hearing was held at 6:00pm in the Barnes and Sawyer Meeting Room and by Zoom for the Deschutes County Hearings Officer review of 247-21-000553-MC and 247-21-000920-A; and

WHEREAS, on December 21, 2021, the Deschutes County Hearings Officer approved Application No. 247-21-000553-MC; and

WHEREAS, on December 30, 2021, Annunziata Gould, the Appellant, appealed the Deschutes County Hearings Officer’s Decision on Files 247-21-000920-A and 247-21-000553-MC (Appeal File No. 247-21-001116-A) the; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officers’ decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

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

ORDER NO. 2022-003

Section 1. That it will not hear on appeal application 247-21-001116-A, 920-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. Pursuant to DCC 22.32.015, the County shall refund any portion of the appeal fee not yet spent processing the subject application. If the matter is further appealed to the Land Use Board of Appeals and the County is required to prepare a transcript of the hearing before the Hearings Officer, the refund shall be further reduced by an amount equal to the cost incurred by the County to prepare such a transcript.

Section 3. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for file nos. 247-21-001116-A, 920-A, 553-MC as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-001116-appeal-hearings-officer-decision-247-21-000920-247-21-000553-mc>

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, Chair

PHIL CHANG, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner



MEMORANDUM

TO: Board of County Commissioners

FROM: Angie Brewer, Senior Planner

DATE: January 5, 2022 for January 12, 2022 Board Session

RE: Board Order 2022-002
Decision whether to hear an appeal of Hearings Officer's approval of an application for 80 Overnight Lodging Units at the Thornburgh Destination Resort
File No. 247-21-001115-A

On January 12, 2022, the Board of County Commissioners (Board) will consider whether to hear appeal 247-21-001115-A of Hearings Officer decision 247-21-000849-A (appeal of Staff Decision 247-21-000508-SP). The Hearings Officer decision addresses a limited scope of issues on appeal and approves the request for 80 Overnight Lodging Units (OLU's).

I. BACKGROUND

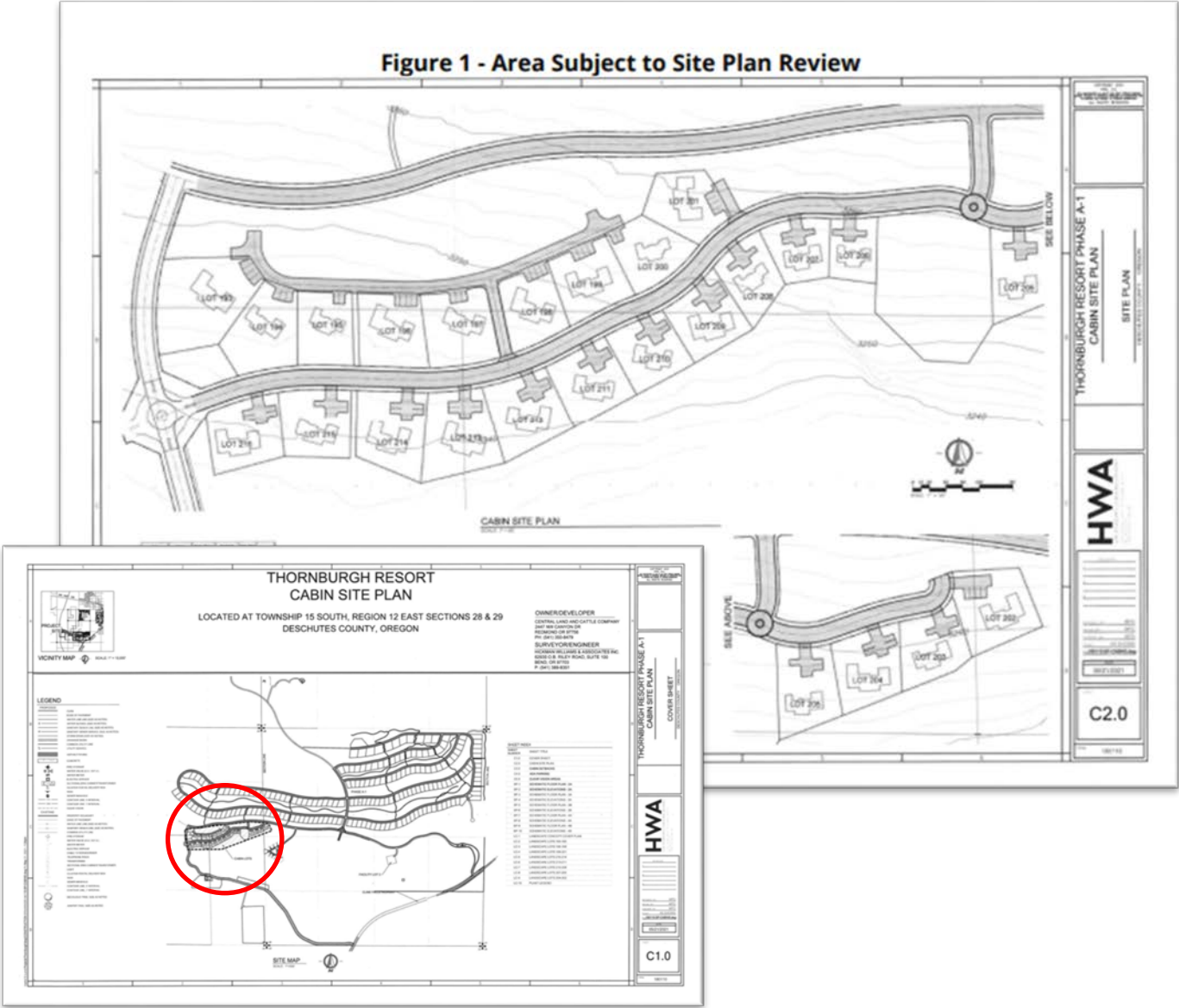
The Thornburgh Destination Resort Master Plan/Conceptual Master Plan was previously approved in File No. M-07/MA-08-6. The applicant has subsequently pursued required land use approvals for specific Site Plan reviews and Tentative Plan reviews to implement the Master Plan in phases.

The subject appeal is in response to Site Plan Review for the construction of 80 Overnight Lodging Units in Phase A-1 of the Thornburgh Destination Resort. OLU's are a required component of destination resort development. Phase A-1 subdivision was previously approved by Deschutes County but has subsequently been appealed to the Oregon Land Use Board of Appeals and has not yet been decided (247-21-000937-A, 21-000731-A; and 247-18-386-TP, 18-454-SP, 18-542-MA). The Board elected not to hear this matter in Board Order 2021-0059. Court rulings have confirmed the status of this case does not preclude the applicant from pursuing subsequent phases of the permitting process.

Staff received Application 247-21-000508-SP on May 21, 2021; Staff issued an administrative decision on September 9, 2021, approving the proposed development with conditions. Appeal 247-21-000849-A was filed by Annunziata Gould September 21, 2021. A hearing before the Deschutes

County Hearings Officer Gregory Frank was held November 4, 2021. The Hearings Officer Decision was issued December 21, 2021, responding to the grounds for appeal, modifying the staff report, and approving the proposed development. Annunziata Gould provided an appeal of the Hearings Officer decision December 30, 2021.

Figure 1 - Area Subject to Site Plan Review



II. HEARINGS OFFICER DECISION

A public hearing was held November 4, 2021; additional argument and evidence was provided during the open record period.

The Hearings Officer remand decision concludes the following:

IV. DECISION

- 1. Appellant's appeal of the Staff Decision is denied; and

- 2. *The Staff Findings and Decision (247-21-000553-MC¹) is affirmed excepting as modified below:*
 - a. *FMP Conditions 3, 8, 9, 11, 13, 14A, 14B, 15, 24, 30 and 37 are "satisfied;" and*
 - b. *Condition 28 correctly states: See conditions # 38 and #39; and*
 - c. *Delete: Staff Decision Condition C.*

III. APPEAL

The appellant, Annunziata Gould provide a statement of reasons for the appeal, noting the following:

- 1. The proposed Site Plan is inextricably linked with the review of Phase A-1, the approval of which is on appeal before LUBA;
- 2. Lot of Record;
- 3. Final Master Plan Conditions 10 and 38;
- 4. Phase A-1 Condition 17;
- 5. Final Master Plan Condition 21;
- 6. Final Master Plan Condition 28 and relatedly, Conditions 38 and 39;
- 7. Final Master Plan Condition 38;
- 8. Water Rights;
- 9. DCC 18.113.060;
- 10. Applicant's requested "correction" #1;
- 11. Applicant's requested "correction" #2;
- 12. Conclusions and decision.

The appellant requests the Board hear this matter to review and reverse the Hearings Officer remand decision. The appellant requests a de novo hearing before the Board.

IV. BOARD OPTIONS

There are two versions of Order No. 2022-002 attached to this memo, one to hear the appeal and one to decline to hear the appeal. In determining whether to hear an appeal, the Board may consider only:

- 1. The record developed before the Hearings Officer;
- 2. The notice of appeal; and
- 3. Recommendation of staff²

In addition, if the Board decides to hear the appeal, it may consider providing time limits for public testimony.

¹ Staff notes a scrivener's error that this decision is limited to the 508-SP file, not the 553-MC file, heard the same evening by the same Hearings Officer.

² Deschutes County Code (DCC) 22.32.035(B) and (D)

Reasons not to hear:

- The Hearings Officer’s decision is reasoned, well written, and could be supported, as the record exists today on appeal to LUBA.
- Statutory remand timelines require a final local decision by February 12, 2022, leaving very little time for the Board to sufficiently hear, deliberate, and decide upon the matter.
- The applicant agrees with the Hearings Officer’s decision and thus requests that the Board not hear the appeal.

Reasons to hear:

- The Board may want to take testimony and make interpretations relating to the Hearings Officer’s decision.
- The appellant recommends the Board hear this matter.

If the Board chooses to hear this matter, the appellant requests the hearing be heard de novo. The applicant has not stated whether they would like the hearing before the Board be heard de novo, limited de novo, or on the record. Under DCC 22.32.027(B)(3) the Board may choose to hear a matter de novo at their sole discretion.

If the Board decides that the Hearings Officer’s remand decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use applications becomes final upon the mailing of the Board’s decision to decline review.

V. STAFF RECOMMENDATION

Staff recommends the Board not hear this appeal because staff believes that the appellants were able to present all relevant evidence at the hearing before the Hearings Officer. Staff agrees with the Hearings Officer’s analysis and decision. Staff also notes that there is not adequate time in the 150-day remand review clock.

VI. 150-DAY LAND USE CLOCK

The County must take final action on this application by February 12, 2022.

VII. RECORD

The record for appeal File 247-21-00115-A (247-21-000849-A and 247-21-000508-SP) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-21-001115-appeal-hearings-officer-decision-247-21-000849-247-21-000508-sp>

Attachments:

Document	Item No.
Order No 2022-002_Accept_1115-A	1
Order No 2022-002_Decline_1115-A	2

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File Nos. 247-21- * ORDER NO. 2022-002
001115-A, 247-21-849-A, 247-21-508-SP

WHEREAS on May 21, 2021, Central Land and Cattle Co., LLC initiated 247-21-000508-SP with a new land use application; and

WHEREAS, on September 9, 2021, an administrative decision was issued by Deschutes County Community Development Department approving the proposed development with conditions; and

WHEREAS, on September 21, 2021, appeal 247-21-000849-A was submitted by Annunziata Gould, represented by Jeffrey Kleinman; and

WHEREAS, on November 4, 2021, a public hearing was held at 6:00pm in the Barnes and Sawyer Meeting Room and by Zoom for the Deschutes County Hearings Officer review of 247-21-000508-SP and 247-21-000849-A; and

WHEREAS, on December 21, 2021, the Deschutes County Hearings Officer approved Application No. 247-21-000508-SP; and

WHEREAS, on December 30, 2021, Annunziata Gould, the Appellant, appealed (File No. 247-21-001115-A) the Deschutes County Hearings Officer’s Decision on Files 247-21-000849-A and 247-21-000508-SP; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officers’ decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

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

Section 1. That it will hear on appeal application 247-21-001115-A, 849-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for file nos. 247-21-001115-A, 849-A, 508-SP as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-001115-appeal-hearings-officer-decision-247-21-000849-247-21-000508-sp>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board’s official repository for the record in this matter.

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, Chair

ATTEST:

PHIL CHANG, Vice Chair

Recording Secretary

PATTI ADAIR, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying Review of Hearings *
Officer’s Decision in File Nos. 247-21- * ORDER NO. 2022-002
001115-A, 247-21-000849-A, and 247-21-
000508-SP.

WHEREAS on May 21, 2021, Central Land and Cattle Co., LLC initiated 247-21-000508-SP with a new land use application; and

WHEREAS, on September 9, 2021, an administrative decision was issued by Deschutes County Community Development Department approving the proposed development with conditions; and

WHEREAS, on September 21, 2021, appeal 247-21-000849-A was submitted by Annunziata Gould, represented by Jeffrey Kleinman; and

WHEREAS, on November 4, 2021, a public hearing was held at 6:00pm in the Barnes and Sawyer Meeting Room and by Zoom for the Deschutes County Hearings Officer review of 247-21-000508-SP and 247-21-000849-A; and

WHEREAS, on December 21, 2021, the Deschutes County Hearings Officer approved Application No. 247-21-000508-SP; and

WHEREAS, on December 30, 2021, Annunziata Gould, the Appellant, appealed the Deschutes County Hearings Officer’s Decision on Files 247-21-000849-A 247-21-000508-SP (Appeal File No. 247-21-001115-A) the; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officers’ decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

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

ORDER NO. 2022-002

Section 1. That it will not hear on appeal application 247-21-001115-A, 849-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. Pursuant to DCC 22.32.015, the County shall refund any portion of the appeal fee not yet spent processing the subject application. If the matter is further appealed to the Land Use Board of Appeals and the County is required to prepare a transcript of the hearing before the Hearings Officer, the refund shall be further reduced by an amount equal to the cost incurred by the County to prepare such a transcript.

Section 3. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for file nos. 247-21-001115-A, 849-A, 508-SP as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-001115-appeal-hearings-officer-decision-247-21-000849-247-21-000508-sp>

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, Chair

PHIL CHANG, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner