



## MADRAS REDEVELOPMENT COMMISSION

125 SW "E" Street Madras, OR 97741  
Phone: 541-475-2344 Fax: 541-475-7061

### Agenda

City Hall  
Council Chambers

April 6, 2016  
5:30 P.M.

1. Call to Order
  
2. Consent Agenda
  - A. Adoption of Agenda
  - B. February 3, 2016 MRC Meeting Minutes
  - C. March 2, 2016 MRC Meeting Minutes
  - D. Approval of April 2016 Vouchers
  
3. Visitors Comments:
  
4. Approval of Modified Spotted Frog Letter from the MRC

Nicholas Snead, Community Development Director
  
5. Report on Procurement of Hanging Flower Baskets for US Highway 97/J Street Decorative Light Poles

Nicholas Snead, Community Development Director
  
6. MRC Budget Resolution No. 2016-02

Brandie McNamee, Finance Director  
Nicholas Snead, Community Development Director
  
7. Consideration of MRC and David Potter Urban Renewal Line of Credit Loan Agreement

Nicholas Snead, Community Development Director  
Gus Burril, City Administrator

8. Report and Discussion on Contract Services for Commercial Development Recruitment  
Nicholas Snead, Community Development Director
  
9. Annual Filing Deadline for Oregon Government Ethics Commission's Statement of Economic Interest  
Nicholas Snead, Community Development Director
  
10. Distribution of Final Urban Renewal Action Plan  
Nicholas Snead, Community Development Director
  
11. Additional Discussion
  
12. Adjourn

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the above referenced meeting; however, the agenda does not limit the ability of the Madras Redevelopment Commission to consider additional subjects. Meetings are subject to cancellation without notice. This meeting is open to the public and interested citizens are invited to attend. This is an open meeting under Oregon Revised Statutes, not a community forum; audience participation is at the discretion of the Madras Redevelopment Commission. **Anyone wishing to address the Commission will need to register prior to the meeting.** The meeting will be audio taped; minutes of this and all public meetings are available for review at the Madras City Hall. The meeting place is handicapped accessible; those needing assistance please contact the City of Madras Community Development two (2) days in advance of the meeting.

City of Madras  
Madras Redevelopment Commission  
Special Meeting Minutes  
February 3, 2016

**I. Call to Order**

The Madras Redevelopment Commission meeting was called to order by Chair, Doug Lofting at 5:30 p.m. on Wednesday February 3, 2016 in the Madras City Council Chambers.

**Members in Attendance:**

Commissioner Chuck Schmidt  
Commissioner Royce Embanks  
Commissioner Tom Brown  
Commissioner Don Reeder

**Members Absent Were:**

Commissioner Blanca Reynoso  
Commissioner Doeshia Jacobs  
Chair Doug Lofting  
There are two Membership vacancies.

**Staff Members in Attendance:**

Nicholas Snead, Community Development Director  
Gus Burrell, City Administrator  
Brandie McNamee, Finance Director  
Jeff Hurd, Public Works Director  
Michele Quinn, Community Development Administrative Assistant

**II. Consent Agenda**

**A. Adoption of Agenda**

**A MOTION WAS MADE BY COMMISSIONER ROYCE EMBANKS TO APPROVE THE CONSENT AGENDA. THE MOTION WAS SECONDED BY COMMISSIONER CHUCK SCHMIDT AND PASSED UNANIMOUSLY.**

**III. Visitors Comments**

None

**IV. Review and Approval of Final Urban Renewal Action Plan**

Community Development Director Nicholas Snead Tonight, staff presents you the final Urban Renewal Action Plan. Staff has worked with EcoNorthwest to make the changes from the last meeting. At this time staff recommends that you take formal action to approve the plan. City Council will review the plan in late February and provide concurrence.

**A MOTION WAS MADE BY COMMISSIONER DON REEDER TO APPROVE URBAN RENEWAL ACTION PLAN THE MOTION WAS SECONDED BY COMMISSIONER CHUCK SCHMIDT AND PASSED UNANMOUSLY.**

Community Development Director Nicholas Snead When we scoped this project the fundamental need was to understand what kind of retail needs we need in the community. I think the realtors would like this information.

Commissioner Royce Embanks The demographic information is priceless it will be good for when we are making these decisions.

Commissioner Tom Brown One thing I would like to see broken down is the perception of the schools so we can see what people are looking for.

Community Development Director Nicholas Snead We only have the data that was collected by the questions that we asked.

Commissioner Royce Embanks It might be appropriate for the school system to do the study instead of the City.

Community Development Director Nicholas Snead I have notified the Superintendent that we have the results of the survey. Staff will be meeting with him in the coming weeks.

Commissioner Chuck Schmidt What is the time frame on this plan, ten years?

Community Development Director Nicholas Snead Ten years or could be twenty, but I don't see it being more than twelve.

Commissioner Don Reeder This plan should be updated every five years because things change.

Community Development Director Nicholas Snead Good point Commissioner Reeder, staff and the Commission should look at this plan every five years.

**V. Regional System Development Charges (SDC) Comparison**

Public Works Director Jeff Hurd Nick asked me to put together a SDC comparison of the local neighboring cities. The City has five types of SDC water, sewer, parks, transportation, and stormwater.

Jeff Hurd explained to the Commission how SDC's work and what they are used for and how they are calculated. Jeff also explained the trip generation and how it is calculated. Our trip rate is lower than what is recommended to use, it is about 20% less. Jeff explained to the Commission the water SDC and where it came from. Jeff continued to explain the wastewater EDU and the SDC. The EDU table comparison is per household. It is easier to compare one to one.

Commissioner Chuck Schmidt Why is our wastewater higher than Redmond?

City Administrator Gus Burril The number of people per mile and how often they have to update.

Commissioner Royce Embanks Could topography in the ground make a difference?

Commissioner Don Reeder How do you measure an EDU?

Commissioner Royce Embanks Comparing the cities is like comparing apples to oranges if you don't know their methodology.

Public Works Director Jeff Hurd We all use the same number for peak hour except for Bend they have done a study and apply their own numbers. Jeff explained to the Commission the peak hour trips and how they can be variable by what use was there prior.

Commissioner Royce Embanks So it will change if you build where there is something already on the land and how the existing credit works.

Public Works Director Jeff Hurd Showed comparisons between all the different cities, if you were to build a house on a vacant lot. Jeff also showed the difference between medical, light industrial, and a lumber store.

Commissioner Chuck Schmidt How do you qualify any SDC to an actual number and look into the future? Is there a way to quantify the number to make some sense when you are talking to someone that might want to build?

Public Works Director Jeff Hurd When we do the methodology that is where we get those numbers. The J Street and City View projects were funded by SDC's. If we are not generating any SDC's we are not building any capital improvements.

The Commission continued to discuss the SDC charges and how they are created and what changes them and how to forecast them.

## **VI. Discussion of FY 2016-17 Investment Scenarios**

Community Development Director Nicholas Snead This evening we would like to have a discussion and get some feedback from you on the 2016-17 budget.

City Administrator Gus Burril We have three scenarios for the Commission to look at and what will happen with the line of credit. The consultant would like to see us get our fund balance up to one hundred and fifty thousand dollars as soon as possible.

The Commission discussed how much money to put in the sidewalk program and how much they should have on hand for blight, and the façade program.

Finance Director Brandie McNamee explained to the Commission if you maintain the seventy thousand your fund balance stays the same, but your debt obligations grows.



City of Madras  
Madras Redevelopment Commission  
Special Meeting Minutes  
February 3, 2016

**I. Call to Order**

The Madras Redevelopment Commission meeting was called to order by Chair, Doug Lofting at 5:30 p.m. on Wednesday March 2, 2016 in the Madras City Council Chambers.

**Members in Attendance:**

Commissioner Royce Embanks  
Commissioner Tom Brown  
Commissioner Don Reeder  
Commissioner Blanca Reynoso  
Chair Doug Lofting

**Members Absent Were:**

Commissioner Chuck Schmidt  
Commissioner Doeshia Jacobs  
There are two Membership vacancies.

**Staff Members in Attendance:**

Nicholas Snead, Community Development Director  
Gus Burrell, City Administrator  
Brandie McNamee, Finance Director  
Michele Quinn, Community Development Administrative Assistant

**II. Consent Agenda**

- A. Adoption of Agenda**
- B. November 14, 2015 MRC Meeting Minutes**
- C. December 9, 2015 Meeting Minutes**
- D. January 20, 2016 MRC Meeting Minutes**
- E. Approval of March 2016 Vouchers**

**A MOTION WAS MADE BY COMMISSIONER TOM BROWN TO APPROVE THE CONSENT AGENDA AS AMENDED. THE MOTION WAS SECONDED BY COMMISSIONER ROYCE EMBANKS AND PASSED UNANIMOUSLY.**

**III. Visitors Comments**

None

**IV. Change in the Style of Minutes**

Community Development Director Snead told the Commission that the City has decided to change the style of minutes we are taking. There will be more summarizing and the meeting recordings will be available on the City website. If you don't not have your microphone on you will not be heard.

Community Development Assistant Michele Quinn As long as the Commission remembers to have their microphones on we will be able to capture the meeting on the recording.

**V. MRC Annual ORS 457.460 Report, Detailing the Financial Activity of the Urban Renewal District**

Finance Director Brandie McNamee explained to the Commission that this is the first year the 457 report has been presented to the MRC's Commission. The MRC's report is very slim compared to other jurisdictions. We decided this year is a good time to enhance the report. With the MRC URAP update from EcoNorthwest and we also did a subcontract with Elaine Howard. Elaine brought it to our attention that in past years we did not disclose the impact the MRC has on taxing districts which is required.

Brandie McNamee went over the items that were funded and touched on the maximum indebtedness and the estimated revenues. The estimated revenues were taken as of December 31, 2015 we have to do a cutoff date. Not disclosed in our audit report is the impact on the taxing districts. Brandie went through the impacts to the taxing district.

Community Development Director Nicholas Snead told the Commission that we will have this on the MRC website for public access.

Chair Doug Lofting asked by expanding this report could it help us in our grant seeking?

**VI. MRC Fund Balance Presentation**

Finance Director Brandie McNamee went over her presentation on Fund Balance and explained fund balance to the Commission. The definition of fund balance is the difference between asset and liabilities. Fund balance is also required by statute to be disclosed as reserved or unreserved. If you look in our audit report 100% of our fund balance is reserved. Brandie explained that fund balance is the number one universal measure that you can be scored against other agencies. Your fund balance is the health of your organization.

Brandie went through the statement of revenue and expensed and touched on the total revenues and expenses. Brandie explained how fund balance rolls over from year to year. The majority of the fund balance is wrapped up in the properties that are held for redevelopment. Brandie went over receivables, accounts payable, deferred revenues and true cash. Brandie explained to the Commission how to get to your total equity of the MRC. Brandie further explained how to get to your net position the MRC is in a negative net position.

Brandie explained to the Commission what does negative net position mean to the MRC. The MRC owes more than what you are worth, but under Oregon statues it is permitted for an Urban Renewal District to have a negative net position. If you look at other agencies in the state they do have negative net position. Over time increases and decreases in net position that is your primary indicator weather or not

the MRC is improving or deteriorating. Based on the 2002 report it said that it was a goal to have a life of 2027 now that goal is out to 2037. Due to net position and the incoming revenue we are not going to be able to pay back our obligations until 2037.

Community Development Director Nicholas Snead explained to the Commission that there are two ways to establish an Urban Renewal District. You can establish a date and time certain that the district goes away, or you can establish a maximum indebtedness once they borrow that amount the district closes. We chose the latter which is why the date is being pushed out, because of our tax collection rate is changing.

Finance Director Brandie McNamee went over a worst case scenario with the Commission and the current debt payback. Brandie went over ending cash balance and how new development will increase the TIF. Fund balance is the health of the MRC it is the equity. Many jurisdictions establish fund balance policies to try and hit targets from year to year. Ending cash is a component of fund balance; fund balance is ultimately what leads into your net position.

Chair Doug Lofting Commissioners is there any concerns or questions for Brandie?

There was a discussion on creating a fund balance policy for the MRC.

**VII. Authorization of Intent to Proceed with Purchasing Flowers from Fessler Nursery and Brackets for Light Poles from North Coast Electric Company for the US Highway 97/J Street decorative Light Poles.**

Community Development Director Nicholas Snead explained to the Commission that the US Highway 97 J Street project was constructed the new street lights contained irrigation so we can hang flower baskets. Staff researched the cost to put out the 31 hanging baskets. We would like to put out the hanging baskets at the same time we put out the flowers in the downtown area. Staff solicited quotes for the steal brackets and also the hanging flower pots. Staff would like to bring back a budget resolution to you in April to allow for the expenses for the flower baskets and the brackets.

The Commission discussed the time line and can the company meet the time requirement. The question was asked what does an informal quote mean?

Community Development Director Nicholas Snead explained to the Commission the City's procurement policy due to the cost of the items being below the threshold we do not need to formally solicit bids for this.

There was a discussion on where the low bid for the flowers are located and can the Commission go with the higher local company.

Community Development Director Nicholas Snead told the Commission that staff attempted to contact local companies and was unsuccessful. Staff is recommending going with the lowest cost.

City Administrator Gus Burri we will need to check on what we can do if we are not going with the low bid.

Community Development Director Nicholas Snead said the Commission would need to give guidance to staff that you want to consider a local bid at a higher cost. Then direct staff to research the legal circumstances that would allow or not allow that to occur.

The Commission talked about shipping fee and the different in price between the two bids. We should be frugal but we should also buy local.

Community Development Director Nicholas Snead told the Commission that Fessler Nursery has been the provider of the downtown flowers for the past three years for the two larger pots.

The Commission asked Karen of Madras Garden Depot if her flowers will also come out of the Willamette Valley?

Karen McCarthy Madras Garden Depot told the Commission that 25% are grown from seed and the rest are grown from plugs that we bring in from the valley. I should note that Fessler Nursery is a national distributor of plugs for eight different large corporate seed companies.

Chair Doug Lofting asked Karen McCarthy from Madras Garden Depot if she could sharpen her quote.

Karen McCarthy I do have some questions I know that Fessler has been awarded the contract for the flower pots. Are they getting the pot back every year that is something I was not clear on? The cost of the pots as a small nursery buying whole sale is \$4.64 each and the soil cost me \$4.20. The flowers themselves cost .75 to .90 cents each. The hangers cost \$12.75 my cost and I have heating and staff labor.

Commissioner Blanca Reynoso as a business owner I have to bump my prices up a little higher than the markets in Redmond or Bend just to stay open.

Commissioner Tom Brown asked if we have an answer on the pots?

Community Development Director Nicholas Snead said yes we have all of our pots at Public Works it is not cost effective for us to return them.

Chair Doug Lofting asked Karen if you use the pots we have would that bring down your price?

Karen McCarthy answered that would be great you can reuse the pots it would probably take \$5.00 off the bid.

Commissioner Tom Brown asked about quality the years we have been getting the flowers from Fessler Nursery they have been gorgeous can you duplicate.

Karen McCarty answered yes, but anything can happen.

Chair Doug Lofting asked Karen if she can meet the deadline. I believe the consensus of the Commission is that we have staff look into going with the local business instead of going with the low quote.

Community Development Director Nicholas Snead told the Commission that we will contact the City Attorney's office and inform them of our circumstance with the quotes. However the Commission would like to purchase from the higher local business could that be legally justified. If they can then we would work with them and if not we would purchase from Fessler Nursery. Regardless we would report back to the Commission in April on the finding and the ultimate selection.

Commissioner Don Reeder asked if we could save the money and not consult the City Attorney and have staff figure out the answer?

Community Development Director Nicholas Snead answered I am unaware of the public procurement laws so I am at the mercy of the City Attorney.

Commissioner Don Reeder commented that we don't want to spend a lot of money on the attorney fees in that respect it could be quite a bit.

City Administrator Gus Burril commented if that is the board's desire and we don't have legal reason against it that is the motion that can be made.

Karen McCarthy commented if she needs to officially state it I can take \$5.00 of the cost if the City wants to supply the containers. It would bring the cost to \$75.00 per each hanging basket.

Chair Doug Lofting commented that now the difference would be around \$250.00 between Fessler and going local. I am also concerned about having a large capital outlie on legal advice. I still agree with the City that we need to check and make sure we are not breaking the law.

Commissioner Don Reeder commented that damages would only be \$250.00 between and if you have a right to throw out bids if it is under a certain amount. So let them sue us for \$250.00.

City Administrator Gus Burril said that it is probably low risk as long as we have your direction we will double check and we will follow your course of action. We would only stop it if we found that there is something prohibiting it.

**A MOTION WAS MADE BY COMMISSIONER TOM BROWN TO SELECT FESSLER NURSERY AS THE PROVIDER FOR THE HANGING FLOWERS, USLESS THE CITY ATTORNEY CAN DETERMINE WE CAN PURCHASE FROM MADRAS GARDEN DEPOT AT A HIGHER COST FOR A LOCAL BUSINESS. THE MOTION WAS SECONDED BY COMMISSIONER BLANCA REYNOSO. 4/1 COMMISSIONERS EMBANKS, REYONOSO, BROWN AND LOFTING IN FAVOR OF THE MOITION AND COMMISSIONER REEDER OBSTAINING DUE TO CONFLICT.**

**VIII. Consideration of MRC and David Potter Urban Renewal Line of Credit Loan Agreement**

Community Development Director Nicholas Snead informed the Commission that the City Attorney provided a title report provided by AmeriTitle. Staff became aware of unpaid property taxes and at this time would recommend that the Commission not take

action on the line of credit agreement documents. There is a potential risk that if the property sells the Commission will not be paid back.

City Administrator Gus Burrell informed the Commission that the property owner has invested some of his own money. The Fire Department and there is a willingness to burn to reduce the overall amount of material to remove. We want to bring to the board that the loan may be at risk due to the tax situation.

The Commission had a discussion on the value of the bare property and to look at the foreclosure and when it will occur. Could the MRC purchase the property for the amount of taxes owed. Could we use the adjoining property as collateral? If we purchased the property we would still have the expense of getting the property cleaned up.

Chair Doug Lofting said this sheds a light on what we were thinking and working toward getting the blight removed. We would be rolling the dice on getting our money back. I want the blight removed, because it could start the catalytic affect that others in the community that have blight see us working towards getting this taken care of.

Community Development Director Nicholas Snead responded saying that he agrees and that is why I am recommending not taking action this evening.

Chair Doug Lofting said that the City is in the position to negotiate with Mr. Potter. This property will most likely be auctioned off by the County. So you could negotiate with Mr. Potter the MRC wants the blight removed.

#### **IX. Discussion on Contract services for Commercial Recruitment**

Community Development Director Nicholas Snead told the Commission that staff has been researching options for contracting with a company to help recruit new development within the district. There are two general types of firms that provide two different types of services. One type of firm that provides services related to national retailers. The other type of service would be a company that works with non-national retailers.

Director Snead explained the different types of companies what their costs would be and what type of services you would be provided. Is the MRC interested in this service if so which one local or national or both?

The Commission discussed the need for having someone local and knows the dynamics of the community especially looking at bringing in a brewery. We could be on the radar screen for something national but we need to sell ourselves. We need to look for options that don't cost a lot but they are willing to work for us.

Community Development Director Nicholas Snead told the Commission that staff has limitations on what we can do in the recruitment. I would like to know if there is interest from national brands. That is why I am suggesting a one year term on the national recruitment side. I would like to bring back the actual cost to you at your meeting in April. The local person we would select by qualification to make sure you are getting a qualified person.

Chair Doug Lofting asked the Commissioners should we have staff look into this?



DISBURSEMENTS LIST - February 24, 2016- March 25, 2016

Madras Redevelopment Commission  
Review and Approval

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Amount</u>
3/9/2016	Community Newspaper	MRC Commission Plan	418.50
3/9/2016	Community Newspaper	Supplemental Budget	40.69
3/11/2016	Bryant, Lovlien, Jarvis	Loan Agreement: David Potter	640.00
3/11/2016	Bryant, Lovlien, Jarvis	Miscellaneous Matters	48.00
<b>Total</b>			<b>\$ 1,147.19</b>

\*\* Committee Review and approval of checks cut in the previous month\*\*

Purchase Date

Vendor Name

Item Description

Post Date

1099 reporting

Item GL Combination

Item Total

Receipt Status

Receipt Comment

Purchase Date	Vendor Name	Item Description	Item GL Combination	Item Total	Receipt Status	Receipt Comment
02/23/2016	BENDBROADBAND BEND, OR	BEND BROADBAND - Airport Internet Services (March)	509-090-520-3003-	91.90		
03/09/2016	MADRAS SANITARY - OFFICE	MADRAS SANITARY - Airport Dump Services (Feb)	509-090-520-3003-	214.76		
03/11/2016	BRYANT, LOVLIN & JARV	BRYANT, LOV & JARV - Loan Agreement: David Potter	701-701-520-2102-	640.00		
03/11/2016	BRYANT, LOVLIN & JARV	BRYANT, LOV & JARV - Misc. Matters	701-701-520-2102-	48.00		
03/09/2016	COMMUNITY NEWSPAPERS	COMMUNITY NEWSPAPERS - MRC Commission Plan	701-701-520-2401-	418.50		
03/09/2016	COMMUNITY NEWSPAPERS	COMMUNITY NEWSPAPERS - Supplemental Budget	802-101-520-1002-	40.69		
03/09/2016	COMMUNITY NEWSPAPERS	COMMUNITY NEWSPAPERS - 2016 Chamber Directory Ad	802-101-520-1002-	275.00		
03/21/2016	CENTRALOREGONEWAD	CENTRALOREGONEWAD - Finance Director Recruitment	802-101-520-1002-	285.00	Yes	
03/21/2016	OMFOA	OMFOA - Finance Director Job Advertisement	802-101-520-1002-	75.00		
03/23/2016	THE BULLETIN-ADV	THE BULLETIN- Finance Director Recruitment	802-101-520-1002-	394.00	Yes	
03/23/2016	OREGON SOCIETY CPAS	OREGON SOCIETY CPAS - Finance Director Job Advertisement	802-101-520-1002-	150.00		



## Madras Redevelopment Commission

125 SW "E" Street, Madras, Oregon, 97741

Phone: 541-475-2344 Fax: 541-475-7061

March 3, 2016

Senator Jeff Merkley  
United States Senate

**Re: Madras Redevelopment Commission/Oregon Spotted Frog**

Dear Senator Merkley:

I am the Chairman of the Madras Redevelopment Commission (MRC), an Urban Renewal District. The MRC was established to enhance and revitalize the City of Madras by increasing livability and commercial activity.

Jefferson County is a majority-minority county and has one of the lowest per capita income levels in the state. One of the main functions of the MRC is to aid in providing employment and business opportunities to hard working low and middle income residents, thus improving the status of Jefferson County overall. Prior to the Spotted Frog litigation, the MRC employed a professional firm to determine the attainable needs for development and improvement of Madras and its economy. Plans currently include revitalization of the downtown Madras corridor and assistance in establishing needed businesses to boost the economy. For example, the MRC was instrumental in establishing the upscale Inn at the Cross Keys Station in Madras, which provides accommodations and conference rooms for domestic and international customers and potential customers of local industries. Developmental plans also currently include revitalization of the downtown Madras corridor.

However, if the plaintiffs in the Spotted Frog litigation prevail, the result would be devastating to the Madras and Jefferson County economy. Massive reallocation of water in the Wickiup Reservoir, would prevent Jefferson County farmers and ranchers (the crux of the Madras economy) from acquiring irrigation water necessary to sustain crops and grazing lands. Even a reduction in crop production would have serious adverse affects to the MRC's future developmental plans for Madras. Therefore, all developmental plans for Madras will at the least be severely hampered, but more likely rendered unobtainable. Therefore, independent funds well-spent on such developmental plans and self-improvement of the local economy will have been for naught.

Please take action to encourage the continuation of a collaborative effort toward water conservation in the Deschutes Basin, and to create a plan for funding of the North Unit Irrigation District to develop and improve the efficiency of its current water conservation and provision. These efforts are essential for the survival of Jefferson County.

Sincerely,

*/s/ Douglas Lofting*

DOUGLAS LOFTING  
Chairman, Madras Redevelopment Commission

cc: Kate Brown, Governor of the State of Oregon

H:\Kathy\NUID\SPOTTED FROG\tr to Sen Merkley-MRC.wpd



## Madras Redevelopment Commission

125 SW "E" Street, Madras, Oregon, 97741  
Phone: 541-475-2344 Fax: 541-475-7061

March 3, 2016

Representative Greg Walden  
US House of Representatives

**Re: Madras Redevelopment Commission/Oregon Spotted Frog**

Dear Representative Walden:

I am the Chairman of the Madras Redevelopment Commission (MRC), an Urban Renewal District. The MRC was established to enhance and revitalize the City of Madras by increasing livability and commercial activity.

Jefferson County is a majority-minority county and has one of the lowest per capita income levels in the state. One of the main functions of the MRC is to aid in providing employment and business opportunities to hard working low and middle income residents, thus improving the status of Jefferson County overall. Prior to the Spotted Frog litigation, the MRC employed a professional firm to determine the attainable needs for development and improvement of Madras and its economy. Plans currently include revitalization of the downtown Madras corridor and assistance in establishing needed businesses to boost the economy. For example, the MRC was instrumental in establishing the upscale Inn at the Cross Keys Station in Madras, which provides accommodations and conference rooms for domestic and international customers and potential customers of local industries. Developmental plans also currently include revitalization of the downtown Madras corridor.

However, if the plaintiffs in the Spotted Frog litigation prevail, the result would be devastating to the Madras and Jefferson County economy. Massive reallocation of water in the Wickiup Reservoir, would prevent Jefferson County farmers and ranchers (the crux of the Madras economy) from acquiring irrigation water necessary to sustain crops and grazing lands. Even a reduction in crop production would have serious adverse affects to the MRC's future developmental plans for Madras. Therefore, all developmental plans for Madras will at the least be severely hampered, but more likely rendered unobtainable. Therefore, independent funds well-spent on such developmental plans and self-improvement of the local economy will have been for naught.

Please take action to encourage the continuation of a collaborative effort toward water conservation in the Deschutes Basin, and to create a plan for funding of the North Unit Irrigation District to develop and improve the efficiency of its current water conservation and provision. These efforts are essential for the survival of Jefferson County.

Sincerely,

*/s/ Douglas Lofting*

DOUGLAS LOFTING  
Chairman, Madras Redevelopment Commission

cc: Kate Brown, Governor of the State of Oregon

H:\Kathy\NUID\SPOTTED FROGUltr to Rep Walden-MRC.wpd



# Madras Redevelopment Commission

125 SW "E" Street, Madras, Oregon, 97741

Phone: 541-475-2344 Fax: 541-475-7061

March 3, 2016

Senator Ron Wyden  
United States Senate

**Re: Madras Redevelopment Commission/Oregon Spotted Frog**

Dear Senator Wyden:

I am the Chairman of the Madras Redevelopment Commission (MRC), an Urban Renewal District. The MRC was established to enhance and revitalize the City of Madras by increasing livability and commercial activity.

Jefferson County is a majority-minority county and has one of the lowest per capita income levels in the state. One of the main functions of the MRC is to aid in providing employment and business opportunities to hard working low and middle income residents, thus improving the status of Jefferson County overall. Prior to the Spotted Frog litigation, the MRC employed a professional firm to determine the attainable needs for development and improvement of Madras and its economy. Plans currently include revitalization of the downtown Madras corridor and assistance in establishing needed businesses to boost the economy. For example, the MRC was instrumental in establishing the upscale Inn at the Cross Keys Station in Madras, which provides accommodations and conference rooms for domestic and international customers and potential customers of local industries. Developmental plans also currently include revitalization of the downtown Madras corridor.

However, if the plaintiffs in the Spotted Frog litigation prevail, the result would be devastating to the Madras and Jefferson County economy. Massive reallocation of water in the Wickiup Reservoir, would prevent Jefferson County farmers and ranchers (the crux of the Madras economy) from acquiring irrigation water necessary to sustain crops and grazing lands. Even a reduction in crop production would have serious adverse affects to the MRC's future developmental plans for Madras. Therefore, all developmental plans for Madras will at the least be severely hampered, but more likely rendered unobtainable. Therefore, independent funds well-spent on such developmental plans and self-improvement of the local economy will have been for naught.

Please take action to encourage the continuation of a collaborative effort toward water conservation in the Deschutes Basin, and to create a plan for funding of the North Unit Irrigation District to develop and improve the efficiency of its current water conservation and provision. These efforts are essential for the survival of Jefferson County.

Sincerely,

*/s/ Douglas Lofting*

DOUGLAS LOFTING  
Chairman, Madras Redevelopment Commission

cc: Kate Brown, Governor of the State of Oregon

**CITY OF MADRAS**  
**Request for Madras Redevelopment Commission Action**

---

**Date Submitted:** March 31, 2016  
**Agenda Date Requested:** April 6, 2016  
**To:** Madras Redevelopment Commission  
**From:** Nicholas Snead, Community Development Director  
**Subject:** Report on Procurement of Hanging Flower Baskets for US Highway 97/J Street Decorative Light Poles.

**TYPE OF ACTION REQUESTED: (Check One)**

- |                                     |                                |                          |                  |
|-------------------------------------|--------------------------------|--------------------------|------------------|
| <input type="checkbox"/>            | <b>Resolution</b>              | <input type="checkbox"/> | <b>Ordinance</b> |
| <input type="checkbox"/>            | <b>Formal Action/Motion</b>    | <input type="checkbox"/> | <b>Other</b>     |
| <input checked="" type="checkbox"/> | <b>No Action - Report Only</b> |                          |                  |

**OVERVIEW:**

The Madras Redevelopment Commission (MRC) desired to purchase 31 hanging flower baskets to install on the new decorative light poles installed in the US Highway 87/J Street Project. At the March 2, 2016 MRC meeting, the MRC wanted to purchase flowers for the street lights from a local business at a higher cost solely because it is a local business instead of purchasing the flowers from the business that provided the lowest quote. At the March 2, 2016 Madras Redevelopment Commission (MRC) meeting the MRC took formal action to, “select Fessler Nursery as the provider for the hanging flowers, unless the City Attorney could determine that the MRC could purchase from Madras Garden Depot at a higher cost from a local business.” At the March 2, 2016 meeting staff noted that a report on the City Attorney’s determination and recommendation would be provided to the MRC at the April 2, 2016 meeting. City staff consulted the City Attorneys (Jeremy Green and Paul Taylor) about the MRC’s desire and requested guidance for the procurement. This staff report identifies the applicable State and City regulations that apply to this type of procurement, analyzes the applicable regulations, and concludes what action the MRC is to take for procuring the hanging flower baskets.

**DISCUSSION:**

Below are the applicable State and City regulations that apply to MRC's procurement of the hanging flower baskets. Staff has underlined portions of the regulations below for emphasis purposes.

**Oregon Revised Statutes**

**Chapter 279A – Public Contracting – General Provisions**

**ORS 279A.015 Policy.** It is the policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting system should:

**(2) Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.**

**(3)** Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within this state.

**(5) Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement.** In public procurement, as set out in ORS chapter 279B, meaningful competition may be obtained by evaluation of performance factors and other aspects of service and product quality, as well as pricing, in arriving at best value.

**Chapter 279B — Public Contracting - Public Procurements**

**279B.065 Small procurements.**

**(1) A contracting agency may award a procurement of goods or services that does not exceed \$10,000 in any manner the contracting agency deems practical or convenient, including by direct selection or award.** A contract awarded under this section may be amended to exceed \$10,000 only in accordance with rules adopted under ORS 279A.065.

**City of Madras**

**Public Contracting Rules & Procedures to the Public Contracting Code, Ordinance No. 808**

**Exhibit A—Public Contracting Rules and Procedures**

**D. Small Procurement (Under \$5,000).**

**(1) Public contracts under \$5,000 are not subject to competitive bidding requirements.** The Chief Procurement Officer or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the City.

**ANALYSIS:**

The Madras Redevelopment Commission (MRC) is subject to the provisions of ORS 279A, ORS 279B. The MRC is a subordinate and dependent public entity to the City of Madras. The MRC has not taken formal action to adopt specific procurement policies for itself that are separate from the City of Madras' procurement policies (i.e. Ordinance No. 808). Since the inception of the MRC, the MRC has followed the City's procurement policies identified in Ord. No. 808 for all procurements.

When the MRC is procuring goods or services, they are to, "*instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do*

*business with the government*” in accordance with ORS 279A.015(2). Additionally, any procurement by the MRC to be “*impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement*” as required by ORS 279A.015(5). In summary, any procurement by the MRC is to be ethical, fair dealing, honest, and have good faith compliance with these statutes.

Additionally, ORS 279B provides, “*a contracting agency may award a procurement of goods or services that does not exceed \$10,000 in any manner the contracting agency deems practical or convenient, including by direct selection or award.*” Specifically, City Ordinance No. 808, Exhibit A, Section D specifies that, “*public contracts under \$5,000 are not subject to competitive bidding*” and that the MRC is to “*make a reasonable effort to obtain competitive quotes in order to ensure the best value for the City.*” Not including the cost for the brackets that mount to the light pole for which the baskets hang from, staff estimated cost for the hanging flower baskets to be less than \$5,000 and therefore solicited quotes from five businesses that would reasonably be able to provide the hanging flower baskets to the MRC.

### **CONCLUSION:**

On March 2, 2016 City staff presented the results of the effort to obtain a quote from five companies that sell flowers. At this MRC meeting, the MRC discussed the desire to purchase from a local company who did not provide the lowest quote for the flowers. First, during the March 2, 2016 MRC meeting the MRC permitted a representative from one company to revise their quote. This is inconsistent with ORS 279A(2) & (5) as it unfairly and impartially allowed one business to revise their quote for the flowers and did not allow the other businesses to provide a revised quote, before taking formal action to determine which business to purchase the hanging flower baskets.

Additionally, based on ORS 279A, ORS 279B, and City Ordinance No. 808, for procurements less than \$5,000, there is no ability to purchase a good or service from a local business at a higher cost. Ordinance No. 808, Exhibit A, Section D, requires that the MRC to procure goods and services in a manner that provides the “best value”. With regard to the term “best value”, the City Attorney has determined:

1. The MRC may certainly interpret the meaning of the term “best value” under Exhibit A, Section D of Ordinance 808. In fact, the MRC has effectively done so when it has awarded contracts in the past under this section.
2. That the MRC has historically considered a variety of factors when determining what constitutes “best value” to the MRC. Factors have included, without limitation, cost, performance, and quality.

The City Attorney has opined that, when arriving at best value, relevant factors may include, without limitation, price, experience, expertise, quality, functionality, suitability, etc. Cost often is not the sole factor. Determining the best value requires an evaluation of all relevant factors. The City Attorney has also advised that, the MRC technically does not need to be involved in an award for products/services under \$5,000 (under Ordinance No. 808); now \$10,000 (under Ordinance 886).

Based on the guidance from the City Attorney, the analysis of the applicable State and City procurement regulations, and the related conclusions, the City Attorney has recommended that the MRC purchase the desired flowers from the business that provided the lowest cost quote. Fessler Nursery provided the lowest cost quote for the hanging flower baskets. Staff has followed the

guidance from the City Attorney and contacted Fessler Nursery and notified them that the MRC will purchase 31 hanging flower baskets from their company. Additionally, staff has contacted Madras Garden Depot and informed them of the City Attorney's guidance and that the MRC will not purchase the hanging flower baskets from them based on the State and City's procurement regulations.

**MADRAS REDEVELOPMENT COMMISSION**  
**Request for Commission Action**

---

**Date Submitted:** March 29, 2016

**Agenda Date Requested:** April 6, 2016

**To:** Madras Redevelopment Commission

**Through:** Nick Snead, Community Development Director

**From:** Brandie McNamee, Finance Director

**Subject:** **Proposed Budget Resolution No. 2016-02:**  
**A RESOLUTION AUTHORIZING AN INCREASE IN APPROPRIATION TO RECOGNIZE UNANTICIPATED REVENUES, AND EXPENSES, AND THE TRANSFER OF APPROPRIATIONS WITHIN FUNDS FOR FISCAL YEAR 2015-2016.**

TYPE OF ACTION REQUESTED:

Resolution

Ordinance

DESCRIPTION: This resolution changes the 2015-2016 Budget and keeps the Madras Redevelopment Commission in compliance with Oregon Budget Law.

STAFF ANALYSIS:

There are three ways in which to change appropriations after the Budget is adopted.

1. A transfer of appropriations decreases an appropriation and increases another. This is the simplest budget change allowed under Oregon Budget law. This does not increase the overall budget. This is approved by a City council resolution.
2. A supplemental budget of less than 10 percent of total appropriations within an individual fund follows a process similar to the transfer of appropriations.
3. A supplemental budget in excess of 10 percent of total appropriations requires a longer process. This process includes a notice in the paper and a public hearing.

This resolution addresses a transfer in appropriation from contingency to materials and services and special payments.

SUMMARY: See attached budget resolution for full details and descriptions of each budget adjustment needed to be in compliance with Oregon Budget Law.

RECOMMENDATION: Staff recommends the Commission to approve and adopt Resolution No. 2016-02, as proposed.

**RESOLUTION NO. MRC 2016-02**

**A RESOLUTION AUTHORIZING AN INCREASE IN APPROPRIATION TO RECOGNIZE UNANTICIPATED REVENUES, AND EXPENSES, AND THE TRANSFER OF APPROPRIATIONS WITHIN FUNDS FOR FISCAL YEAR 2015-2016.**

**WHEREAS**, in accordance with ORS 294.456 and 294.463, Madras Redevelopment Commission (MRC), the governing body of the Urban Renewal District of Madras, Oregon may transfer appropriations within funds for Fiscal Year 2014-2015 that were authorized by the MRC Board of Commissioners pursuant to Resolution No. 2015-05; and

**WHEREAS**, unanticipated revenues and expenditures were unknown at the time the budget was prepared and the Madras Redevelopment Commission of the City of Madras deems it advisable to adjust the Fiscal Year 2015-2016 appropriations to be in compliance with Oregon Budget Law;

**WHEREAS**, the proposed changes exceed 15% from contingency, thus a public hearing is needed under ORS 294.471, and a notice of a supplemental budget hearing was posted in the Madras Pioneer on March 30, 2016 to be in accordance with ORS 294.471 (3)(b);

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Madras Redevelopment Commission of the City of Madras as follows:

**SECTION 1:** Because of the circumstances stated below by fund level, the MRC Board of Commissioners of the Urban Renewal District of Madras determines that it is necessary to transfer and increase appropriations as follows for the 2015-2016 MRC Budget;

**SECTION 2:** The Finance Director is hereby authorized and directed to execute the following changes to appropriated budget amounts on behalf of the MRC:

<b>702-702</b>	<b>Adopted Budget</b>	<b>Increase</b>	<b>Decrease</b>	<b>Revised Budget</b>
<b>MRC- Reinvestment Fund</b>				
Contingency	25,000	-	11,000	14,000
Materials and Services	8,000	11,000	-	19,000

**REASON:** In order to purchase the hanging flower baskets for the US Highway 97/J Street Project, a budget resolution is needed to appropriate \$11,000. \$8,000 is for metal brackets holding the flowers, and \$3,000 for flowers for the new light pole arrangements.

<b>701-701</b>	<b>Adopted Budget</b>	<b>Increase</b>	<b>Decrease</b>	<b>Revised Budget</b>
<b>MRC- General Fund</b>				
Contingency	3,000	-	1,500	1,500
Special Payments	235,000	1,500	-	236,500

**REASON:** To support a paint grant of \$1,500 for a business property within the district.

**SECTION 3:** This resolution shall become effective on April 6, 2016.

**APPROVED** by the Madras Redevelopment Commission of the City of Madras and signed by the Chair this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Abstentions: \_\_\_\_\_  
Absent: \_\_\_\_\_  
Vacancies: \_\_\_\_\_

\_\_\_\_\_  
Doug Lofting, Board Chair

ATTEST:

\_\_\_\_\_  
Nicholas Snead, Community Development Director

**CITY OF MADRAS**  
**Request for Madras Redevelopment Commission Action**

---

**Date Submitted:** March 31, 2016  
**Agenda Date Requested:** April 6, 2016  
**To:** Madras Redevelopment Commission  
**From:** Nicholas Snead, Community Development Director  
**Subject:** Consideration of MRC and David Potter Urban Renewal Line of Credit Loan Agreement.

**TYPE OF ACTION REQUESTED: (Check One)**

- |   |                                    |
|---|------------------------------------|
| <input type="checkbox"/> Resolution                             | <input type="checkbox"/> Ordinance |
| <input checked="" type="checkbox"/> <b>Formal Action/Motion</b> | <input type="checkbox"/> Other     |
| <input type="checkbox"/> No Action - Report Only                |                                    |

**OVERVIEW:**

On October 21, 2015 the Madras Redevelopment Commission (MRC) authorized staff to move forward to work with the property owner, David Potter who owns tax lots 102 and 103 on Jefferson County Assessor's Map No. 11-13-1CB, to develop an agreement between the MRC and Mr. Potter fund the removal of the single family dwelling and detached garage on the properties. These structures are considered to be derelict buildings and blight in accordance with the City's Nuisance Ordinance and Urban Renewal Plan, respectively. In response, the City staff and the City Attorney have drafted the loan documents (Attachments A-C) for the MRC to review and consider approving.

**DISCUSSION:**

At the March 2, 2016 MRC meeting, staff expressed concern for the unpaid taxes that were shown on the Preliminary Title Report (Attachment D) and requested the MRC to not take formal action to approve the loan documents as presented as staff needed additional time to research the impacts of the unpaid taxes. The Commissioners at the March 2, 2016 meeting briefly discussed purchasing the properties from the property owner. Staff has researched that option and has does recommend that the MRC not purchase the properties for the following reasons:

1. The goal of the project is to remove the unsightly and unsafe building
2. The MRC does not need to purchase the properties to remove the structures
3. The cost to purchase the properties and remove the structures would likely exceed the amount of unpaid taxes for the properties (\$90,797.05) as shown in Attachments E and F.

As identified in Attachment A, the MRC is providing up to a \$9,000 grant to Mr. Potter to remove the structures on the property. The risk to the MRC is that the loan principal and interest (i.e. \$9,000 + 4% annual interest) would not be repaid to the MRC. Comparatively, the cost to purchase the properties would exceed to total of the unpaid taxes (\$90,797.05) due to the likelihood that the property owner would sell the properties at an amount that would exceed the amount of the unpaid taxes and the MRC would additionally need to pay for the removal of the structures on the property. As such, staff recommends that the MRC enter into an agreement with Mr. Potter to remove the structures on the properties. In doing so, it would efficiently utilize limited MRC resources to remove blight from the District.

**SUMMARY:**

**A. Fiscal Impact:** \$18,000.

**B. Funding Source:**

- i. MRC General Fund, Special Payments, Grants-Businesses  
Line Item: 701-701-545-6110
- ii. MRC Reinvestment Fund, Special Payments, Loan Distributions  
Line Item: 702-702-545-6200

**D. Supporting Documentation:**

Attachment A: Line of Credit Loan Agreement  
Attachment B: Line of Credit Promissory Note  
Attachment C: Trust Deed  
Attachment D: Preliminary Title Report  
Attachment E: Tax Lot 102 Statement of Tax Account  
Attachment F: Tax Lot 103 Statement of Tax Account

**STAFF RECOMMENDATION:**

That the MRC approve the \$18,000 Line of Credit Loan Agreement with David Potter and authorize the Chair to sign the loan documents.

**RECOMMENDED MOTION:**

I move to approve the \$18,000 Line of Credit Loan Agreement with David Potter and authorize the Chair to sign the loan documents.

**MADRAS REDEVELOPMENT COMMISSION – URBAN RENEWAL LINE OF CREDIT LOAN AGREEMENT**

This Madras Redevelopment Commission – Urban Renewal Line of Credit Loan Agreement (this “Agreement”) is made and entered into on April \_\_\_\_, 2016, but made effective for all purposes as of December 1, 2015 (the “Effective Date”), between the Madras Redevelopment Commission (“Lender”), whose address is 125 SW “E” Street, Madras, Oregon 97741, and David A. Potter (“Borrower”), whose address is 205 S 1<sup>st</sup> Street, Silverton, Oregon 97381.

RECITAL:

Borrower owns certain real property (and all improvements located thereon) located at 401 NE Sixth Street, Madras, Oregon 97741, which real property is more particularly described on the attached Exhibit A (collectively, the “Property”). Subject to the terms and conditions contained in this Agreement, Borrower desires to borrow funds from Lender, and Lender desires to loan funds to Borrower, to enable Borrower to complete certain remedial work in and to the Property.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms contained in this Agreement have the meanings assigned to them in the attached Appendix A.
2. Line of Credit Loan. Subject to the terms and conditions contained in this Agreement, Lender will loan to Borrower and Borrower will borrow from Lender the maximum sum of Eighteen Thousand Dollars (\$18,000.00) pursuant to a line of credit (the “Loan”). The Loan will be evidenced by the Note. The Note will be in form and substance acceptable to Lender. The Loan will be paid in accordance with the terms of the Note.
3. Loan Purpose; Remedial Work. Lender will disburse the Loan to Borrower for Borrower’s completion of the Remedial Work. Borrower must use the Loan for completion of the Remedial Work and for no other purpose. Borrower must properly complete the Remedial Work on or before June 30, 2016. Borrower will provide Lender evidence to Lender’s satisfaction that the Remedial Work has been properly completed immediately upon Lender’s request. Borrower will complete the Remedial Work at Borrower’s cost and expense. Borrower will furnish and pay for all services, labor, materials, equipment, tools, machinery, transportation, and all other matters required for proper completion of the Remedial Work. Borrower will complete the Remedial Work in a good workmanlike manner. The Remedial Work will be completed subject to and in compliance with all applicable Laws. In connection with the Remedial Work, Borrower will properly manage and dispose of all waste and hazardous substances, including, without limitation, sediment, paint, cement wash, asphalt, motor oil, asbestos, and grease, subject to and in accordance with all applicable Laws.
4. Lender Security. Borrower’s obligations to Lender concerning the Loan will be secured by a perfected security interest in the Collateral. Lender’s security interest in the Collateral will be evidenced by the Trust Deed (which will be delivered by Borrower to Lender contemporaneously with Borrower’s execution of this Agreement). Borrower will execute and deliver all Loan Documents Lender may require concerning the Transaction. All Loan Documents will be in form and substance acceptable to Lender.
5. Jefferson County Real Property Taxes; Encumbrances. Borrower has certain unpaid and outstanding Jefferson County real property taxes and/or assessments concerning the Property for the 2012-2013, 2013-2014, 2014-2015, and 2015-2016 tax years totaling approximately \$21,679.07 (collectively, the “Taxes”). Borrower will promptly and timely pay the Taxes (including interest and penalties) in full and in advance of the commencement of any tax foreclosure proceedings. If Borrower receives any notice of default or foreclosure

arising out of or concerning the Taxes, Borrower will immediately deliver a copy of the notice to Lender. Lender may cure or satisfy Borrower's real property tax obligations without waiving Borrower's default under this Agreement. Borrower will defend, indemnify, and hold Lender and each Lender Representative harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, late charges, penalties, and additional interest, resulting from or arising out of, whether directly or indirectly, the Taxes.

6. Conditions Precedent to Disbursement. Lender will not be obligated to disburse any Loan proceeds to Borrower unless and until each of the following conditions have been satisfied or waived by Lender: (a) Lender has received a commitment from a title insurance company (the "Title Insurer") acceptable to Lender to issue to Lender a mortgagee's title insurance policy (the "Title Policy") in the principal amount of Eighteen Thousand Dollars (\$18,000.00) in such form and with such endorsements as may be required by Lender, insuring that Borrower holds fee simple title to the Property and that the Trust Deed is, and will continue to be, an Encumbrance against the Property prior and paramount to all Encumbrances of any nature or kind whatsoever except the Encumbrance(s) created by the Permitted Encumbrance(s) and such other Encumbrance(s) which Lender approves prior in writing; (b) Lender must have received fully executed originals of the Loan Documents; (c) Lender must have received such environmental studies and reports as Lender may require, each of which must be satisfactory to Lender; (d) all required insurance (including, without limitation, the Title Policy) must be in full force and effect and Lender must have received such evidence thereof as it requires; (e) each of Borrower's representations and warranties contained in the Loan Documents must be true and accurate as of the date of the Draw Request and any Advance; (f) Lender must have a valid and perfected security interest in the Collateral (with a priority acceptable to Lender) and will have received satisfactory evidence of perfection and the priority of its security interest; and (g) any other condition that Lender may impose from time to time.

7. Loan Advances.

7.1 Draw Requests. Borrower will prepare and deliver the Budget to Lender for Lender's review and approval. Lender will not make any Advances until the Budget has been approved by Lender. Subject to the terms and conditions contained in this Agreement, Lender will make one or more Advances during the Draw Period. No Advance will be made after the Draw Period. Lender will not be required to make Advances more frequently than once weekly. Each Advance will reduce the amount available for borrowing under the Loan and Loan amounts repaid may not be re-borrowed. To initiate an Advance, Borrower must provide Lender a Draw Request. Notwithstanding anything contained in this Agreement to the contrary, Lender will determine whether to make an Advance. Each Advance will be made and used (a) solely to pay costs associated with specific line items set forth in the Budget, and (b) the total amount disbursed for expenses associated with any line item will not exceed the corresponding amount set forth for such line item in the Budget. Any Advance made by Lender may be disbursed, in whole or in part, at Lender's election, (x) to Borrower, (y) to Lender for all amounts then due to Lender, including, without limitation, interest expenses and title insurance costs, and/or (z) directly to the persons furnishing labor, materials, inventory, and/or supplies. Lender will have no obligation to confirm that Advances made are actually used by that party to pay for labor, materials, inventory, and/or supplies. Borrower accepts and assumes all risks in connection with any Advances made by Lender under this Agreement. As of the date of this Agreement, Lender has made one or more Advances to Borrower totaling \$\_\_\_\_\_, which Advances Borrower represents, warrants, and covenants have been used subject to and in accordance with this Agreement.

7.2 Conditions Precedent to each Advance. In addition to any other condition contained in this Agreement, each Advance will be subject to the following conditions: (a) no Event of Default under any Loan Document will have occurred and/or will then exist; (b) there has been no condemnation, casualty, and/or catastrophe affecting the Collateral; and (c) the Title Insurer continues to insure the lien of the Trust Deed as a lien against the Property (subordinate only to the lien(s) concerning the Taxes) securing all previous Advances and the Advance then being requested, and nothing has intervened to affect the validity or priority of the Trust Deed.

8. Representations; Warranties. In addition to any other representation and/or warranty made by Borrower under this Agreement, Borrower represents and warrants the following to Lender:

8.1 Authority; Binding Obligation; No Conflicts. Borrower has full power and authority to sign and deliver this Agreement and to perform all of Borrower's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with its terms. The signing and delivery of this Agreement and the performance by Borrower of all of Borrower's obligations under this Agreement will not (a) breach any agreement to which Borrower is a party, or give any person the right to accelerate any obligation of Borrower, (b) violate any law, judgment, or order to which Borrower is subject, and/or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

8.2 Compliance; No Misstatements; Encumbrances. Borrower and the Collateral are in compliance with all applicable Laws. No report, financial statement, representation, and/or other information furnished by Borrower to Lender in connection with the Loan contains any misstatement of fact or omits to state any fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Borrower owns fee simple title to the Collateral, free from any and all Encumbrances. No claim of right, title, and/or interest adverse to Borrower in or to the Collateral has been or will be made by any person. There are no pending or threatened claims or actions against Borrower and/or the Collateral. The Property is, and at all times that any amounts remain owing on the Loan will be, used exclusively as commercial property and will not be used as a personal residence.

9. Covenants. In addition to any other Borrower covenant contained in this Agreement, Borrower covenants the following to Lender:

9.1 Insurance. Borrower will obtain and maintain at all times insurance policies that provide adequate insurance coverage for the Property for all risks normally insured against by a person owning similar real property in a similar location, and for any other risks to which the Property is normally exposed. Each insurance policy that covers the Property will (a) be in form and substance satisfactory to Lender, (b) name Lender as a loss payee, and (c) will provide that the insurance policy may not be amended or cancelled without ten (10) days' prior written notice to Lender. Immediately upon Lender's request, Borrower will deliver a copy of each policy to Lender.

WARNING

(Provided pursuant to ORS 746.201(2))

Unless you [Borrower] provide us [Lender] with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the Collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan balance will apply to this added amount. The effective date of coverage may be the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damages coverage or any mandatory liability insurance requirements imposed by law.

9.2 Encumbrances; Transfer. Borrower will keep the Collateral free from all Encumbrances except the Permitted Encumbrances. Borrower will not Transfer all or any portion of the Collateral without Lender's prior written consent. Upon Lender's request, Borrower will permit Lender to (a) inspect the Property (and any other Collateral), and (b) inspect and copy Borrower's books of account and records related to the Property, including, without limitation, all contracts involving the ownership, lease, use, and/or operation of the

Property. Borrower and the Collateral will comply with all Laws.

9.3 Indemnification. Borrower will defend, indemnify, and hold Lender and each Lender Representative harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, obligations, costs, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) any breach and/or inaccuracy of any Borrower representation, warranty, and/or covenant made in this Agreement and/or any other Loan Document; (b) any failure by Borrower to pay and/or perform any covenant and/or obligation required to be performed by Borrower under this Agreement and/or any other Loan Document; (c) the Remedial Work; and/or (d) the Loan. This indemnification provision will survive the termination of this Agreement and the satisfaction of the obligations of Borrower to Lender under this Agreement.

10. Defaults; Remedies.

10.1 Events of Default. The occurrence of any one or more of the following events constitutes a default by Borrower under this Agreement and each Loan Document (each an "Event of Default"): (a) Borrower's failure to make any payment required under the Note and/or this Agreement when due; (b) Borrower's failure to perform any covenant, agreement, and/or obligation contained in this Agreement and/or any other Loan Document (other than making any payment required under the Note and/or this Agreement as provided in Section 10.1(a)) within ten (10) days after written notice from Lender specifying the failure with reasonable particularity; (c) any warranty, representation, statement, and/or information made or furnished to Lender by or on behalf of Borrower proves to have been false or misleading in any respect when made or furnished or when deemed made or furnished, or becomes false or misleading at any time thereafter; (d) any default occurs under, or Borrower fails to pay, perform, and/or comply with, the terms of any Loan Document or any other agreement, document, and/or instrument between Borrower and Lender, and such failure is not remedied within any applicable grace period, if any; (e) any default occurs under any security instrument securing any indebtedness or obligation of Borrower to Lender and/or any lien created or purported to be created by the Trust Deed ceases to be, or is asserted by any person not to be, a valid, perfected priority security interest or lien, subject only to liens and encumbrances accepted by Lender; and/or (f) the occurrence of any event that has or may reasonably be expected to have an adverse effect on Borrower's financial condition and/or Borrower's ability to pay and perform its obligations under this Agreement and/or any other Loan Document.

10.2 Remedies in the Event of Default. On and after an Event of Default, Lender may exercise the following remedies, which remedies are cumulative and which may be exercised singularly or concurrently: (a) upon notice to Borrower, the right to accelerate the due dates of the Loan so that the Loan is immediately due, payable, and performable in its entirety; (b) upon notice to Borrower, the right to take possession, control, and charge of the Property and/or any other Collateral; (c) the right to institute an action to appoint a receiver to take charge of the Property and/or any other Collateral; (d) any remedy available to Lender under any Loan Document and/or any agreement evidencing, guaranteeing, and/or securing the payment or performance of the Loan and/or any of the obligations of Borrower, including, without limitation, the Trust Deed; and/or (e) any other remedy available to Lender at law or in equity.

11. Miscellaneous.

11.1 No Lender Waiver. No failure and/or delay of Lender in exercising any right, power, and/or remedy under this Agreement and/or any other Loan Document will operate as a waiver of such right, power, and/or remedy of Lender or of any other right. A waiver of any provision of this Agreement and/or any other Loan Document will not constitute a waiver of or prejudice Lender's right to demand strict compliance with that provision and/or any other provision. Any waiver, permit, consent, and/or approval of any kind or character on the part of Lender must be in writing and will be effective only to the extent specifically set forth in writing.

11.2 Costs and Fees; Attorney Fees. Without otherwise limiting any other provision contained in this Agreement, Borrower will pay Lender immediately on demand an amount equal to all costs and

expenses incurred by Lender in connection with the Loan, Title Insurance, enforcement of the Loan Documents, and/or collection of amounts due to Lender, including, without limitation, all recording costs, filing fees, costs of appraisals, title insurance, inspection, collateral audits, costs of perfecting, protecting, and defending Lender's security interest in the Collateral and attorney fees. Notwithstanding the foregoing, if any arbitration, action, suit, and/or proceeding is instituted to interpret, enforce, and/or rescind this Agreement and/or any other Loan Document, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

11.3 Notices; Attorney in Fact. Any notice required under this Agreement must be in writing. Any notice will be deemed given when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day. So long as any amount remains due hereunder to Lender and during the continuance of any default hereunder, Borrower hereby irrevocably appoints Lender its attorney-in-fact with full power and authority to execute, file, and record any notice or other document which Lender deems necessary or advisable to establish or perfect Lender's security interest in the Collateral.

11.4 Successors; Severability; Governing Law. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns, except that Borrower may not assign or transfer any of its rights or obligations under this Agreement and/or any other Loan Document without the prior written consent of Lender. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.

11.5 Interpretation; Discretion. Upon request by Lender, Borrower will from time to time provide such information, execute such documents, and do such acts as may reasonably be required by Lender in connection with any indebtedness or obligations of Borrower to Lender. All information, documents, and instruments required to be executed or delivered to Lender will be in form and substance satisfactory to Lender. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. When Lender is exercising any consent, approval, determination, and/or similar discretionary action under this Agreement, the standard will be Lender's sole discretion. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

11.6 Integration; Conflicting Terms. This Agreement, together with the other Loan Documents, comprises the entire agreement of the parties on the subject matter hereof and supersedes and replaces all prior agreements, oral and written, on such subject matter. If any term of any of the other Loan Documents expressly conflicts with the provisions of this Agreement, the provisions of this Agreement will control;

provided, however, that the inclusion of supplemental rights and remedies of Lender in any of the other Loan Documents will not be deemed a conflict with this Agreement. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party. This Agreement may be amended only by a written agreement signed by each party.

11.7 Survival. Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement and/or in any certificate or other instrument delivered by Borrower under this Agreement and/or any Loan Document. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties, and covenants will survive the making of the Loan and delivery to Lender of the Loan Documents, will be continuing in nature, and will remain in full force and effect until such time as Borrower has satisfied its obligations under the Loan Documents in full.

11.8 Disclosure. **Under Oregon law, most agreements, promises, and commitments made by Lender concerning loans and other credit extensions which are not for personal, family, or household purposes or secured solely by the borrower's residence must be in writing, express consideration, and be signed by Lender to be enforceable.**

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed on the date first written above but made effective for all purposes as of the Effective Date.

Lender:  
Madras Redevelopment Commission

Borrower:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
David A. Potter

Appendix A  
Definitions

“Advance(s)” means Loan amounts provided by Lender under this Agreement and the Note.

“Agreement” has the meaning assigned to such term in the preamble.

“Borrower” has the meaning assigned to such term in the preamble.

“Budget” means a detailed written budget identifying Borrower’s total cost of the Remedial Work and a schedule of the estimated amount and time of each Advance.

“Collateral” means the Property and all other collateral described in the Trust Deed.

“Draw Period” means the period commencing on the Effective Date and ending on June 30, 2016.

“Draw Request(s)” means a written request for an Advance, which may only be made during the Draw Period.

“Effective Date” has the meaning assigned to such term in the preamble.

“Encumbrance(s)” means any liens, mortgages, pledges, security interests, reservations, restrictions, changes, claims, and/or any other encumbrances.

“Event of Default” has the meaning assigned to such term under Section 10.1.

“Law(s)” means any and all leases, covenants, conditions, restrictions, easements, declarations, laws, statutes, liens, ordinances, orders, codes, rules, ordinances, and regulations directly or indirectly concerning or affecting the Collateral (including, without limitation, the Property), Borrower, and/or the Loan, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), any environmental laws, and any building and safety codes and zoning ordinances, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

“Lender” has the meaning assigned to such term in the preamble.

“Lender Representative(s)” means Lender and its successors, assigns, and affiliates, and all past, present, and future officers, employees, attorneys, agents, volunteers, contractors, representatives, and insurers of the aforementioned.

“Loan” means the line of credit loan provided by Lender to Borrower under this Agreement.

“Loan Document(s)” means, individually and collectively, (a) this Agreement, (b) the Note, (c) the Trust Deed, and (d) such other documents and/or instruments as Lender may require.

“Note” means that certain Line of Credit Promissory Note in the principal amount of Eighteen Thousand Dollars (\$18,000.00) dated as of the Effective Date.

“Permitted Encumbrance(s)” means (a) any lien, mortgage, pledge, security interest, and/or other encumbrance in favor of Lender, (b) a certain easement granted to Pacific Telephone and Telegraph Company under a certain Easement recorded on June 27, 1923 in the Jefferson County Official Records as Instrument No. 7-304, (c) certain limited access provisions contained in the Warranty Deed from Earl M. Bone and Edith Bone to the State of Oregon recorded on June 1, 1959 in the Jefferson County Official Records as Instrument No. 31-102, (d) an easement granted to Cascade Natural Gas Corporation under a certain Right of Way Contract recorded on June 19,

1969 in the Jefferson County Official Records as Instrument No.: 44-102, and (e) any lien, mortgage, pledge, security interest, or other encumbrance arising by operation of law for taxes, assessments, or government charges not yet due.

“Property” has the meaning assigned to such term in the Recital.

“Remedial Work” means the following: (a) deconstruction and removal of the single-family dwelling and associated detached garage (and all other fixtures and/or improvements located on the Property), including, without limitation, the removal of all asbestos; (b) termination of all utilities serving the Property; (c) removal of all landscaping, trees, and shrubs located on the Property; (d) leveling the surface of the Property to a grade level with the curb cuts; and (e) any and all other work that Lender may require at any time and from time to time.

“Taxes” has the meaning assigned to such term under Section 5.

“Title Insurer” has the meaning assigned to such term under Section 6.

“Title Policy” has the meaning assigned to such term under Section 6.

“Transaction” means the line of credit loan transaction contemplated under this Agreement and the Loan Documents.

“Transfer” means (a) any transfer, including, without limitation, any sale, conveyance, exchange, gift, lease, Encumbrance, foreclosure of an Encumbrance, or attachment, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence, and (b) any agreement involving the ownership, lease, and/or use of all or any portion of the Property for a period longer than thirty (30) days.

“Trust Deed” means that certain Line of Credit Instrument Trust Deed, Assignment of Leases and Rents, and Fixture Filing dated as of the Effective Date made by Borrower in favor of Lender. The Trust Deed will be delivered by Borrower to Lender upon the funding of the Loan and the Trust Deed will be in form and substance acceptable to Lender.

Exhibit A  
Legal Description

The subject real property is legally described as follows:

**Parcel 1:**

Description of a parcel of land situate in a portion of the NW1/4 of the SW1/4 of Section 1, Township 11 South, Range 13 East, W.M., City of Madras, Jefferson County, Oregon, more particularly described as follows: Commencing at a 3/4" rod monumenting the Northeast corner of the NW1/4 of the SW1/4 of Section 1 T. 11S. R. 13E. W.M., the Initial Point; thence S00°07'05"W along the East line of said NW1/4SW1/4, 252.78 feet to the Northerly line of Bone Addition to the City of Madras on the Northerly line of Park Avenue; thence S49°11'43" W along said Northerly lines, 817.56 feet to the TRUE POINT OF BEGINNING; thence N58°26'29"W, 96.80 feet to a 1/2" pipe in an existing fence; thence N36°24'33"E along said fence, 72.10 feet to a 1/2" pipe at an angle point of said fence; thence N67°41'38"W along said fence, 287.45 feet to a 1/2" pipe on the East line of State Highway U.S. Number 97; thence S31°30'04"W along said East line, 25.52 feet to a common boundary with Pacific Northwest Bell Telephone Company, recorded in Deed Book 33 Page 339, records of Jefferson County, Oregon; thence along said common boundary as follows: S58°23'00"E, 102.13: feet to a found 1/2" Re-bar; thence S31°37'00"W, 98.95 feet; thence S89°40'00"W, 116.42 feet to a 1" iron rod, cited in said Deed as N89°40'W, 118 feet; thence N00°04'00"E, 5.80 feet to said East Highway line, cited in said Deed as N00°04'E, 7.66 feet, thus ending this boundary along said common line; thence S31°30'04"W along said East line, 225.02 feet to the North line of Sixth Street per Bone Addition; thence N76°46'42"E, 120.56 feet to a 1/2" pipe on the prolongation of the East line of said Sixth Street; a point witnessed by the angle point in said East line per Bone Addition which bears South, 115.00 feet; thence East 283.57 feet to a 1/2" pipe on the Northerly line of Park Avenue; thence N49°11'43"E along said Northerly line, 154.45 feet to the TRUE POINT OF BEGINNING EXCEPTING THEREFROM that portion lying within U.S. Highway 97 and NE 6th Street.

**Parcel 2:**

Commencing at a 3/4" rod monumenting the Northeast corner of the Northwest quarter of the Southwest quarter of Section 1, Township 11 South, Range 13 East of the Willamette Meridian, Jefferson County, Oregon; the Initial Point; thence South 00° 07' 05" West along the East line of said Northwest quarter Southwest quarter 252.78 feet to the Northerly line of Bone Addition to the City of Madras, Oregon and the Northerly line of Park Avenue; thence South 49° 11' 43" West along said Northerly lines 972.01 feet to a 1/2" pipe and the True Point of Beginning; thence South 49° 11' 43" West along said Northerly lines 110.41 feet to the West line of Seventh Street; thence South along said line 66.00 feet to the North line of Lot 1 Block 2 of said Addition; thence South 82° 22' 00" West along said North line 100.89 feet to the West line of said Lot 1; thence North along the prolongation of said West line 46.61 feet to the Northeast corner of that tract of land described in Warranty Deed filed April 16, 1979 in Deed Book 62, instrument No. 132438, Jefferson County Records; thence West, 100.00 feet to the prolongation of the East line of Sixth Street per said Addition, a point witnessed by the angle point in said East Street line which bears South, 10.00 feet; thence North along said prolongation 105.00 feet to a 1/2" pipe and also being the Northeast corner of that tract of land described in Declaration of Dedication filed November 9, 1983, as instrument No. 149336, Jefferson County Records; thence East 283.57 feet to the True Point of Beginning.

**This Note (as defined below) has not been registered under the Securities Act of 1933 or any state securities laws. This Note may not be sold, assigned, and/or otherwise negotiated to any person unless pursuant to an effective registration statement filed under the Securities Act of 1933 and applicable state securities laws, or unless Maker (as defined below) receives an opinion of counsel, in form and from counsel acceptable to Maker, that the sale, assignment, and/or other negotiation is exempt from the registration requirements of the Securities Act of 1933 and applicable state securities laws.**

**LINE OF CREDIT PROMISSORY NOTE**

\$18,000.00

Effective Date: December 1, 2015

This Line of Credit Promissory Note (this "Note") is made by David A. Potter ("Maker"), whose address is 205 S 1st Street, Silverton, Oregon 97381, in favor of the Madras Redevelopment Commission ("Holder"), whose address is 125 SW "E" Street, Madras, Oregon 97741.

1. Payment.

1.1 Maker promises to pay to the order of Holder in immediately available funds the principal amount of Eighteen Thousand Dollars (\$18,000.00) or, if less, the aggregate unpaid principal amount of all advances made by Holder to Maker pursuant to the Madras Redevelopment Commission – Urban Renewal Line of Credit Loan Agreement dated effective December 1, 2015 between Maker and Holder (the "Loan Agreement"), together with interest on the unpaid principal amount from the date of each advance. The entire unpaid principal amount, together with accrued interest, is due and payable by Maker immediately upon the occurrence of the earlier of the following (each a "Triggering Event"): (a) any Transfer (as defined in the Loan Agreement) of the Property (as defined in the Loan Agreement); (b) issuance of any building permit(s) concerning the Property; or (c) November 30, 2025. All payments under this Note will be made to Holder at Holder's address first set forth above or any other address that Holder may designate by written notice to Maker.

1.2 Subject to the terms and conditions contained in this Note and all other Loan Documents (as defined below), if Maker has not breached and/or failed to timely pay and perform any Maker representation, warranty, covenant, and/or obligation arising out of or under the Loan Documents, upon the occurrence of a Triggering Event Holder will forgive fifty percent (50%) of the unpaid principal amount, including accrued but unpaid interest, provided Maker immediately pays Holder the remaining fifty percent (50%) of the unpaid principal amount, including accrued but unpaid interest (and all other amounts payable under the Loan Documents). Notwithstanding anything contained in this Note to the contrary, (a) Holder will not forgive any loan amount under this Note if the Triggering Event arose from a Transfer that does not constitute an arm's length voluntary sale to a third party of all Maker's rights and interests in and to the Property and/or Maker breached and/or failed to timely pay and perform any Maker representation, warranty, covenant, and/or obligation arising out of or under the Loan Documents, and (b) Maker is responsible for all taxes that may arise out of or result from Holder's loan forgiveness provided under this Section 1.2. Holder makes no representations or warranties concerning the tax treatment of any loan forgiveness provided under this Section 1.2.

2. Requests for Advances; Accounting Statement. The loan amount may be advanced in multiple disbursements. Maker must make requests for advances to Holder in writing and in accordance with the Loan Agreement. Maker is liable to Holder for any amount advanced to Maker. All advances must be completed no later than June 30, 2016. Holder may, from time to time, deliver to Maker a

written accounting statement that sets forth the following information: (a) the date and amount of each advance made by Holder to Maker; (b) the interest rate applicable to each advance; (c) the date and amount of each payment made by Maker to Holder; and (d) the unpaid principal amount (including accrued but unpaid interest), as of a specified date. The information set forth in an accounting statement will be binding on Maker unless Maker delivers to Holder a written objection within ten (10) days after the delivery of the accounting statement and the objection specifies in reasonable detail the facts giving rise to the objection.

3. Interest; Late Charges. Maker will pay interest on the unpaid principal amount at an annual rate of four percent (4.0%). On and after an Event of Default (as defined below), (a) all accrued interest will become part of the unpaid principal amount, and (b) Maker will pay interest on the unpaid principal amount at the annual rate of eight percent (8.0%). Interest will be computed on the basis of a 365-day year. If Maker fails to make any payment required under this Note within ten (10) days after the payment is due, a late charge equal to \$25.00 will be immediately due and payable.

4. Application of Payments; Prepayment. All payments under this Note will apply first to any costs and expenses due to Holder, then to accrued interest to date of payment, and then to the unpaid principal amount. Maker may prepay all or any part of the unpaid principal amount at any time. Excess payments or prepayments will not be credited as future scheduled payments required under this Note.

5. Loan Agreement; Security. Maker's obligations under this Note are subject to the terms and conditions of the Loan Agreement. Maker's obligations under this Note are guaranteed or secured by that certain Line of Credit Instrument Trust Deed, Assignment of Leases and Rents, and Fixture Filing dated effective December 1, 2015 made by Maker in favor of Holder (the "Trust Deed").

6. Event of Default. The occurrence of any one or more of the following events constitutes a default by Maker under this Note (each an "Event of Default"): (a) Maker fails to make any payment required under this Note when due; (b) the occurrence of any event that has or may reasonably be expected to have an adverse effect on Maker's financial condition and/or Maker's ability to make any payment required under this Note; (c) the death of Maker; (d) Maker fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Maker's debts as and when they become due, or Maker makes a general assignment for the benefit of creditors; (e) a proceeding with respect to Maker or the Property is commenced under any applicable law for the benefit of creditors, including, without limitation, any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Maker is entered; and/or (f) an event of default occurs under (1) any Loan Document, and/or (2) any agreement securing the performance of any of the obligations of any guarantor of this Note. For purposes of this Note, the term "Loan Document(s)" means (w) the Loan Agreement, (x) the Trust Deed, (y) this Note, and (z) all other agreement and/or instrument evidencing, guaranteeing, and/or securing the performance of any of Maker's obligations under this Note.

7. Remedies. On and after an Event of Default, Holder may exercise the following remedies, which remedies are cumulative and which may be exercised singularly or concurrently: (a) upon notice to Maker, the right to accelerate the due dates under this Note so that the unpaid principal amount, together with accrued interest, is immediately due and payable in its entirety; (b) any remedy available to Holder under any Loan Document; (c) any remedy available to Holder under any agreement securing the performance of any of the obligations of any guarantor of this Note; and/or (d) any other remedy available to Holder at law or in equity.

8. Time of Essence; Amendment; Waiver; Severability. Time is of the essence with respect to all dates and time periods in this Note. This Note may be amended only by a written document signed by the party against whom enforcement is sought. Maker waives demand, presentment for payment, notice of dishonor or nonpayment, protest, notice of protest, and lack of diligence in collection, and agrees that Holder may extend or postpone the due date of any payment required by this Note without affecting Maker's liability. No waiver will be binding on Holder unless it is in writing and signed by Holder. Holder's waiver of a breach of a provision of this Note will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. If a provision of this Note is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Note will not be impaired.

9. Governing Law; Venue. This Note is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Note. Any action, suit, and/or proceeding arising out of the subject matter of this Note will be litigated in courts located in Jefferson County, Oregon. Maker consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.

10. Attorney's Fees. If any arbitration, action, suit, and/or proceeding is instituted to interpret, enforce, and/or rescind this Note, or otherwise in connection with the subject matter of this Note, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

11. Costs and Expenses. If an Event of Default occurs and Holder does not institute any arbitration, action, suit, and/or proceeding, Maker will pay Holder, immediately upon Holder's demand, all costs and expenses, including, without limitation, attorney fees and collection fees, incurred by Holder in attempting to enforce this Note and/or collect the indebtedness evidenced by this Note.

12. Notices. Any notice required under this Note must be in writing. Any notice will be deemed given when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day.

13. Statute of Frauds. Under Oregon law, most agreements, promises and commitments made by Holder concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by Holder to be enforceable.

Maker:

\_\_\_\_\_  
David A. Potter

**After recording, return to:**

City of Madras  
Attn: Madras Redevelopment Commission  
125 SW "E" Street  
Madras, Oregon 97741

**Beneficiary's name and address:**

City of Madras  
Attn: Madras Redevelopment Commission  
125 SW "E" Street  
Madras, Oregon 97741

**LINE OF CREDIT INSTRUMENT  
TRUST DEED, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING**

This Line of Credit Instrument Trust Deed, Assignment of Leases and Rents, and Fixture Filing (this "Trust Deed") is made and entered into on April \_\_\_\_, 2016, but made effective for all purposes as of December 1, 2015 (the "Effective Date"), by David A. Potter ("Grantor"), whose address is 205 S 1<sup>st</sup> Street, Silverton, Oregon 97381, in favor of AmeriTitle ("Trustee"), whose address is 748 SW 5<sup>th</sup> Street, Madras, Oregon 97741, for the benefit of Madras Redevelopment Commission ("Beneficiary"), whose address is 125 SW "E" Street, Madras, Oregon 97741.

The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit instrument is \$18,000.00.

Subject to the terms and conditions contained in the credit agreement (and related loan documents), the maturity date of the credit agreement secured by this line of credit instrument, exclusive of any option to renew or extend such maturity date, is November 30, 2025.

The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit instrument may be exceeded by advances to complete construction pursuant to ORS 86.155(2)(c).

The tax parcel numbers for the real property subject to this instrument are (a) Account No. 9052, Map/Tax Lot No. 111301-CB-00102, and (b) Account No. 9053, Map/Tax Lot No. 111301-CB-00103.

**RECITAL:**

Beneficiary and Grantor have entered into a certain Madras Redevelopment Commission – Urban Renewal Line of Credit Loan Agreement dated effective December 1, 2015 (the "Agreement"). Pursuant to the Agreement, Beneficiary has extended to Grantor a certain line of credit loan in the principal amount of Eighteen Thousand Dollars (\$18,000.00) which loan is evidenced by a certain Line of Credit Promissory Note dated effective December 1, 2015 as it may be modified, extended, or replaced from time to time (the "Note"). As a condition to making the loan to Grantor and accepting the Note, Beneficiary has required, and Grantor has agreed to execute and deliver, this Trust Deed.

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of securing the Obligations, the parties hereto hereby agree as follows:

1. Definitions.

1.1 Capitalized Terms. Unless defined elsewhere in this Trust Deed, capitalized terms used in this Trust Deed have the meanings assigned to them in the attached Appendix A.

1.2 ORS Chapter 86. Unless the context clearly indicates otherwise, terms used in this Trust Deed that are defined in ORS Chapter 86 have the meanings assigned to them in ORS Chapter 86.

1.3 UCC Terms. Unless the context clearly indicates otherwise, terms used in this Trust Deed that are defined in the Uniform Commercial Code have the meanings assigned to them in the Uniform Commercial Code. The term “instrument” has the meaning assigned to it in ORS Chapter 79 rather than ORS Chapter 73.

2. Trust Deed.

2.1 Transfer. As security for the full and prompt payment and performance of the Obligations, Grantor transfers and assigns to Trustee in trust for the benefit of Beneficiary, with power of sale, all of Grantor’s right, title, and interest in and to the Trust Property, subject to the provisions of this Trust Deed.

2.2 Recording and Perfection. Beneficiary may record this Trust Deed in the mortgage records in Jefferson County, Oregon. Upon Trustee’s or Beneficiary’s request, Grantor will take any actions that Trustee or Beneficiary deems necessary to perfect and continue Trustee’s and/or Beneficiary’s rights under this Trust Deed. Grantor will pay all the fees, costs, and expenses of recording this Trust Deed and any other document that Trustee or Beneficiary deems necessary to perfect and continue Trustee’s and/or Beneficiary’s rights under this Trust Deed.

2.3 Reconveyance. Within ninety (90) days after the full payment and performance of the Obligations, Beneficiary will deliver a written request to Trustee to reconvey the Trust Property to Grantor. Within thirty (30) days after Beneficiary delivers the written request to reconvey to Trustee, Trustee will reconvey the Trust Property to Grantor.

3. Assignment of Lease Rights.

3.1 Assignment. Grantor assigns and transfers to Beneficiary all of Grantor’s rights under each Lease, together with all prepaid rent and existing and future security or other deposits that each Tenant has paid and will pay with respect to the Tenant’s Lease.

3.2 No Assumption. Beneficiary will not assume any of Grantor’s liabilities or obligations under any Lease.

3.3 Revocable License. Beneficiary grants Grantor a revocable and exclusive license to (a) retain, collect, and receive any prepaid rent and existing and future security or other deposits that each Tenant has paid or will pay with respect to the Tenant’s Lease, but only to the extent that the prepaid rent and deposits are applied for the purposes required by the Tenant’s Lease, to the Obligations, or to any other commercially reasonable purpose, (b) collect and receive the rent and other payments due to Beneficiary under the Leases, but only to the extent that the payments are applied to the Obligations or to any other commercially reasonable purpose, and (c) enforce Beneficiary’s rights under the Leases.

3.4 Automatic Reassignment and Termination. Upon the full payment and performance of the Obligations, (a) all of Beneficiary’s rights under the Leases, together with all prepaid rent and existing security or other deposits that each Tenant has paid to Grantor or Beneficiary with respect to the Tenant’s Lease, will be automatically reassigned and transferred to Grantor, and (b) the license described in Section 3.3 will automatically terminate.

3.5 Indemnification. Grantor will defend, indemnify, and hold Beneficiary and each Beneficiary Representative harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, any liability and/or obligation of Grantor under any Lease.

4. Representations and Warranties of Grantor. In addition to any other representation and/or warranty made by Grantor under this Trust Deed, Grantor jointly and severally represents and warrants to Beneficiary as follows:

4.1 Authority; Binding Obligation; No Conflicts. Grantor has full power and authority to sign and deliver this Trust Deed and to perform all of Grantor's obligations under this Trust Deed. This Trust Deed is the legal, valid, and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity. The signing and delivery of this Trust Deed by Grantor and the performance by Grantor of all of Grantor's obligations under this Trust Deed will not (a) breach any agreement to which Grantor is a party, or give any person the right to accelerate any obligation of Grantor, (b) violate any law, judgment, or order to which Grantor is subject, and/or (c) require the consent, authorization, and/or approval of any person, including, without limitation, any governmental body.

4.2 Real Property. Grantor's use of the Trust Property complies with all applicable zoning laws. Grantor's use of the Trust Property is not subject to any permitted nonconforming use and/or to any structure classification. No fixture and/or improvement on any parcel of land not included in the Trust Property encroaches onto the Trust Property. The Trust Property abuts and has direct vehicular access to a public road or to a permanent, irrevocable, appurtenant easement that provides direct vehicular access to a public road.

4.3 Title to Trust Property. Except as encumbered by any Permitted Encumbrances, Grantor has good title to the Trust Property free from any and all Encumbrances.

4.4 Commercial Purposes. Grantor has used the Trust Property exclusively for commercial purposes.

4.5 Name of Grantor. The exact full legal name of Grantor is David A. Potter.

4.6 Lease. Grantor has delivered to Beneficiary copies of all Leases in effect as of the Effective Date. The Leases are legal, valid, and binding obligations of Grantor and the Tenants and both Grantor and the Tenants are in full compliance with the Leases.

4.7 Compliance With Laws. Grantor will comply with all applicable laws relating to the ownership, lease, use, and/or operation of the Trust Property. No event has occurred or circumstances exist that will likely result in Grantor's failure to comply with any applicable law relating to the ownership, lease, use, and/or operation of the Trust Property.

4.8 Environmental. Grantor has delivered to Beneficiary complete copies of all environmental reports, studies, analyses, tests, and site assessments relating to the Trust Property. Grantor has no liabilities and/or obligations of any kind arising out of or related to, whether directly or indirectly, any Environmental Law, whether known or unknown, fixed or contingent, disputed or undisputed, matured or unmatured, liquidated or unliquidated, or secured or unsecured. Grantor is not a party to any contract, settlement agreement, or other similar arrangement that requires or may require Grantor to have any liability or obligation of any kind arising out of any Environmental Law. No event has occurred or circumstances exist that will likely result in Grantor having any liability or obligation of any kind arising out of any Environmental Law. Grantor has complied with all applicable Environmental Laws. No event has occurred or circumstances exist that will likely result in Grantor's failure to comply with any applicable Environmental Law. Grantor has not received any notice

from any governmental authority or other person regarding (a) any actual, alleged, and/or potential failure by Grantor to comply with any Environmental Law, and/or (b) any actual or threatened liability or obligation of Grantor arising out of any Environmental Law with respect to the Trust Property. No action, arbitration, audit, hearing, investigation, litigation, suit, and/or other proceeding relating to any Environmental Law is pending or, to Grantor's Knowledge, threatened against Grantor. Grantor is not subject to any judgment or order relating to any Environmental Law. No Hazardous Substance is present on the Trust Property. No Hazardous Substance has been spilled, discharged, and/or otherwise released on and/or into the Trust Property. To Grantor's Knowledge, no Hazardous Substance is present on any real property that geologically or hydrologically adjoins the Trust Property. To Grantor's Knowledge, no Hazardous Substance has been spilled, discharged, or otherwise released on and/or into any real property that geologically or hydrologically adjoins the Trust Property. No underground storage tank is present on the Trust Property. The Trust Property does not contain any wetlands or other protected areas, flora, or fauna.

4.9 Taxes. Grantor has filed on a timely basis all tax returns and reports required to be filed by applicable laws. All of Grantor's filed tax returns are complete and accurate in all respects. Grantor has paid – or made provision for the payment of – all taxes that have become due for all periods. No taxing authority has asserted – or informed Grantor that it intends to assert – any deficiency in the payment of any taxes by Grantor. Grantor is not the beneficiary of any extension of time within which to file a tax return.

4.10 No Material Adverse Change. Grantor has no Knowledge of any facts or circumstances that will likely result in a material adverse change in the financial condition of Grantor.

4.11 Non-foreign Person. Grantor is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

5. Covenants of Grantor. Grantor jointly and severally covenants to Beneficiary that Grantor will perform the following obligations and observe the following conditions until the Obligations are fully paid and performed:

5.1 Obligations. Grantor will fully and promptly pay and perform the Obligations when due.

5.2 Ownership of Trust Property. Grantor will defend Trustee's and Beneficiary's rights under this Trust Deed against the adverse claim of any person.

5.3 Restriction on Transfer. Grantor will not Transfer all or any interest in the Trust Property without Beneficiary's prior written consent.

5.4 Condition of Trust Property. Grantor will keep the Trust Property in good repair and condition, reasonable wear and tear excepted, and will not commit or permit any waste of the Trust Property. Grantor will not remove, demolish, and/or materially alter any improvement on the Trust Property, except in connection with the replacement of an improvement in the ordinary course of Grantor's business.

5.5 Use of Trust Property. Grantor will not initiate, support, and/or consent to any rezoning of the Trust Property and/or any change in any public or private covenant, condition, and/or restriction relating to the use of the Trust Property. Grantor will use the Trust Property exclusively for commercial purposes, and will ensure that this Trust Deed does not become a residential trust deed.

5.6 Name of Grantor. Grantor will not change Grantor's legal name.

5.7 Leases. Grantor will fully and promptly pay and perform all of Grantor's obligations under each Lease. Unless and until the license described in Section 3.3 is revoked by Beneficiary, Grantor will, at Grantor's own cost and expense, use commercially reasonable efforts to (a) collect the rent and other payments due to Beneficiary under the Leases, except that Grantor will not collect any prepaid rent or other payments that

are due under any Lease more than thirty (30) days before the due date of the payment, and (b) enforce Beneficiary's rights under the Leases. Grantor will promptly notify Beneficiary if Grantor or any Tenant materially breaches any Lease. Grantor will not renew, materially amend, waive any right under, and/or terminate any Lease without the prior written consent of Beneficiary. Grantor will not enter into any new Lease without the prior written consent of Beneficiary. Grantor will not pay, contest, and/or settle any claim relating to any Lease without the prior written consent of Beneficiary.

5.8 Estoppel Certificates. Upon Beneficiary's request, Grantor will use commercially reasonable efforts to obtain from each Tenant an estoppel certificate signed by the Tenant, in form and substance reasonably satisfactory to Beneficiary.

5.9 Notification. Grantor will promptly notify Beneficiary if any of the following occurs: (a) any material change in the business of Grantor; (b) any material loss or damage with respect to the Trust Property with a value over Five Thousand Dollars (\$5,000.00), whether or not the loss or damage is covered by insurance; (c) any adverse change in the financial condition of Grantor; and/or (d) an Event of Default.

5.10 Future Commercial Tort Claims. Grantor will promptly notify Beneficiary if Grantor obtains any rights to any commercial tort claim relating to the ownership, lease, use, and/or operation of the Trust Property. Grantor will ensure that the notice includes the adverse parties to the claim and the specific facts out of which the claim arose.

5.11 Inspection. Upon Beneficiary's request, Grantor will permit Beneficiary to (a) inspect the Trust Property, and (b) inspect and copy Grantor's books of account and records related to the Trust Property including, without limitation, all contracts involving the ownership, lease, use, and/or operation of the Trust Property.

5.12 Compliance With Laws. Grantor will comply with all laws, ordinances, regulations, directions, rules, and requirements of all governmental authorities and others applicable to the use and/or occupancy of the Trust Property.

5.13 Environmental. Grantor will comply with all applicable Environmental Laws. Grantor will comply with the terms and conditions of each judgment and order relating to any Environmental Law to which Grantor is subject. Grantor will not cause or permit any Hazardous Substance to be present on or to be spilled, discharged, and/or otherwise released on and/or into the Trust Property. Grantor will fully and promptly pay and perform all of Grantor's obligations arising out of any Environmental Law. Grantor will comply with the terms and conditions of any contract, settlement agreement, and/or other similar arrangement that requires or may require Grantor to have any liability or obligation of any kind arising out of any Environmental Law. Grantor will promptly notify Beneficiary if Grantor obtains Knowledge of the occurrence after the Effective Date of any fact or condition that would cause Grantor to breach any representation or warranty in Section 4.8 if the representation or warranty were made as of the date of the occurrence.

5.14 Taxes. Grantor will file on a timely basis all tax returns and reports required to be filed by applicable laws. All of Grantor's filed tax returns will be complete and accurate in all respects. Grantor will pay – or make provision for the payment of – all taxes that become due for all periods. Grantor will promptly notify Beneficiary if any taxing authority asserts – or informs Grantor that it intends to assert – any deficiency in the payment of any taxes by Grantor. Grantor will not seek any extension of time within which to file a tax return.

5.15 Insurance. Grantor will obtain and maintain at all times during the term of this Trust Deed insurance policies that provide adequate insurance coverage for the Trust Property for all risks normally insured against by a person owning similar real property in a similar location, and for any other risks to which the Trust Property is normally exposed. If any portion of the Trust Property is located in a special flood hazard area, Grantor will obtain flood insurance under the National Flood Insurance Program. Each insurance policy that covers the Trust Property will (a) be in form and substance reasonably satisfactory to Beneficiary, (b) name Beneficiary as

a loss payee, and (c) provide that the insurance policy may not be amended or cancelled without ten (10) days' prior written notice to Beneficiary. Upon Beneficiary's request, Grantor will deliver a copy of each insurance policy to Beneficiary.

5.16 Sales; Change in Ownership. Grantor will not enter into any transaction or series of transactions involving the sale and/or transfer of substantially all of Grantor's assets in any one transaction or series of transactions unless Grantor obtains Beneficiary's prior written consent.

6. Damage or Destruction. Grantor will perform the following obligations and observe the following conditions until the Obligations are fully paid and performed:

6.1 Assignment of Proceeds. Grantor assigns and transfers to Beneficiary all of Grantor's rights to receive insurance proceeds under all insurance policies that provide coverage to Grantor for the Trust Property.

6.2 Application of Proceeds. If any damage or destruction occurs with respect to the Trust Property, and if Beneficiary receives any insurance proceeds under any insurance policy that provides coverage to Grantor for the Trust Property, (a) Beneficiary may hold the proceeds as additional security for the full and prompt payment and performance of the Obligations, subject to the provisions of this Section 6.2, and (b) Beneficiary may, in Beneficiary's sole discretion, apply the proceeds (1) to the Obligations, whether or not the Obligations are then due, and/or (2) to the cost and expense of restoring the portion of the Trust Property that was damaged or destroyed, subject to any conditions that Beneficiary deems reasonably necessary to ensure that the Trust Property is properly restored, including, without limitation, holding the proceeds until the restoration is complete.

7. Prior Encumbrance. This Trust Deed will be subordinate only to the Permitted Encumbrances.

8. Condemnation. Grantor will perform the following obligations and observe the following conditions until the Obligations are fully paid and performed:

8.1 Notice. Grantor will promptly notify Beneficiary if all or any portion of the Trust Property is condemned or threatened with condemnation. The notice will include a copy of all correspondence relating to the condemnation or the threat that Grantor received from any third-party.

8.2 Proceeding. Beneficiary may elect to control the condemnation matter described in Grantor's notice by notifying Grantor within twenty (20) days after the delivery of Grantor's notice. If Beneficiary elects to control the condemnation matter within the twenty-day period after the delivery of Grantor's notice Beneficiary may institute a condemnation proceeding, in which case (1) Beneficiary must diligently prosecute the proceeding, with counsel reasonably satisfactory to Grantor, (2) Grantor may participate in the prosecution of the proceeding, at Grantor's own cost and expense, and (3) Beneficiary may settle the matter with the consent of Grantor, which Grantor may not unreasonably withhold, condition, and/or delay. If Beneficiary does not elect to control the condemnation matter within the twenty-day period after the delivery of Grantor's notice Grantor may institute a condemnation proceeding, in which case (1) Grantor will diligently prosecute the proceeding, with counsel reasonably satisfactory to Beneficiary, (2) Beneficiary may participate in the prosecution of the proceeding, at Beneficiary's own cost and expense, and (3) Grantor may settle the matter with the consent of Beneficiary. In any condemnation proceeding that is subject to the provisions in this Section 8.2, Grantor and Beneficiary will keep each other fully informed of the status of the proceeding, cooperate with each other with respect to the prosecution of the proceeding, and attempt to preserve in full any attorney-client and work-product privileges and the confidentiality of any confidential information.

8.3 Assignment of Compensation. Grantor assigns and transfers to Beneficiary all of Grantor's rights to receive compensation as a result of any condemnation of all or any portion of the Trust Property.

8.4 Application of Compensation. If all or any portion of the Trust Property is condemned, and if Beneficiary receives any compensation as a result of the condemnation, (a) Beneficiary may hold the compensation as additional security for the full and prompt payment and performance of the Obligations, subject to the provisions of this Section 8.4, and (b) Beneficiary may, in Beneficiary's sole discretion, apply the compensation (1) to the Obligations, whether or not the Obligations are then due, and/or (2) to the cost and expense of restoring or improving the remaining portion of the Trust Property, if any, subject to any conditions that Beneficiary deems reasonably necessary to ensure that the remaining portion of the Trust Property is properly restored or improved, including, without limitation, holding the proceeds until the restoration or improvement is complete.

9. Payment of Taxes and Other Charges by Beneficiary. Whenever Grantor fails to pay when due any taxes, assessments, interest on prior mortgages, insurance premiums, and/or other charges necessary to be paid for the protection of Trustee's and/or Beneficiary's rights under this Trust Deed, Beneficiary may pay the same. Such payments will be added to the Obligations and will bear interest at the default interest rate specified in the Note.

#### BENEFICIARY'S WARNING TO GRANTOR

Unless you [Grantor] provide us [Beneficiary] with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

#### 10. Defaults and Remedies.

10.1 Events of Default. The occurrence of any one or more of the following events constitutes an event of default under this Trust Deed (each an "Event of Default"): (a) Grantor fails to make any payment Obligation when due; (b) Grantor fails to perform any non-payment Obligation within ten (10) days after Beneficiary notifies Grantor of the failure to perform the Obligation when due; (c) any representation or warranty made by Grantor in this Trust Deed is found to have been untrue or misleading in any respect as of the Effective Date; (d) an Encumbrance other than a Permitted Encumbrance attaches to the Trust Property; (e) any Transfer of the Trust Property and/or any interest in the Trust Property to any person other than Trustee or Beneficiary, unless the Transfer is expressly permitted by this Trust Deed; (f) any material loss or damage with respect to the Trust Property occurs that is not covered by insurance; (g) any material portion of the Trust Property is condemned; (h) Grantor fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Grantor's debts as they become due, or makes a general assignment for the benefit of creditors; (i) a proceeding with respect to Grantor is commenced under any applicable law for the benefit of creditors, including, without limitation, any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Grantor and/or the Trust Property is entered; (j) an event of default occurs under (1) any Loan Document, and/or (2) any agreement securing the performance of any of the obligations of any

guarantor of the Obligations; and/or (k) the occurrence of any event that has or may reasonably be expected to have an adverse effect on Grantor's financial condition and/or Grantor's ability to pay and perform the Obligations.

10.2 Remedies. On and after an Event of Default, Beneficiary may exercise the following remedies, which remedies are cumulative and which may be exercised singularly or concurrently: (a) upon notice to Grantor, the right to accelerate the due dates of the Obligations so that the Obligations are immediately due, payable, and performable in their entirety; (b) upon notice to Grantor, the right to take possession, control, and charge of the Trust Property; (c) the right to institute an action to appoint a receiver to take charge of the Trust Property; (d) the right to institute an action to obtain a temporary restraining order; (e) upon notice to Grantor, the right to pay and perform any of the Obligations; (f) any remedy available to Beneficiary under any Loan Document and/or any agreement securing the performance of any of the obligations of any guarantor of the Obligations; (g) any remedy available to Beneficiary under ORS Chapter 86, including, without limitation, the foreclosure of this Trust Deed by advertisement and sale in the manner provided in ORS 86.705 to ORS 86.795; (h) the right to foreclose this Trust Deed as provided by law for the foreclosure of mortgages on real property; (i) any remedy available to Beneficiary under the Uniform Commercial Code; (j) the right to revoke the license described in Section 3.3 and to (1) retain, collect, and receive all prepaid rent and existing and future security or other deposits that each Tenant has paid and will pay with respect to the Tenant's Lease, (2) collect and receive the rent and other payments due to Beneficiary under the Leases, and (3) enforce Beneficiary's rights under the Leases; (k) the right to deliver to each Tenant a letter, in form and substance reasonably satisfactory to Beneficiary, notifying the Tenant that (1) all of Grantor's rights under the Tenant's Lease have been assigned to Beneficiary, and (2) all future rent and other payments must be paid to Beneficiary; and/or (l) any other remedy available to Beneficiary at law or in equity.

10.3 Additional Rights and Obligations. After an Event of Default, (a) upon Beneficiary's request, Grantor will sign for each Tenant the letter described in Section 10.2, and (b) upon Beneficiary's request, Grantor will otherwise assist Beneficiary in exercising any remedy available to Beneficiary under this Trust Deed.

10.4 Possession and Protection of Trust Property. If Beneficiary or a receiver takes possession, control, and/or charge of the Trust Property after an Event of Default, Grantor will peacefully relinquish possession of the Trust Property upon Beneficiary's or the receiver's request. After taking possession, control, and/or charge of the Trust Property, Beneficiary or the receiver may (a) manage, develop, improve, partition, change the character of, or abandon the Trust Property, (b) make ordinary or extraordinary repairs or alterations to the Trust Property, demolish any improvements, and raze existing or erect new party walls or buildings, (c) subdivide the Trust Property, make or obtain the vacation of plats, or adjust boundaries, (d) enter into a lease of all or any portion of the Trust Property, (e) insure the Trust Property against damage or loss, (f) borrow and advance money for the protection of the Trust Property, and for all expenses, losses, and liability sustained in the protection of the Trust Property, (g) pay, contest, and/or settle any claim relating to the Trust Property, (h) pay taxes, assessments, and other expenses incurred in the protection of the Trust Property, (i) employ persons to advise or assist Beneficiary or the receiver in the protection of the Trust Property, and act without independent investigation upon their recommendations, (j) prosecute or defend actions, claims, and/or proceedings for the protection of the Trust Property, and/or (k) take any other actions that Trustee or the receiver deems reasonably necessary to protect the Trust Property. Any payments made or indebtedness incurred by Beneficiary or the receiver in connection with protecting the Trust Property will be added to the Obligations and will bear interest at the default rate specified in the Note. If Beneficiary or the receiver receives any rent or other payments after taking possession, control, and/or charge of the Trust Property, (y) Beneficiary may hold the payments as additional security for the full and prompt payment and performance of the Obligations, subject to the provisions of this Section 10.4, and (z) Beneficiary may, in Beneficiary's sole discretion, apply the payments (1) to the Obligations, whether or not the Obligations are then due, and/or (2) to the cost and expense of protecting the Trust Property.

10.5 Sale of Trust Property. After an Event of Default, Trustee may sell the Trust Property at auction to the highest bidder for cash. Any person, including Beneficiary, but excluding Trustee, may bid at the

sale. The attorney for Trustee, or any agent designated by Trustee or the attorney, may conduct the sale and act in the sale as the auctioneer of Trustee.

10.6 Proceeds of Sale of Trust Property. After an Event of Default and a sale of the Trust Property by Trustee, Trustee must apply the proceeds of the sale as follows: (a) to the expenses of the sale, including the compensation of Trustee, and a reasonable charge by the attorney for Trustee; (b) to the Obligations; (c) to all persons having recorded liens subsequent to the interest of Trustee in this Trust Deed as their interests may appear in the order of their priority; and (d) the surplus, if any, to Grantor or to the successor in interest of Grantor entitled to such surplus.

10.7 No Obligation to Pay or Perform. Beneficiary has no obligation to pay or perform any Obligation.

11. Release, Indemnification, and Waivers.

11.1 Release and Indemnification. Grantor releases and will defend, indemnify, and hold Trustee, Beneficiary, and each Beneficiary Representative harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, obligations, costs, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, the following: (a) any action that Trustee, Beneficiary, and/or any Beneficiary Representative take to perfect or continue Trustee's and/or Beneficiary's rights under this Trust Deed; (b) the exercise of any remedy available to Beneficiary under this Trust Deed, without regard to cause or the negligence of Trustee, Beneficiary, any Beneficiary Representative, and/or any other person; (c) any breach and/or inaccuracy of any Grantor representation, warranty, and/or covenant made in this Trust Deed and/or any Loan Document; and/or (d) any failure by Grantor to pay and/or perform any covenant and/or obligation required to be performed by Grantor under this Trust Deed and/or any Loan Document. This indemnification and hold harmless provision will survive the termination of this Trust Deed and the satisfaction of the obligations of Grantor to Beneficiary under this Trust Deed.

11.2 Waiver by Grantor. Grantor waives demand, presentment for payment, notice of dishonor or nonpayment, protest, notice of protest, and lack of diligence in collection, and agrees that Beneficiary may amend any agreement evidencing, guaranteeing, or securing any of the Obligations or extend or postpone the due dates of the Obligations without affecting Grantor's liability.

11.3 No Waiver by Beneficiary. No waiver will be binding on Beneficiary unless it is in writing and signed by Beneficiary. Beneficiary's waiver of a breach of a provision of this Trust Deed or any agreement evidencing, guaranteeing, or securing any of the Obligations will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. Beneficiary's failure to exercise any remedy under this Trust Deed or any agreement evidencing, guaranteeing, or securing any of the Obligations will not be considered a waiver by Beneficiary of Beneficiary's right to exercise the remedy.

12. Environmental Indemnification.

12.1 Indemnification. Grantor will jointly and severally defend, indemnify, and hold Trustee, each Trustee Representative, Beneficiary, and each Beneficiary Representative harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, Grantor's breach of any representation, warranty, covenant, and/or other obligation of Grantor in Section 4.8 and/or Section 5.13.

12.2 Survival. All representations, warranties, covenants, and other obligations of Grantor in Section 4.8, Section 5.13, and Section 12.1 will survive the reconveyance of the Trust Property to Grantor and the foreclosure of this Trust Deed.

13. Successor Trustee. At any time, Beneficiary may appoint in writing a successor to Trustee. If the appointment of the successor to Trustee is recorded in the mortgage records in Jefferson County, Oregon, the successor to Trustee will be vested with all the powers of Trustee.

14. Non-foreign Affidavit. Contemporaneously with the signing and delivery of this Trust Deed, Grantor will deliver to Beneficiary a non-foreign affidavit signed by Grantor for purposes of Section 1445 of the Internal Revenue Code, in form and substance reasonably satisfactory to Beneficiary.

15. Miscellaneous.

15.1 Time of Essence; No Assignment; Binding Effect. Time is of the essence with respect to all dates and time periods in this Trust Deed. Grantor may not assign or delegate any of Grantor's rights or obligations under this Trust Deed to any person without the prior written consent of Beneficiary, which Beneficiary may withhold in Beneficiary's sole discretion. This Trust Deed will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.

15.2 Amendment; Notice. This Trust Deed may be amended only by a written document signed by the party against whom enforcement is sought. Any notice required under this Trust Deed must be in writing. Any notice will be deemed given when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day.

15.3 Severability; Further Assurances; Remedies. If a provision of this Trust Deed is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Trust Deed will not be impaired. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Trust Deed. Beneficiary will have all remedies available to it at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

15.4 Governing Law; Venue. This Trust Deed is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Trust Deed. Any action or proceeding arising out of this Trust Deed will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.

15.5 Attorney Fees. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Trust Deed, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

15.6 Entire Agreement. This Trust Deed contains the entire understanding of the parties regarding the subject matter of this Trust Deed and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Trust Deed.

15.7 No Waiver by Beneficiary. No failure and/or delay of Beneficiary in exercising any right, power, and/or remedy under this Trust Deed and/or any other Loan Document will operate as a waiver of such right, power, and/or remedy of Beneficiary or of any other right. A waiver of any provision of this Trust Deed

and/or any other Loan Document will not constitute a waiver of or prejudice Beneficiary's right to demand strict compliance with that provision and/or any other provision. Any waiver, permit, consent, and/or approval of any kind or character on the part of Beneficiary must be in writing and will be effective only to the extent specifically set forth in writing.

15.8 Interpretation and Exercise of Discretion. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Trust Deed. When Beneficiary is exercising any consent, approval, determination, and/or similar discretionary action under this Trust Deed, the standard will be Beneficiary's sole discretion. For purposes of this Trust Deed, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

15.9 Attachments. Any exhibits, schedules, and other attachments referenced in this Trust Deed are part of this Trust Deed.

15.10 Waiver of Jury Trial and Hearing. GRANTOR IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING HEREAFTER INSTITUTED BY OR AGAINST GRANTOR IN RESPECT TO THIS TRUST DEED, THE NOTE, AND/OR ANY OTHER DOCUMENT PERTAINING TO THIS LOAN TRANSACTION. GRANTOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS TRUST DEED IS A PART IS A COMMERCIAL TRANSACTION. TO THE EXTENT PERMITTED BY ANY STATE OR FEDERAL LAW, GRANTOR WAIVES ANY RIGHT GRANTOR MAY HAVE TO PRIOR NOTICE OF AND A HEARING ON THE RIGHT OF ANY HOLDER OF THIS TRUST DEED, THE NOTE, AND/OR ANY OTHER DOCUMENT PERTAINING TO THIS LOAN TRANSACTION TO ANY REMEDY OR COMBINATION OF REMEDIES THAT ENABLES SAID HOLDER, BY WAY OF FORECLOSURE, ATTACHMENT, GARNISHMENT, OR REPLEVIN, TO DEPRIVE GRANTOR OF ANY PROPERTY, AT ANY TIME, PRIOR TO FINAL JUDGMENT IN ANY LITIGATION INSTITUTED IN CONNECTION WITH THIS TRUST DEED, THE NOTE, AND/OR ANY OTHER DOCUMENT PERTAINING TO THIS LOAN TRANSACTION.

15.11 Joint and Several. If Grantor consists of more than one party, all Grantor representations, warranties, covenants, and obligations made under this Trust Deed are made by Grantor on a joint and several basis.

[end of instrument – signature page immediately follows]

IN WITNESS WHEREOF, the undersigned has caused this Trust Deed to be executed on the date first written above but made effective for all purposes as of the Effective Date.

**GRANTOR:**

\_\_\_\_\_  
David A. Potter

State of Oregon            )  
                                  )        ss.  
County of Jefferson        )

I certify that I know or have satisfactory evidence that David A. Potter signed this instrument, that he is authorized to execute this instrument and acknowledge it to be his free and voluntary act for the uses and purposes contained in this instrument.

Before me:

\_\_\_\_\_  
Notary Public for Oregon  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Appendix A  
Definitions

“Beneficiary Representative(s)” means Beneficiary and its successors, assigns, divisions, affiliates, and related entities, and all past, present, and future officers, directors, shareholders, members, managers, employees, attorneys, agents, volunteers, contractors, representatives, and insurers of the aforementioned.

“Encumbrance(s)” means any liens, mortgages, pledges, security interests, reservations, restrictions, changes, claims, and/or any other encumbrances.

“Environmental Law(s)” means any law designed to minimize, prevent, punish, and/or remedy the consequences of actions that damage or threaten the environment or public health and safety.

“Event of Default” means any event specified in Section 10.1.

“Hazardous Substance(s)” means any hazardous or toxic substance, material, and/or waste, including, without limitation, the following: (a) any hazardous or toxic substance, material, and/or waste that is defined as such under any Environmental Law; and (b) petroleum, petroleum products, asbestos, presumed asbestos-contaminating materials, asbestos-contaminating materials, urea formaldehyde, and polychlorinated biphenyls.

“Knowledge” means, with respect to Grantor, the actual knowledge of each Grantor and any knowledge that each Grantor would have obtained if such individual(s) had conducted a reasonably comprehensive investigation of the relevant matter.

“Lease(s)” means any lease affecting the Trust Property to which Grantor is or becomes a party.

“Loan Document(s)” means (a) the Madras Redevelopment Commission – Urban Renewal Line of Credit Loan Agreement dated as of the Effective Date made by Grantor in favor of Beneficiary, (b) this Trust Deed, (c) the Note, and (d) any agreement evidencing, guaranteeing, and/or securing the performance of any of Grantor’s obligations arising out of or under the aforementioned.

“Note” means the Line of Credit Promissory Note dated as of the Effective Date in the principal amount of Eighteen Thousand Dollars (\$18,000.00) made by Grantor in favor of Beneficiary and referenced in the recital.

“Obligation(s)” means all present and future obligations of any kind owed by Grantor to Beneficiary, including, without limitation, all of Grantor’s obligations arising out of or under (a) the Note, (b) this Trust Deed, and (c) any other agreement evidencing, guaranteeing, and/or securing the performance of any of Grantor’s obligations arising out of or under the aforementioned agreements.

“Permitted Encumbrance(s)” means (a) any lien, mortgage, pledge, security interest, and/or other encumbrance in favor of Lender, (b) a certain easement granted to Pacific Telephone and Telegraph Company under a certain Easement recorded on June 27, 1923 in the Jefferson County Official Records as Instrument No. 7-304, (c) certain limited access provisions contained in the Warranty Deed from Earl M. Bone and Edith Bone to the State of Oregon recorded on June 1, 1959 in the Jefferson County Official Records as Instrument No. 31-102, (d) an easement granted to Cascade Natural Gas Corporation under a certain Right of Way Contract recorded on June 19, 1969 in the Jefferson County Official Records as Instrument No.: 44-102, and (e) any lien, mortgage, pledge, security interest, or other encumbrance arising by operation of law for taxes, assessments, or government charges not yet due.

“Real Property” means the real property (and all improvements located thereon) located at 401 NE Sixth Street, Madras, Oregon 97741 as more particularly described on the attached Exhibit A.

“Tenant(s)” means any person other than Grantor that is a party to any Lease.

“Transfer(s)” means (a) any transfer, including, without limitation, any sale, conveyance, exchange, gift, lease, encumbrance, foreclosure of an encumbrance, or attachment, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence, and (b) any agreement involving the ownership, lease, and/or use of all or any portion of the Property for a period longer than thirty (30) days.

“Trust Property” means all of Grantor’s right, title, and interest in and to the Real Property, together with the following:

- (a) all interests, estates, and rights that Grantor now has and/or may acquire in the Real Property;
- (b) any and all options, agreements, and contracts for the purchase or sale of all or any part or parts of the Real Property or interests in the Real Property;
- (c) all easements, rights-of-way, and rights used in connection with the Real Property and/or as a means of access to the Real Property;
- (d) all tenements, hereditaments, and appurtenances in any manner belonging, relating, and/or appertaining to the Real Property;
- (e) all interests, estates, and rights of Grantor, now owned or hereafter acquired, in and to any land lying within any streets, sidewalks, alleys, strips, and/or gores adjacent to or used in connection therewith;
- (f) all Grantor rights, titles, and interests, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Real Property and all fixtures, machinery, equipment, and other personal property located on the Real Property or attached to, contained in, or used in any such buildings and other improvements, and all appurtenances and additions to and substitutions and replacements of the Real Property (all of the foregoing being collectively referred to below as the “Improvements”);
- (g) any and all mineral, oil and gas rights, air rights, development rights, water rights, water stock, and water service contracts, drainage rights, zoning rights, and other similar rights or interests that benefit or are appurtenant to the Real Property or the Improvements or both, and any of their proceeds;
- (h) all Grantor rights, titles, and interests in and to all present and future licenses, permits, approvals, and agreements with or from any municipal corporation, county, state, or other governmental or quasi-governmental entity or agency relating to the development, improvement, division, or use of all or any portion of the Real Property to the extent assignable by law; and all other general intangibles relating to the Real Property, the Improvements, or their use and operation;
- (i) all Grantor rights in and to any escrow or withhold agreements, title insurance, surety bonds, warranties, management contracts, leasing and sales agreements, and service contracts that are in any way relevant to the ownership, development, improvement, management, sale, and/or use of all or any portion of the Real Property or any of the Improvements;
- (j) Grantor’s rights under any payment, performance, and/or other bond in connection with construction of any Improvements, and all construction materials, supplies, and equipment delivered to the Real Property or intended to be used in connection with the construction of any Improvements; and
- (k) all rights, interests, and claims that Grantor now has or may acquire with respect to any damage to or taking of all or any part of the Real Property and/or the Improvements, including, without limitation, any and all proceeds of insurance in effect with respect to the Improvements, any and all awards made for taking by eminent domain or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Property or

the Improvements, and any and all awards resulting from any other damage to the Real Property or the Improvements, all of which are assigned to Beneficiary under this Trust Deed.

“Trustee Representative(s)” means each present and future director, officer, shareholder, employee, member, assignee, manager, partner, and authorized representative of Trustee.

Exhibit A  
Legal Description

Parcel 1:

Description of a parcel of land situate in a portion of the NW1/4 of the SW1/4 of Section 1, Township 11 South, Range 13 East, W.M., City of Madras, Jefferson County, Oregon, more particularly described as follows: Commencing at a 3/4" rod monumenting the Northeast corner of the NW1/4 of the SW1/4 of Section 1 T. 11S. R. 13E. W.M., the Initial Point; thence S00°07'05"W along the East line of said NW1/4SW1/4, 252.78 feet to the Northerly line of Bone Addition to the City of Madras on the Northerly line of Park Avenue; thence S49°11'43" W along said Northerly lines, 817.56 feet to the TRUE POINT OF BEGINNING; thence N58°26'29"W, 96.80 feet to a 1/2" pipe in an existing fence; thence N36°24'33"E along said fence, 72.10 feet to a 1/2" pipe at an angle point of said fence; thence N67°41'38"W along said fence, 287.45 feet to a 1/2" pipe on the East line of State Highway U.S. Number 97; thence S31°30'04"W along said East line, 25.52 feet to a common boundary with Pacific Northwest Bell Telephone Company, recorded in Deed Book 33 Page 339, records of Jefferson County, Oregon; thence along said common boundary as follows: S58°23'00"E, 102.13: feet to a found 1/2" Re-bar; thence S31°37'00"W, 98.95 feet; thence S89°40'00"W, 116.42 feet to a 1" iron rod, cited in said Deed as N89°40'W, 118 feet; thence N00°04'00"E, 5.80 feet to said East Highway line, cited in said Deed as N00°04'E, 7.66 feet, thus ending this boundary along said common line; thence S31°30'04"W along said East line, 225.02 feet to the North line of Sixth Street per Bone Addition; thence N76°46'42"E, 120.56 feet to a 1/2" pipe on the prolongation of the East line of said Sixth Street; a point witnessed by the angle point in said East line per Bone Addition which bears South, 115.00 feet; thence East 283.57 feet to a 1/2" pipe on the Northerly line of Park Avenue; thence N49°11'43"E along said Northerly line, 154.45 feet to the TRUE POINT OF BEGINNING EXCEPTING THEREFROM that portion lying within U.S. Highway 97 and NE 6th Street.

Parcel 2:

Commencing at a 3/4" rod monumenting the Northeast corner of the Northwest quarter of the Southwest quarter of Section 1, Township 11 South, Range 13 East of the Willamette Meridian, Jefferson County, Oregon; the Initial Point; thence South 00° 07' 05" West along the East line of said Northwest quarter Southwest quarter 252.78 feet to the Northerly line of Bone Addition to the City of Madras, Oregon and the Northerly line of Park Avenue; thence South 49° 11' 43" West along said Northerly lines 972.01 feet to a 1/2" pipe and the True Point of Beginning; thence South 49° 11' 43" West along said Northerly lines 110.41 feet to the West line of Seventh Street; thence South along said line 66.00 feet to the North line of Lot 1 Block 2 of said Addition; thence South 82° 22' 00" West along said North line 100.89 feet to the West line of said Lot 1; thence North along the prolongation of said West line 46.61 feet to the Northeast corner of that tract of land described in Warranty Deed filed April 16, 1979 in Deed Book 62, instrument No. 132438, Jefferson County Records; thence West, 100.00 feet to the prolongation of the East line of Sixth Street per said Addition, a point witnessed by the angle point in said East Street line which bears South, 10.00 feet; thence North along said prolongation 105.00 feet to a 1/2" pipe and also being the Northeast corner of that tract of land described in Declaration of Dedication filed November 9, 1983, as instrument No. 149336, Jefferson County Records; thence East 283.57 feet to the True Point of Beginning.



PO Box 67, Madras, OR 97741  
PHONE (541)475-4885 FAX (541)475-4348

---

To: Bryant, Lovlien & Jarvis, P.C.  
591 SW Mill View Wy.  
Bend, OR 97702  
Attn: Nicole Precone

Date: February 29, 2016  
Order No. 90238AM  
Re: 401 NE Sixth Street  
Madras, OR 97741

We have enclosed our Preliminary Title Report pertaining to order number 90238AM:

***Thank you for the opportunity to serve you. Your business is appreciated!***

If you have any questions or need further assistance, please do not hesitate to contact your Title Officer listed below.

Sincerely,

Rick Baird, Rick.Baird@amerititle.com  
Title Officer



PO Box 67, Madras, OR 97741  
PHONE (541)475-4885 FAX (541)475-4348

---

February 29, 2016  
File Number: 90238AM  
Report No.: 1  
Title Officer: Rick Baird  
Email Address: Rick.Baird@amerititle.com  
Phone No.: (541)389-7711

### PRELIMINARY TITLE REPORT

**Property Address: 401 NE Sixth Street, Madras, OR 97741**

**Policy or Policies to be issued:**

ALTA RESIDENTIAL ( ) EXTENDED ( X ) STANDARD

Liability  
\$18,000.00

Premium  
\$200.00

Proposed Insured: **Madras Redevelopment Commission**

We are prepared to issue ALTA (06/17/06) title insurance policy(ies) of Chicago Title Insurance Company, in the usual form insuring the title to the land described as follows:

**Legal description attached hereto and made a part hereof marked Exhibit "A"**

and dated as of 11th day of February, 2016 at 7:30 a.m., title is [vested in](#):

**David A. Potter**

The estate or interest in the land described or referred to in this Preliminary Title Report and covered herein is:

FEE SIMPLE

**Except for the items properly cleared through closing, Schedule B of the proposed policy or policies will not insure against loss or damage which may arise by reason of the following:**

**GENERAL EXCEPTIONS:**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject Land onto adjoining Land or of existing improvements located on adjoining Land onto the subject Land) encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the subject Land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

**EXCEPTIONS 1 THROUGH 5 ABOVE APPLY TO STANDARD COVERAGE POLICIES AND MAY BE MODIFIED OR ELIMINATED ON AN EXTENDED COVERAGE POLICY.**

**SPECIAL EXCEPTIONS:**

6. Taxes assessed under Code No. 0015 Account No. 9052 [Map](#) No. 111301CB 00102  
The 2012-2013 [Taxes](#): \$1,549.44, plus interest, unpaid.
7. The 2013-2014 Taxes: \$1,588.11, plus interest, unpaid.
8. The 2014-2015 Taxes: \$1,536.91, plus interest, unpaid.
9. The 2015-2016 Taxes: \$1,442.49, plus interest, unpaid.
10. Taxes assessed under Code No. 0015 Account No. 9053 [Map](#) No. 111301CB 00103  
The 2012-2013 [Taxes](#): \$4,191.54, plus interest, unpaid.
11. The 2013-2014 Taxes: \$4,296.11, plus interest, unpaid.
12. The 2014-2015 Taxes: \$4,035.32, plus interest, unpaid.
13. The 2015-2016 Taxes: \$3,039.15, plus interest, unpaid.
14. The property lies within the boundaries of Deschutes Valley Water District and is subject to any charges or assessments levied by said District and pipeline easements in connection therewith.  
(No inquiry has been made. If a search is requested, a charge of \$10.00 per account will be added)
15. Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals of North Unit Irrigation District.  
(No inquiry has been made. If a search is requested, a charge of \$10.00 per account will be added)
16. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: Pacific Telephone and Telegraph Company  
Recorded: June 27, 1923  
Instrument No.: [7-304](#)

17. Limited access provisions contained in Deed from Earl M. Bone and Edith Bone to State of Oregon, by and through its State Highway Commission, which provided that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,  
Recorded: June 1, 1959  
Instrument No.: [31-102](#)
18. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: Cascade Natural Gas Corporation  
Recorded: June 19, 1969  
Instrument No.: [44-102](#)
19. Release and relinquishment to the State of Oregon of any abutters rights of ingress and egress, as contained in Stipulated General Judgment,  
Recorded: May 30, 2006  
Instrument No.: [2006-03260](#)
20. Rights of tenants under existing leases or tenancies.

**INFORMATIONAL NOTES:**

NOTE: As of the date hereof, there are no matters against David A Potter which would appear as exceptions in the policy to issue, except as shown herein.

NOTE: Underwriter's portion of the total title insurance premium (include endorsements and additional risk premiums) 11.25%.

NOTE: We find no activity in the past 24 months regarding transfer of title to subject property.

NOTE: Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

NOTE: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

NOTE: Your application for title insurance was placed by reference to only a street address or tax identification number. Based on our records, we believe that the legal description in this report covers the parcel(s) of Land that you requested. If the legal description is incorrect, the parties to the transaction must notify the Company and/or the settlement company in order to prevent errors and to be certain that the correct parcel(s) of Land will appear on any documents to be recorded in connection with this transaction and on the policy of title insurance.

This report is preliminary to the issuance of a policy of title insurance and shall become null and void unless a policy is issued and the full premium paid.

**End of Report**

*"Superior Service with Commitment and Respect for Customers and Employees"*

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Parcel 1:

Description of a parcel of land situate in a portion of the NW1/4 of the SW1/4 of Section 1, Township 11 South, Range 13 East, W.M. , City of Madras, Jefferson County, Oregon, more particularly described as follows: Commencing at a 3/4" rod monumenting the Northeast corner of the NW1/4 of the SW1/4 of Section 1 T. 11S. R. 13E.W.M., the Initial Point; thence S00°07'05"W along the East line of said NW1/4SW1/4, 252.78 feet to the Northerly line of Bone Addition to the City of Madras on the Northerly line of Park Avenue; thence S49°11'43" W along said Northerly lines, 817.56 feet to the TRUE POINT OF BEGINNING: thence N58°26'29"W, 96.80 feet to a 1/2" pipe in an existing fence; thence N36°24'33"E along said fence, 72.10 feet to a 1/2" pipe at an angle point of said fence; thence N67°41'38"W along said fence, 287.45 feet to a 1/2" pipe on the East line of State Highway U.S. Number 97; thence S31° 30'04"W along said East line, 25.52 feet to a common boundary with Pacific Northwest Bell Telephone Company, recorded in Deed Book 33 Page 339, records of Jefferson County, Oregon; thence along said common boundary as follows: S58°23'00"E, 102.13: feet to a found 1/2" Re-bar; thence S31°37'00"W, 98.95 feet; thence S89°40'00"W, 116.42 feet to a 1" iron rod, cited in said Deed as N89°40'W, 118 feet; thence N00°04'00"E, 5.80 feet to said East Highway line, cited in said Deed as N00°04'E, 7.66 feet, thus ending this boundary along said common line; thence S31°30'04"W along said East line, 225.02 feet to the North line of Sixth Street per Bone Addition; thence N76°46'42"E, 120.56 feet to a 1/2" pipe on the prolongation of the East line of said Sixth Street; a point witnessed by the angle point in said East line per Bone Addition which bears South, 115.00 feet; thence East 283.57 feet to a 1/2" pipe on the Northerly line of Park Avenue; thence N49°11'43"E along said Northerly line, 154.45 feet to the TRUE POINT OF BEGINNING EXCEPTING THEREFROM that portion lying within U.S. Highway 97 and NE 6th Street.

Parcel 2:

Commencing at a 3/4" rod monumenting the Northeast corner of the Northwest quarter of the Southwest quarter of Section 1, Township 11 South, Range 13 East of the Willamette Meridian, Jefferson County, Oregon; the Initial Point; thence South 00° 07' 05" West along the East line of said Northwest quarter Southwest quarter 252.78 feet to the Northerly line of Bone Addition to the City of Madras, Oregon and the Northerly line of Park Avenue; thence South 49° 11' 43" West along said Northerly lines 972.01 feet to a 1/2" pipe and the True Point of Beginning; thence South 49° 11' 43" West along said Northerly lines 110.41 feet to the West line of Seventh Street; thence South along said line 66.00 feet to the North line of Lot 1 Block 2 of said Addition; thence South 82° 22' 00" West along said North line 100.89 feet to the West line of said Lot 1; thence North along the prolongation of said West line 46.61 feet to the Northeast corner of that tract of land described in Warranty Deed filed April 16, 1979 in Deed Book 62, instrument No. 132438, Jefferson County Records; thence West, 100.00 feet to the prolongation of the East line of Sixth Street per said Addition, a point witnessed by the angle point in said East Street line which bears South, 10.00 feet; thence North along said prolongation 105.00 feet to a 1/2" pipe and also being the Northeast corner of that tract of land described in Declaration of Dedication filed November 9, 1983, as instrument No.149336, Jefferson County Records; thence East 283.57 feet to the True Point of Beginning.



**STATEMENT OF TAX ACCOUNT**  
**JEFFERSON COUNTY TAX COLLECTOR**  
**66 S.E. D STREET, SUITE E**  
**MADRAS, OR 97741**  
**(541) 475-4458**

31-Mar-2016

POTTER, DAVID A  
 205 S 1ST ST  
 SILVERTON, OR 97381

Tax Account #	9052	Lender Name	
Account Status	A	Loan Number	
Roll Type	Real	Property ID	0015
Situs Address	401 NE 6TH ST MADRAS, OR 97741	Interest To	4/15/2016

**Tax Summary**

Tax Year	Tax Type	Total Due	Current Due	Interest Due	Discount Available	Original Due	Due Date
2015	ADVALOREM	\$1,487.37	\$1,442.49	\$44.88	\$0.00	\$1,442.49	Nov 15, 2015
2014	ADVALOREM	\$1,823.80	\$1,536.91	\$286.89	\$0.00	\$1,536.91	Nov 15, 2014
2013	ADVALOREM	\$2,138.65	\$1,588.11	\$550.54	\$0.00	\$1,588.11	Nov 15, 2013
2012	ADVALOREM	\$2,334.48	\$1,549.44	\$785.04	\$0.00	\$1,549.44	Nov 15, 2012
2011	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,487.94	Nov 15, 2011
2010	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,442.52	Nov 15, 2010
2009	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,395.22	Nov 15, 2009
2008	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,371.47	Nov 15, 2008
2007	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,334.52	Nov 15, 2007
2006	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,284.62	Nov 15, 2006
2005	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,240.30	Nov 15, 2005
2004	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,177.16	Nov 15, 2004
2003	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,153.97	Nov 15, 2003
2002	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$1,129.16	Nov 15, 2002
2001	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$998.11	Nov 15, 2001
2000	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$937.07	Nov 15, 2000
1999	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$867.70	Nov 15, 1999
1998	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$814.65	Nov 15, 1998
1997	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$813.84	Dec 15, 1997
1996	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$867.78	Nov 15, 1996
	<b>Total</b>	<b>\$7,784.30</b>	<b>\$6,116.95</b>	<b>\$1,667.35</b>	<b>\$0.00</b>	<b>\$24,432.98</b>	

**STATEMENT OF TAX ACCOUNT**  
**JEFFERSON COUNTY TAX COLLECTOR**  
**66 S.E. D STREET, SUITE E**  
**MADRAS, OR 97741**  
**(541) 475-4458**

31-Mar-2016

POTTER, DAVID A  
 205 S 1ST ST  
 SILVERTON, OR 97381

Tax Account #	9053	Lender Name	
Account Status	A	Loan Number	
Roll Type	Real	Property ID	0015
Situs Address	401 NE 6TH ST MADRAS, OR 97741	Interest To	4/15/2016

**Tax Summary**

Tax Year	Tax Type	Total Due	Current Due	Interest Due	Discount Available	Original Due	Due Date
2015	ADVALOREM	\$3,133.70	\$3,039.15	\$94.55	\$0.00	\$3,039.15	Nov 15, 2015
2014	ADVALOREM	\$4,788.58	\$4,035.32	\$753.26	\$0.00	\$4,035.32	Nov 15, 2014
2013	ADVALOREM	\$5,785.43	\$4,296.11	\$1,489.32	\$0.00	\$4,296.11	Nov 15, 2013
2012	ADVALOREM	\$6,315.25	\$4,191.54	\$2,123.71	\$0.00	\$4,191.54	Nov 15, 2012
2011	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$4,024.82	Nov 15, 2011
2010	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,901.61	Nov 15, 2010
2009	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,773.15	Nov 15, 2009
2008	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,709.05	Nov 15, 2008
2007	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,608.82	Nov 15, 2007
2006	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,473.98	Nov 15, 2006
2005	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,354.04	Nov 15, 2005
2004	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,183.35	Nov 15, 2004
2003	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,120.57	Nov 15, 2003
2002	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$3,053.49	Nov 15, 2002
2001	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$2,699.10	Nov 15, 2001
2000	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$2,534.01	Nov 15, 2000
1999	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$2,740.37	Nov 15, 1999
1998	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$2,572.87	Nov 15, 1998
1997	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$2,570.48	Dec 15, 1997
1996	ADVALOREM	\$0.00	\$0.00	\$0.00	\$0.00	\$2,482.24	Nov 15, 1996
	<b>Total</b>	<b>\$20,022.96</b>	<b>\$15,562.12</b>	<b>\$4,460.84</b>	<b>\$0.00</b>	<b>\$66,364.07</b>	

**CITY OF MADRAS**  
**Request for Madras Redevelopment Commission Action**

---

**Date Submitted:** March 31, 2016  
**Agenda Date Requested:** April 6, 2016  
**To:** Madras Redevelopment Commission  
**From:** Nicholas Snead, Community Development Director  
**Subject:** Report and Discussion on Contract Services for Commercial Development Recruitment.

**TYPE OF ACTION REQUESTED: (Check One)**

- |   |                                    |
|---|------------------------------------|
| <input type="checkbox"/> Resolution                             | <input type="checkbox"/> Ordinance |
| <input checked="" type="checkbox"/> <b>Formal Action/Motion</b> | <input type="checkbox"/> Other     |
| <input type="checkbox"/> No Action - Report Only                |                                    |

**OVERVIEW:**

On March 2, 2016 the Madras Redevelopment Commission (MRC) agreed to have staff research services to assist the MRC in recruiting commercial development to the Urban Renewal District. Staff has conducted additional research and will present that to the MRC. Staff requests the MRC formal action to allow staff to move forward to procure commercial development recruitment services.

**DISCUSSION:**

**Procurement:**

Services for the National Commercial Development Recruitment Specialist and the Local Commercial Development Specialist will need to be procured in two different ways. Primarily because there are three companies known that provide services to recruit national commercial and retail businesses however staff is not aware of individuals or companies that provide that provide services to recruit local commercial and retail business. Accordingly, the National Commercial Development Recruitment Specialist service will be procured in a manner consistent with City Ordinance No. 886, Exhibit A, Section B, by:

1. Staff as obtained three quotes from companies that are reasonably able to provide the needed services
2. The MRC will select the company that can provide the needed services at the lowest cost.

The Local Commercial Development Recruitment Specialist will be selected by City staff issuing a Request for Qualifications (RFQ). Individuals will be required to submit qualifications to City staff. Staff will review the submitted qualifications and determine the most qualified responder. Staff will then request the MRC to select the most qualified responder and then begin developing and Processional Services Agreement with the selected responder.

**National Commercial Development Recruitment Specialist:**

At the March 2, 2016 MRC meeting, staff presented the results of two inquires to firms that provide assistance recruiting national commercial and retail businesses: Buxton Company and The Retail Research Group. As presented at the March 2, 2016 MRC meeting, the Buxton Company was generally able to provide the desired recruitment services except for contacting the national commercial and retail businesses to persuade them consider development in Madras. Additionally, the Buxton Company's cost for services is a minimum of \$50,000 per year. The Retail Group specializes in grocery, drug store, general merchandisers, only provides market analysis and revenue projections for commercial developments, and does not contact the national commercial and retail businesses to persuade them consider development in Madras. Accordingly, the Buxton Company could not provide all of the desired services and the cost for services far exceeded the MRC's budget for such services. The Retail Research Group only specializes in a few national and regional commercial and retail business. Staff recommends that the MRC not select the Buxton Company or The Retail Research Group as the National Commercial Development Recruitment Specialist due to the cost of service and they're inability to provide the desired services, respectively.

After the March 2, 2016 MRC meeting, staff contacted a third company, The Retail Coach, that provides recruitment services for national commercial and retail businesses. The Retail Coach can provide recruitment services for national commercial and retail businesses by conducted any necessary additional market analyses, developing marketing materials, and will contact the national commercial and retail businesses that are consistent with the local demographic and market needs (Attachment A. The cost of such services from The Retail Coach is \$12,500. As such, staff recommends that the MRC select The Retail Coach as the National Commercial Development Recruitment Specialist based on their ability to provide the desired services at the lowest cost.

**Local Commercial Development Recruitment Specialist:**

As discussed at the March 2, 2016 MRC meeting, the Local Commercial Development Recruitment Specialist will likely be filled by a local individual. Staff does not know who locally would be interested in such service. In response staff has drafted a Scope of Work (Attachment B) for the Local Commercial Development Recruitment Specialist, which will be used in the RFQ solicitation. Staff requests the MRC review and provide feedback on the Scope of Work with respect to:

1. Scope of services
2. Cost of service (\$5,000)
3. Term of service (1 Year)

Notwithstanding changes to the Scope of Work that the MRC find appropriate, staff requests MRC approval of the Local Commercial Development Recruitment Specialist Scope of Work and direct staff to solicit qualifications for a Local Commercial Development Recruitment Specialist in accordance with City Ordinance No. 886.

**SUMMARY:**

- A. **Fiscal Impact:** \$17,500 in FY 2016-17. The MRC FY 2016-17 MRC budget has been prepared to accommodate the expense for the Commercial Development Recruitment Specialists. If the MRC FY 2016-17 budget is not approved with this expense, then services will not be procured.
- B. **Funding Source:** MRC General Fund, Materials & Services, Professional Services Line Item: 701-701-520-2503
- D. **Supporting Documentation:**

Attachment A: The Retail Coach, Recruitment Strategy

Attachment B: Local Commercial Development Recruitment Specialist Scope of Work

**STAFF RECOMMENDATION**

That the MRC select The Retail Coach as the National Commercial Development Recruitment Specialist based on their ability to provide the desired services at the lowest cost and approve the Local Commercial Development Recruitment Specialist Scope of Work and direct staff to solicit qualifications for a Local Commercial Development Recruitment Specialist in accordance with City Ordinance No. 886.

**RECOMMENDATION:**

I move to select The Retail Coach as the National Commercial Development Recruitment Specialist based on their ability to provide the desired services at the lowest cost and approve the Local Commercial Development Recruitment Specialist Scope of Work and direct staff to solicit qualifications for a Local Commercial Development Recruitment Specialist in accordance with City Ordinance No. 886.



# **Retail Recruitment Strategy**

*Madras, Oregon*

March 2016

Prepared by Kelly Cofer, CCIM, Aaron Farmer

# RETAIL ECONOMIC DEVELOPMENT PLAN

## METHODOLOGY

### ***Determining Retail Trade Areas***

- A primary Retail Trade Area is the geographic area from which retailers derive approximately 80-85% of their business.

### ***Retail Trade Area Mapping***

- Delineate boundary map of the Retail Trade Area using area analysis, community analysis, and retail transaction data.

### ***Demographic Profile***

The Retail Coach will create comprehensive 2010 Census, 2015, 2016, 2020 and 2021 demographic profiles for the Retail Trade Area and Madras. The profile includes the following characteristics:

- Population and Population Growth
- Population Trends
- Average Annual Population Growth
- Ethnicity
- Income
- Age
- Households and Household Growth
- Educational Attainment

***A community must be able to provide the information and data sets sought by retailers during the site selection process instantaneously. The data sets must be accurate, current, and readily available.***

### ***Identify Retail Gaps***

The Retail Coach will perform a Retail Gap Analysis that estimates potential retail sales (demand) for the Retail Trade Area and compare these figures to estimated sales figures (supply) to calculate approximate retail dollars “coming in” or “flowing out” of Madras. The Retail Gap Analysis will:

- Identify retail sales surpluses and leakages for different retail categories.
- Distinguish the retail categories that have the highest prospect for success and quantify their retail potential.
- Develop and provide summary tables and graphs of each retail category illustrating potential sales versus estimated actual

***A community is able to quantify its retail opportunity through the Retail Gap Analysis. It provides a summary of the primary spending gaps – or opportunities – segmented by retail category. A Retail Gap Analysis computes the retail potential of the Retail Trade Area, and then compares it to the estimated actual sales of the community. The difference is either a leakage, consumers are traveling outside the community for certain retail goods and services, or a surplus, consumers are traveling from outside the community for certain retail goods and services.***

## ***Recruitment of Retailers***

Retail recruitment requires a long-term commitment. Our Retail:360<sup>SM</sup> system involves a multi-step process that begins during the project and continues throughout our 12-month engagement period.

### ***Step 1: Identification of Retail Prospects***

The Retail Coach will identify 15 regional and national retailers whose essential location factors fit our findings from the area analysis, community analysis, Retail Trade Area demographic and Retail Gap Analysis.

It is important to understand that a community must target the retailers that are a good fit for their community, which means that the Retail Trade Area population, disposable incomes, ethnicities, ages, and educational level of the population should meet the retailer's ideal specifications.

### ***Step 2: Marketing***

The most critical step in reaching out to targeted retailers is providing site-specific information to corporate real estate directors and site selectors because it is essential in making initial decisions about locating in the community.

The Retail Coach creates a custom, inclusive Retailer Feasibility Package to address retailers' essential location criteria. The feasibility package includes:

- Location Map
- Retail Trade Area Map
- Existing Retailer Aerial Map
- Retailer Location Map
- Retail Trade Area Demographic Profile Summary
- Retail Gap Analysis Summary Table
- Retail Trade Area Demographic Profile
- Community/County Demographic Profile
- Area Traffic Generators
- Appropriate Logo and Contact Information

### ***Step 3: Recruitment***

- Introductory emails are sent to each targeted retailer.
- Personal telephone calls are placed to measure the interest level.
- Personal emails and Retailer Feasibility Packages are sent to each targeted retailer.
- A Retailer Status Report is provided quarterly with each retailer's complete contact information and comments resulting from recruitment activities.
- A Retailer Status Report is provided with retailer responses resulting from our continued recruitment activities.

**PROJECT TIMELINE & PRICING**

The project period is for 12 months, commencing on the receipt of the fully executed agreement.

**Project Fees**

The total fee for completion of this work is **\$12,500** payable in two installments:

- a. **\$6,250** upon execution of the agreement;
- b. **\$6,250** upon completion of first round of retailer contacting.

Project fees are payable within thirty (30) days after receipt of the invoice.

Should Madras request a special assignment or additional work not specifically referenced in the contract, we will prepare a written authorization to be signed by Madras in advance of commencing any additional work.

**Madras Responsibilities:**

Madras will designate a project liaison who will serve as The Retail Coach’s primary contact during the project.

Madras will provide information relevant to the project such as prior retail studies, current traffic count data, surveys, maps, aerials, infrastructure plans and any other plans that may influence the development of the retail strategy.

Madras will provide city or organization logo and contact information as it should appear on all produced reports and materials to The Retail Coach upon execution of the agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

The Retail Coach, L.L.C.

By: \_\_\_\_\_

C. Kelly Cofer, President/CEO

By: \_\_\_\_\_

City of Madras, Oregon

**Deliverables**

The Retail Coach will provide the following deliverables electronically:

**COMMUNITY ANALYSIS**

Retail Trade Area Maps with Demographic Profiles (Historical/Current/Projected)  
Madras Demographic Profile (Historical/Current/Projected)  
Retail Gap Analysis, including a summary table showing surpluses and/or leakages

**RETAIL RECRUITMENT PLAN**

Target list of retailers and restaurants along with contact information  
Retailer-Specific Feasibility Studies  
Retailer Status Report based on retailer and restaurant contacts

## Local Development Recruitment Specialist Scope of Work

### Overview:

The City of Madras established an Urban Renewal District (URD) in July 2002. The Madras Redevelopment Commission is comprised of appointed citizens who manage the Urban Renewal District in Madras. The goal of the URD is to remove blight through rehabilitation of older buildings, redevelopment of key sites, infrastructure improvements, and creating public amenities. Since 2002, over \$3.4 million has been spent on projects, including property acquisition and remediation, building façade improvements, infrastructure improvements, parks and open space improvements, and financial assistance for a new hotel and movie theater.

The Madras Redevelopment Commission (MRC) seeks to revitalize downtown Madras through public-private partnerships that leverage and attract commercial and retail development that fulfills market needs and catalyzes additional development within the District. The MRC wants to continue investing in improvements within the District and has prioritized investments that result in new development within the District and would like to hire a Local Commercial Development Recruitment Specialist to help accomplish the MRC investment and development goals.

### Job Summary

The MRC seeks to contract with a qualified professional for commercial development recruitment services. The Local Commercial Development Recruitment Specialist (Specialist) will generally:

- Work with the team of City staff to recruit development to the Urban Renewal District.
- Understand national, state, regional, and local market conditions related to commercial development
- Market the MRC's financial incentives for new development within the District.
- Find and connect willing property owner and developers to determine the feasibility of development within the District.
- Use creative problem solving and persistence to accomplish land sales, development agreements, and public financing for new development.

- Report to the MRC on a bi-monthly basis on the status of their efforts related to leads, projects materializing, concerns, and problems

### **Responsibilities**

- Develop and maintain professional relationships with national/regional retailer and restaurant site selectors, retail real estate developers, real estate brokers and other third parties involved in retail real estate in our client communities
- Proactively recruit retailers, restaurants and developers to client communities through electronic messaging, telephone calls and face-to-face meetings.
- Research and interpret retail strategy results including retail trade areas, demographic profiles and retail site assessments.
- Lead generation through traditional business development approaches, existing business contacts, professional organization memberships, trade events, corporate marketing support.
- Understand individual commercial, retailer, and restaurant location requirements and their suitability to Madras.
- Coordinate recruitment activities with the MRC and City of Madras staff.
- Update the MRC bi-monthly on recruitment efforts
- Occasional travel to meet with property owners, realtors, developers, etc.

### **Experience and Skills**

- Proven commercial, retail, restaurant site selection experience
- Ability to develop and or evaluate development pro forma
- Minimum of 5+ years professional experience in Commercial Real Estate
- Proven record of providing outstanding internal and external customer service
- Excellent oral and written communication skills
- The qualified candidate will be confident, detail oriented, a self-starter, well organized, able to handle multiple projects simultaneously, and comfortable working in a fast-paced environment
- Coordinate recruitment efforts with City, County, Chamber of Commerce, and other agency staff.

- Demonstrated creative problem solver
- Demonstrated strong interpersonal and sales skills
- Strong negotiation skills and proven track record in real estate negotiation

**Term**

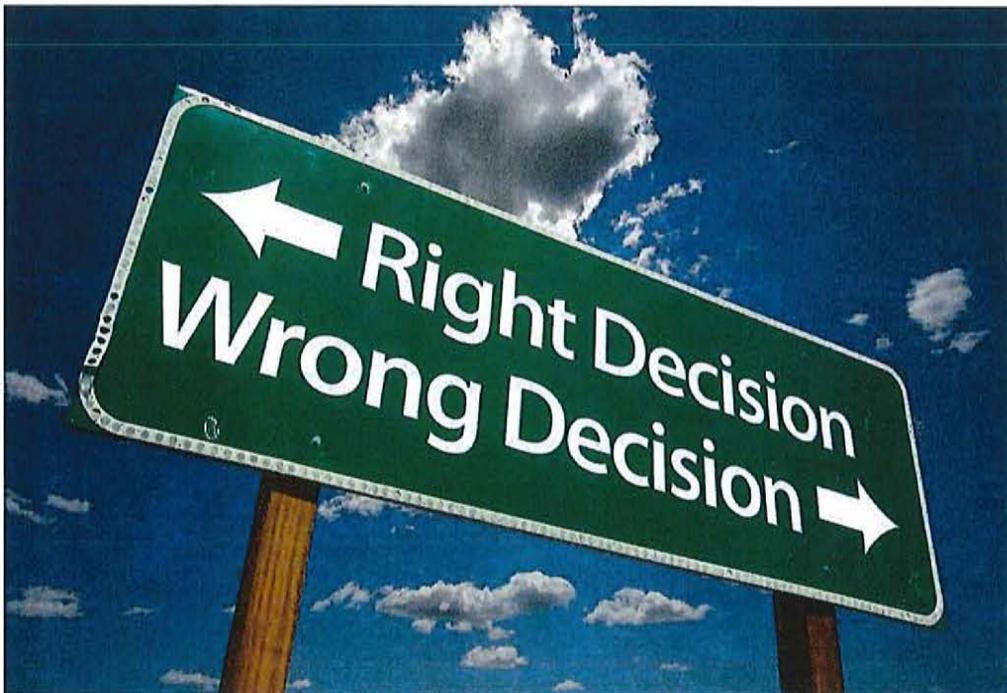
- The Local Commercial Development Recruitment Specialist will be funded for one (1) year however the MRC may extend the funding for services depending on the results of their efforts.
- The term of service will commence on or after July 1, 2016

**Compensation**

\$416.66 per month, \$5,000 total.

DRY

# Oregon Government Ethics Law



Oregon Government Ethics Commission  
3218 Pringle Rd. SE, Suite 220  
Salem, OR 97302-1544  
Telephone: 503-378-5105  
Fax: 503-373-1456  
Web address: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

## **About the Commission**

The Oregon Government Ethics Commission (OGEC), established by vote of the people in 1974, is a seven-member citizen commission (though HB 2019 (2015) will increase the number of commission members to nine) charged with enforcing government ethics laws.

Oregon government ethics laws prohibit public officials from using office for financial gain, and require public disclosure of economic conflict of interest. The OGEC also enforces state laws that require lobbyists and the entities they represent to register and periodically report their expenditures. The third area of OGEC jurisdiction is the executive session provisions of public meetings law.

## **Am I a “public official”?**

The answer is yes if you are serving the State of Oregon or any of its political subdivisions or any other public body, as an elected official, appointed official, employee, agent or otherwise, irrespective of whether you are compensated for services [ORS 244.020(15)].

## **What you need to know if you are a public official:**

The provisions in Oregon Government Ethics law restrict some choices, decisions or actions a public official may make. The restrictions placed on public officials are different than those placed on private citizens because service as a public office is a public trust and provisions in ORS Chapter 244 were enacted to provide one safeguard for that trust.

- Public officials are prohibited from using or attempting to use their positions to gain a financial benefit or to avoid a financial cost for themselves, a relative, or their businesses if the opportunity is available only because of the position held by the public official [ORS 244.040(1)].
- There are conditions that must be met before a public official may accept a gift and in some cases, there are limits on the value of gifts that can be accepted. Certain public officials are required to file reports that disclose some of the gifts accepted and the specific economic interests.
- When met with a conflict of interest, a public official must follow specific procedures to disclose the nature of the conflict. There are also restrictions on certain types of employment subsequent to public employment and on nepotism.

This handout will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules. This guide should not be used as a substitute for a review of the specific statutes and rules.

You will find links to ORS Chapter 244, and relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at [www.oregon.gov/ogec](http://www.oregon.gov/ogec). Questions or comments may be submitted to the Commission by email at [ogec.mail@state.or.us](mailto:ogec.mail@state.or.us), by Fax to 503-373-1456 or by telephone to 503-378-5105.

### Are you a public official?

"Public official" is defined in ORS 244.020(15) as any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- Elected or appointed to an office or position with a state, county or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county or city agency or special district.
- An unpaid volunteer for a state, county or city agency or special district.
- Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health Sciences University.

"As defined in ORS 244.020(15), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an "agent." An "agent" means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990)." The Commission has adopted, by rule, additional language used to clarify the use of "agent" in the definition of "public official" in the following OAR 199-005-0035(7).

My position as a \_\_\_\_\_ defines me as a public official.



## What does a public official need to know about relatives?

Public officials need to know how Oregon Government Ethics law defines who is a "relative". While a public official should exercise sound judgment when participating in actions that could result in personal financial benefits, a public official should also exercise sound judgment when participating in actions could result in financial benefits for a relative.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using actions of the position held to benefit a relative; or may limit the value of financial benefits accepted by a relative of the public official or may require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit.

In everyday conversation the use of "relative" is applied to a broader spectrum of individuals with "family ties" than those defined as relatives in ORS 244.020(16). In general, when a provision in ORS Chapter 244 refers to "relative" it means one of the following:

- The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate
- The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate
- Person for whom the public official or candidate have a legal support obligation
- Person benefiting from a public official when benefits are from the public official's public employment
- Person who benefits a public official or candidate when benefits are from the person's employment

I have approximately \_\_\_\_\_ relatives as defined by statute.



ORS Chapter 244 does address the issue of nepotism. Nepotism, as used in ORS Chapter 244, is based on the relative relationship, as well as other members of the public official's household. Changes to Oregon Government Ethics law passed by the 2013 Legislative Assembly mean that the definitions for "relative" in ORS 244.020(16), and "member of household" in ORS 244.010(11), now apply to these nepotism regulations as well.

**If I am a volunteer, does that make me a public official?**

If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, "irrespective of whether" you are "compensated" you are a public official.

Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services.

Among the public officials who volunteer are elected or appointed members of governing bodies of state boards or commissions, city councils, planning commissions, fire districts, school districts and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as fire fighters, reserve law enforcement officers and parks or recreation staff members.

The Commission recognizes that there are many who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts.

I am a \_\_\_\_\_ volunteer.



## Financial Gain

### **What are the provisions in the law that prohibits a public official from using the position or office held for financial gain?**

Public officials become public officials through employment, appointment, election or volunteering. ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official. The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

Not only is a public official prohibited from using the position as a public official to receive certain financial benefits, but the public official is prohibited from using or attempting to use the position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is the use or attempted use of the public official position to obtain financial benefits for a business with which either the public official, a relative or a member of the public official's household are associated.

Public officials often have access to or manage information that is confidential and not available to members of the general public. ORS 244.040(4) specifically prohibits public officials from attempting to use confidential information gained because of the position held or by carrying out assigned duties to further the public official's personal gain. ORS 244.040(5) also prohibits a former public official from attempting to use confidential information for personal gain if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.

ORS 244.040(6) also has a single provision to address circumstances created when public officials who are members of the governing body of a public body own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firms, may encounter circumstances in which this provision may apply.

There a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, conducting personal business on a government agency's time or with a government agency's resources [i.e. computers, vehicles, heavy equipment or office machines].

**NOTES:**

---

---

---

---

---

---

**Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available but for holding the position as a public official?**

Yes, ORS 244.040(2) provides a list of financial benefits that would not otherwise be available to public officials but for holding the position as a public official. The following financial benefits are not prohibited and may be accepted by a public official and some may also be accepted by a public official's relative or member of the public official's household:

**Official Compensation:** Public officials may accept any financial benefit that is identified by the public body served by the public official as part of the "official compensation package" of the public official. If the public body identifies such salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the "official compensation package". [ORS 244.040(2)(a)].

OAR 199-005-0035(3) provides a definition of "official compensation package:"

An "official compensation package" means the wages and other benefits provided to the public official. To be part of the public official's "official compensation package", the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. "Official compensation package" also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

**Reimbursement of Expenses:** A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business [ORS 244.040(2)(c)].

The Commission has provided a definition in OAR 199-005-0035(4): "reimbursement of expenses' means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment."



**Honorarium:** Public officials are allowed to accept honorarium by ORS 244.040(2)(b) as it is defined in ORS 244.020(8). A public official must know how honorarium is defined because there are many occasions where someone will offer them a financial benefit and call it an honorarium, but it does not meet the definition of honorarium.

A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the economic value has been prevented by custom or propriety. The services provided by a public official may include but not be limited to speeches or other services provided in connection with an event.

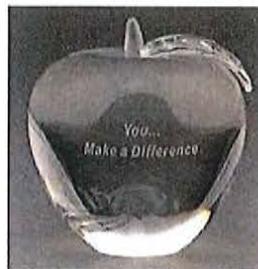
**The limitation for honorarium is \$50.**



**Awards for Professional Achievement:** Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize an achievement of the public official [ORS 244.040(2)(d)].

Awards for professional achievement should not be confused with awards of appreciation, allowed by ORS 244.020(7)(b)(C), honorarium allowed by ORS 244.040(2)(b) or gifts that are allowed or restricted by other provisions in ORS Chapter 244.

Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement. These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for an achievement. Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement. Public officials may be educators, lawyers, certified public accountants or hold a doctorate in some field. These public officials may receive awards recognizing achievements in their fields and those awards would be considered by the Commission to be awards allowed by ORS 244.040(2)(d).



## Gifts

There are occasions when public officials can accept gifts and Oregon Government Ethics law does not limit the quantity or value of gifts, but there are other occasions when the acceptance of gifts is limited to an aggregate value of \$50 from a single source in each calendar year [ORS 244.025].

When Oregon Government Ethics law uses the word "gift" it has the meaning in ORS 244.020(7)(a):

"Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(a) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(b) For valuable consideration less than that required from others who are not public officials or candidates." In other words, a "gift" is something of economic value that is offered to:

- A public official or candidate or to relatives or members of the household of a public official or candidate,
  - Without cost, at a discount or as forgiven debt and,
  - The same offer is not made or available to the general public who are not public officials or candidates.

To know whether gifts from a single source are limited or unlimited you must determine if the decisions or votes of the public official, who is offered a gift, would have a distinct economic impact on the source making the offer. If the source of the offer would receive a financial gain or avoid a financial cost from the decisions or votes of a public official, gifts from that source to that public official would be limited as to the aggregate value of gifts accepted from that source in a calendar year. This economic interest is a pivotal factor in determining the propriety of gifts and is found in the expression "legislative or administrative interest" which is defined in ORS 244.020(10) and is used in ORS Chapter 244, primarily, when applying the provisions regarding gifts accepted by public officials.

While a "gift" is defined in ORS 244.020(7)(a), ORS 244.020(7)(b), identifies specific gifts that are exempt from gift restrictions if the offers are made or accepted in the specific circumstances and conditions described.

**What does a public official need to know about a “Legislative or Administrative Interest” [ORS 244.020(10)]?**

Beginning in 2010, the change to the definition of what is a legislative or administrative interest represents one of the most significant changes made in Oregon Government Ethics law during the last session of the Oregon Legislative Assembly.

The change is significant because knowing if the source of a gift offered to a public official has a legislative or administrative interest determines whether or not the gift offered is allowed or restricted. Before this change, a public official only had to know if a gift was offered from a source with a legislative or administrative interest in the public official's governmental agency, but now the focus is on the vote or decision of each individual public official. The change places greater responsibility on the individual public official to decide if a gift offered is restricted by ORS Chapter 244. The definition of a legislative or administrative interest is provided in ORS 244.020(10) as follows:

“‘Legislative or administrative interest’ means an economic interest, distinct from that of the general public, in:

- (a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or
- (b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.”

In the context of gifts offered to or accepted by a public official or candidate, the public official or candidate must determine if the source of the offered gift has a legislative or administrative interest in the decision or vote of the public official or candidate, if elected. In applying the phrase “legislative or administrative interest,” there are several factors to consider:

**Source:** The Commission adopted a rule [OAR 199-005-0030(2)] that identifies the source of a gift is the person or entity that makes the ultimate and final payment of the gift's expense. OAR 199-005-0030 also places on the public official the burden of knowing the identity of the source and insuring that the aggregate value in ORS 244.025 is not exceeded.

**Distinct from that of the general public:** This phrase refers to an economic interest and in the context of gifts the economic interest of the source of a gift. The economic interest is whether a vote or decision by a public official would result in a financial gain or a financial detriment to the party who holds the interest. There are many votes or decisions made by public officials that have the same general economic impact on all members of the general public. Income or property tax rates would be examples.

There are other decisions or votes that have an economic impact on specific persons, businesses or groups that are not experienced by members of the general public alike. To illustrate, private contractors have an economic interest in a public body's authority to award contracts and that economic interest is distinct from the economic interest held

by members of the general public in the contracting authority of a public body. Also, real estate developers would have an economic interest in a public body's authority to approve subdivision applications and that economic interest is distinct from the economic interest held by members of the general public in the approval authority of a public body.

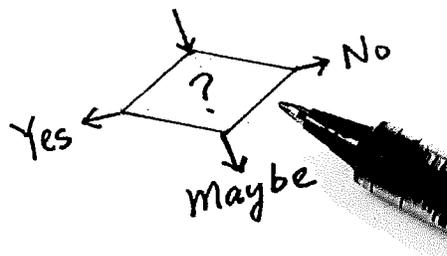
**Vote:** This has the common meaning of to vote as an elected member of a governing body of a public body or as a member of a committee, commission or board appointed by a governing body, Oregon Legislative Assembly or the Office of the Governor.

**Decision:** The Commission defines the term "decision" in OAR 199-005-0003(2). A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. Making a recommendation or giving advice in an advisory capacity does not constitute a decision.

The change to the definition of a legislative or administrative interest places the focus on the decision or vote of each individual public official. That means that any decision to accept or reject the offer of a gift must be made individually by each public official. It also means that there will be some public officials who may accept unlimited gifts from a source and other public officials within the same public body that would have restrictions on gifts from that same source because not all public officials in the same public body have similar responsibilities that would require any or similar decisions or votes.

If the source of the offer of a gift to a public official does not have a legislative or administrative interest in the decisions or votes of the public official, the public official can accept unlimited gifts from that source. [ORS 244.040(2)(f)] However, if the source of the offer of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year [ORS 244.025].

While gifts from a source with a legislative or administrative interest in the decisions or votes of a public official are limited, there are some gifts that are exempt from the definition of what is a "gift." If the offer of a gift is exempt from the definition of a "gift," the offer may be accepted by a public official. The value of gifts that are allowed as exemptions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year.



There are gifts that are allowed because when offered under specific conditions and within certain circumstances the gifts are exempt from the definition of a "gift." ORS 244.020(7)(b) provides a description of gifts that are allowed. If you are a public official accepting gifts or a source offering gifts it is important you become familiar with the requirements that may apply to you.

The following **GIFTS ARE ALLOWED** as exemptions to the definition of what is a "gift":

- Campaign contributions as defined in ORS 260.005 [ORS 244.020(7)(b)(A)].
- Contributions to a legal expense trust fund established under ORS 244.209 [ORS 244.020(7)(b)(G)].
- Gifts from relatives or members of the household of public officials or candidates [ORS 244.020(7)(b)(B)].
- Anything of economic value received by a public official or candidate, their relatives or members of their household when:
  - The receiving is part of the usual and customary practice of the person's business, employment, or volunteer position with any legal non-profit or for-profit entity [ORS 244.020(7)(b)(O)(i)].
  - The receiving bears no relationship to the person's holding the official position or public office [ORS 244.020(7)(b)(O)(ii)].
- Unsolicited gifts with a resale value of less than \$25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos [ORS 244.020(7)(b)(C) *and see resale value discussed in OAR199-005-0010*].
- Publications, subscriptions or other informational material related to the public official's duties [ORS 244.020(7)(b)(D)].
- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate [ORS 244.020(7)(b)(J)].
- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event [ORS 244.020(7)(b)(M) *and see "incidental" defined in OAR199-005-0025(1)*].
- Entertainment for a public official, a relative of the public official or a member of the public official's household when the public official is acting in an official capacity and representing a governing agency for a ceremonial purpose [ORS 244.020(7)(b)(N) *and see "ceremonial" defined in OAR199-005-0025(2)*].

- Cost of admission or food and beverage consumed by the public official, a relative, household member, or staff member when accompanying the public official, who is representing government (state, local or special district), at a reception, meal or meeting held by an organization [ORS 244.020(7)(b)(E) *and the accompanying discussion in OAR199-005-0015*].
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged [ORS 244.020(7)(b)(L) *and the accompanying discussion in OAR199-005-0025(1)*].
- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official [ORS 244.020(7)(b)(K)].
- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3) [ORS 244.020(7)(b)(F) *and see definition of terms for this exception in OAR 199-005-0020*].
- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official's household or staff may be accepted when the public official is representing the government agency or special district at one of the following:
  - Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(7)(b)(H)(i)]
  - Officially designated negotiation or economic development activity when receipt has been approved in advance [ORS 244.020(7)(b)(H)(ii). *Defined terms and an explanation of how and who may officially sanction or designate these events are addressed in OAR 199-005-0020(1)(b)(B).*]
- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip [ORS 244.020(7)(b)(P)].
- Food and beverage when acting in an official capacity in the following circumstances:
  - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction [ORS 244.020(7)(b)(I)(i)];

- While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing [ORS 244.020(7)(b)(I)(ii)]; or
- While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys [ORS 244.020(7)(b)(I)(iii)].

The last gift I received was from \_\_\_\_\_. The source of this offer is / is not economically affected by my decisions or votes as a public official.

### **Gifts vs. Prohibited Use of Position**

In understanding issues related to gifts, the operative definition of a “gift” is used in deciding how Oregon Government Ethics law would apply to a gift offered to or accepted by a public official or candidate. The application of the gift provisions regarding candidates is not included in this discussion. The following is a paraphrase of the definition taken from ORS 244.020(7)(a):

**Gift: “Something of economic value” given** to a public official, a relative of the public official or a member of the public official’s household and the recipient either makes no payment or makes payment at a discounted price. The opportunity for the gift is one that is **not available to members of the general public**, who are not public officials, **under the same terms and conditions as** those that apply to the gift offered to **the public official**, the relative or a member of the household.

The definition of a “gift” has remained much the same since Oregon Government Ethics law was enacted. Originally, the law prohibited the offer or acceptance of any gifts; it allowed some gifts and for others it imposed limits on the aggregate value on gifts that could be accepted. With the recent revisions, Oregon Government Ethics law does not prohibit gifts but does place conditions on when some gifts may be accepted and for other gifts there is a limit on the aggregate value that can be accepted.

The primary focus of ORS 244.040(1) is on the use or attempted use of the position held by the public official and not on whether a gift is accepted by a public official. However, accepting gifts that would not be available “but for” holding a position as a public official could represent a prohibited financial benefit.

The financial benefit prohibited by ORS 244.040(1) is one obtained by a public official through the use or attempted use of a position or office held. The prohibited benefit may be gained through the public official’s access to and use of the public body’s resources.

The financial benefit may take several forms. It may be the avoidance of a personal expense, money, extra income from private employment, creation of a new employment opportunity or the use of confidential information for financial gain.

Gifts, on the other hand, are not received by a public official, primarily, because of the public official's use of a public body's resources, but because gifts are offered by sources other than the public official's government employer or the public body represented by the public official. Sources of gifts are private individuals, businesses or organizations; they are public bodies that are not the employer of or represented by the public official. Sources of gifts may also be employees of the same public body of the public official and they offer gifts acquired with their personal resources, not the public body's resources. If something of economic value is received from the employer of or the public body represented by a public official, that "something" is not a gift, it is a financial benefit either allowed or prohibited by ORS 244.040.

### **Conflict of Interest**

Oregon Government Ethics law defines **actual conflict of interest** [ORS 244.020(1)] and **potential conflict of interest** [ORS 244.020(13)]. In brief, a public official is met with a conflict of interest when participating in official action which could result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either are associated.

**The difference between an actual conflict of interest and a potential conflict of interest is determined by the words "would" and "could."** A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated.

#### **Questions to ask yourself:**

**I own a business that my public body does business with. Yes / No**

**I have a relative that owns a business that my public body does business with. Yes / No**

**A member of my household owns a business that my public body does business with. Yes / No**

**I have identified \_\_\_\_\_ a business or businesses with which I, my relatives and members of my household are associated.**



### What if I am met with a conflict of interest?

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

#### **An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission:**

- (a) When met with a *potential* conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or
- (b) When met with an *actual* conflict of interest, announce publicly the nature of the actual conflict and refrain from participating\* as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

#### **Any other appointed official, including public officials in public bodies who are appointed, employed or volunteer:**

Must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met [ORS 244,120(1)(c)].

**My appointing authority is \_\_\_\_\_.**

**\*NOTE:** If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote.

The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)]

These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the numbers of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

**If in doubt, contact the Oregon Government Ethics Commission to seek guidance prior to engaging in any action, decision or recommendation in your official capacity.**

**The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:**

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite for holding the public official position [ORS 244.020(13)(a)].
- If the financial impact of the official action would impact the public official, relative or business of the public official *to the same degree* (meaning equally or proportionately) as other members of an identifiable group or "class." The Commission has the authority to determine the minimum size of a "class" [ORS 244.020(13)(b) and ORS 244.290(3)(a)].
- If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c)(3) of the Internal Revenue Code [ORS 244.020(13)(c)].

**How is the announcement of the nature of a conflict of interest recorded?**

The public body that is served by the public official will record the disclosure of the nature of the conflict of interest in the official records of the public body [ORS 244.130(1)].

**Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?**

The announcement needs to be made on each occasion the conflict of interest is met. For example, an elected member of the city council would have to make the public announcement one time during a meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting. An employee in a city planning department would have to give a separate written notice on each occasion they participate in official action on a matter that gives rise to a conflict of interest [ORS 244.120(3)].

**If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?**

No. Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest [ORS 244.130(2)].

**My positions as a \_\_\_\_\_ requires me to \_\_\_\_\_  
announce the nature of conflicts of interest on \_\_\_\_\_ occasion.**

**NOTES:**

---

---

---

---

---

---

---

---

**Employment**

**Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?**

No. Many public officials hold or perform services as volunteers, meaning there is little or no compensation and they have a private source of income to maintain a household. There are also public officials who do receive compensation, but for personal reasons find it necessary to seek additional sources of income. Some obtain employment with a private business and others establish a private business of their own.

ORS 244.040(3) prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment. Any employer who may directly or indirectly offer employment under these conditions may also violate this provision.

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own. They must not use the position held as a public official to create the opportunity for additional personal income. The public official must also insure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the public body's time and resources. The Commission has created guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

**GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS**

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.

4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
  - o Employees of governmental agencies must give written notice to their appointing authority.
  - o Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

**What are the restrictions on employment after I resign, retire or leave my public official position?**

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; however, most former public officials may enter the private work force with few restrictions.

**Resources**

All members of the Commission staff are cross-trained in the laws and regulations under the Commission's jurisdictions. Questions regarding the Commission's laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. Guidance and information is provided either informally or in written formal opinions. The following are available:

- Telephone inquiries are answered during the call or as soon as possible.
- E-mail inquiries are answered with return e-mail or telephone call as soon as possible.
- Letter inquiries are answered by letter as soon as possible.
- Written opinions on specific circumstances can also be requested.

**If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as "safe harbor" protection from becoming a respondent to a complaint filed with or initiated by the Commission?**

There is no "safe harbor," if the term is understood to mean that any person who relies on any advice or opinions offered by the Commission or the staff is protected from being a respondent to a complaint, found violating laws within the jurisdiction of the Commission or receiving a penalty for a violation.

There is, however, specific and conditional protection for any person who has requested and relied upon advice or an opinion from the Commission or its staff.

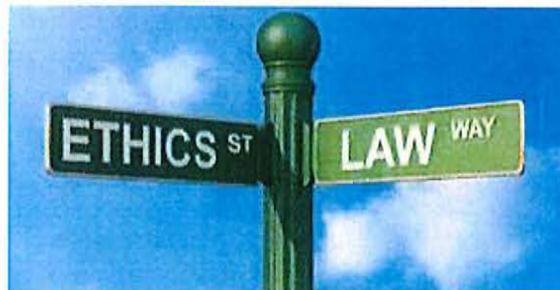
It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction the law may have a different application for one public official than for other public officials.

### **Sanctions for Violations**

- Civil Penalty [ORS 244.350]
- Forfeiture [ORS 244.306]
- Letters of Reprimand, Correction or Education [ORS 244.350(5)]

### **Resources and Information**

- Telephone 503-378-5105
- Fax 503-373-1456
- e-mail: [OGEC.mail@state.or.us](mailto:OGEC.mail@state.or.us)
- Website: <http://www.oregon.gov/OGEC>
- Training
  - In person
  - iLinc Webinars – Presented live using the internet
  - iLearn – Self-paced online eLearning



## Executive Session provisions of Public Meetings law ORS 192.660

### EXECUTIVE SESSION CHECKLIST

Prior to the meeting:

- Provide notice of an executive session in the same manner you give notice of a public meeting. **The notice must cite the specific statutory provision(s) authorizing the executive session.**

See attached document below for the permissible grounds for going into executive session.

At the meeting:

- Announce that you are going into executive session pursuant to ORS 192.660 and **cite the specific reason(s) and statute(s)** that authorize the executive session for **each subject** to be discussed. –Reminder, you may hold a public session even if an executive session is authorized.
- If you intend on coming out of executive session to take final action, announce when the open session will begin again.
- Specify if any individuals other than the news media may remain.
- Tell the media what may not be disclosed from the executive session. **If you fail to do this, the media may report everything!** If you discuss matters other than what you announce you are going to discuss in the executive session, the media may report those additional matters. \*A member of the news media must be excluded from executive session held to discuss litigation with legal counsel if he or she is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party.
- Come back into open session to take final action.** If you did not specify at the time you went into executive session when you would return to open session, and the executive session has been very short, you may open the door and announce that you are back in open session. If you unexpectedly come back into open session after previously announcing you would not be doing so, you must use reasonable measures to give actual notice to interested persons that you are back in open session. This may require postponing final action until another meeting.
- Keep minutes or a sound, video, or digital recording of executive sessions.

## Statutory Provisions for Executive Session

<p>To consider the employment of an officer, employee, staff member or agent if: (i) the job has been publicly advertised, (ii) regularized procedures for hiring have been adopted, and (iii) in relation to employment of a public officer, there has been an opportunity for public comment. For hiring a chief executive officer, the standards, criteria and policy to be used must be adopted in an open meeting in which the public has an opportunity to comment. This reason for executive session may not be used to fill vacancies in an elective office or on any public committee, commission or other advisory group, or to consider general employment policies</p>	<p>ORS 192.660(2)(a) ORS 192.660(7)</p>
<p>To consider dismissal or discipline of, or to hear charges or complaints against an officer, employee, staff member or agent, if the individual does not request an open meeting.</p>	<p>ORS 192.660(2)(b)</p>
<p>To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085 and 441.990(3).</p>	<p>ORS 192.660(2)(c)</p>
<p>To conduct deliberations with persons you have designated to carry on labor negotiations.</p>	<p>ORS 192.660(2)(d)</p>
<p>To conduct deliberations with persons you have designated to negotiate real property transactions.</p>	<p>ORS 192.660(2)(e)</p>
<p>To consider information or records that are exempt from disclosure by law, including written advice from your attorney.</p>	<p>ORS 192.660(2)(f)</p>
<p>To consider preliminary negotiations regarding trade or commerce in which you are in competition with other states or nations.</p>	<p>ORS 192.660(2)(g)</p>
<p>To consult with your attorney regarding your legal rights and duties in regard to current litigation or litigation that is more likely than not to be filed.</p>	<p>ORS 192.660(2)(h)</p>
<p>To review and evaluate the performance of an officer, employee or staff member if the person does not request an open hearing. This reason for executive session may not be used to do a general evaluation of an agency goal, objective or operation or any directive to personnel concerning those subjects.</p>	<p>ORS 192.660(2)(i) ORS 192.660 (8)</p>
<p>To carry on negotiations under ORS Chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.</p>	<p>ORS 192.660(2)(j)</p>
<p>For a health professional regulatory board to consider information obtained as part of an investigation of licensee or applicant conduct.</p>	<p>ORS 192.660(2)(k)</p>
<p>For the State Landscape Architect Board or its advisory committee to consider information obtained as part of an investigation of registrant or applicant conduct.</p>	<p>ORS 192.660(2)(l)</p>
<p>To discuss information about review or approval of programs relating to the security of any of the following: (A) a nuclear-powered thermal power plant or nuclear installation; (B) transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation; (C) generation, storage or conveyance of (i) electricity (ii) gas in liquefied or gaseous form (iii) hazardous substances as defined in ORS 453.005(7)(a), (b), and (d), (iv) petroleum products, (v) sewage, or (vi) water; (D) telecommunications systems, including cellular, wireless or radio systems; or (E) data transmissions by whatever means provided.</p>	<p>ORS 192.660(2)(m)</p>