



Deschutes County Board of Commissioners  
1300 NW Wall Street, Suite 200, Bend OR 97701-1960  
541.388.6570 – Fax 541.385.3202 – [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST AND STAFF REPORT**

**For Board Business Meeting of: February 25, 2015**

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**DATE:** February 12, 2015

**FROM:** Chris Doty                      Road Department                      Phone: 541.322.7105

**TITLE OF AGENDA ITEM:**

Consideration for Board approval of a License Agreement with the Sunriver Owners Association (SROA) to construct and maintain a fence in County right-of-way adjacent to Harper's Bridge.

**PUBLIC HEARING ON THIS DATE?** No

**BACKGROUND AND POLICY IMPLICATIONS:**

In the spring of 2014, the SROA constructed a fence across a right-of-way previously dedicated to Deschutes County for John Peters Road, north of Harper's Bridge (Spring River Road). The fence location represented a relocation of a prior fence alignment approximately 20-feet to the south.. The new fence location constricted recreational access to the river and constituted an unpermitted obstacle within the right-of-way.

After months of discussion, the SROA has agreed to relocate the fence to the prior location. Although also within the John Peters Road right-of-way, the prior location does not interfere with recreational access previously enjoyed by the public.

The attached License Agreement (to use right-of-way) will serve as a permit to accommodate the placement of the fence to its prior unpermitted location.

**FISCAL IMPLICATIONS:**

None

**RECOMMENDATION AND ACTION REQUESTED:**

Approval with suggested motion: "I move to approve a License Agreement with the Sunriver Owners Association to construct and maintain a fence in the John Peters Road right-of-way"

**ATTENDANCE:** Chris Doty

**DISTRIBUTION OF DOCUMENTS:** SROA, c/o Becki Sylvester, PO Box 3278, Sunriver, OR 97707

## DESCHUTES COUNTY DOCUMENT SUMMARY

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

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

**Date:**

**Department:**

**Contractor/Supplier/Consultant Name:**

**Contractor Contact:**

**Contractor Phone #:**

**Type of Document:** License Agreement (to use right-of-way)

**Goods and/or Services:** License to construct and maintain a fence in John Peters Road right-of-way.

**Background & History:** See agenda request/staff report

**Agreement Starting Date:**

**Ending Date:**

**Annual Value or Total Payment:**

Insurance Certificate Received (check box)

Insurance Expiration Date:

Check all that apply:

RFP, Solicitation or Bid Process

Informal quotes (<\$150K)

Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

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

If **No**, has budget amendment been submitted?  Yes  No

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

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

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

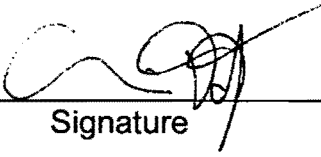
Contact information for the person responsible for grant compliance: Name:

Phone #:

\_\_\_\_\_

**Departmental Contact and Title:** Chris Doty, Director,  
**Phone #:** x7105

**Department Director Approval:**

  
Signature

02/11/15  
Date

**Distribution of Document:** Chris Doty, Road Department (x7105)

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**Official Review:**

County Signature Required (check one):  BOCC  Department Director (if <\$25K)

Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. \_\_\_\_\_)

Legal Review \_\_\_\_\_

Date \_\_\_\_\_

Document Number

~~DC 2014-117~~

For Recording Stamp Only

**LICENSE AGREEMENT  
(TO USE RIGHT OF WAY)**

THIS LICENSE, made and entered into by and between **Deschutes County**, herein called "Licensor," and **Sunriver Owners Association (SROA)**, herein called "Licensee,"

**WITNESSETH:**

WHEREAS, Licensee is the fee owner of the real property described in attached Exhibit "A" ("Property"), said real property being subject to and encumbered by a 60' public right-of-way easement ("Easement"); and

WHEREAS, Licensor, on behalf of the public, maintains and exercises control over the Easement and allows use of the Easement by the public; and

WHEREAS, Licensee has expressed concern that use of the Easement by the public exposes Licensee to monetary claims for injury and damage; and

WHEREAS, in order to deter the public from trespassing onto real property beyond the Easement Licensee has constructed a fence within a portion of the Easement; and

WHEREAS, Licensor has directed that Licensee's fence within the Easement be located so as not to impede or restrict use of the Easement by the public to gain access to the Deschutes River at Harper Bridge; and

WHEREAS, the parties to this License Agreement intend herein to state the terms under which Licensee may construct and maintain a fence within the Easement and Licensor may continue to maintain the Easement such that the public is afforded access to the Deschutes River at Harper Bridge, now therefore it is agreed as follows:

**TERMS:**

1. Term. The term of this License shall commence upon signature of all parties and continue until terminated or abandoned as provided herein.
2. Possession. Licensee's right to construct and maintain a fence within the Easement shall commence as of the date of this License. Pursuant to the terms and limitations of this License Agreement, Licensee shall have exclusive right to construct and maintain a fence within the Easement at a location authorized by Licensor. Licensee shall relocate existing fence crossing the Easement to the approximate location depicted on Exhibit A and shall thereafter, subject to the terms of this License, have the exclusive right to construct and maintain such fence within the Easement.
3. Condition of Property. Licensor represents that it has full right, power, and authority to enter into this License Agreement for the term herein granted and that the licensed real property

may be used by the Licensee during the entire term for the purposes herein set forth. If it is determined that Licensor did not have the right, power or authority to enter into this License because of Licensor's failure to have properly acquired jurisdiction over, or the Property is under lease or license to another and Licensee has not acquired the leasehold interest of such other person(s), firm, or corporation, this License shall automatically terminate. In the event of termination under the circumstances set forth in this paragraph, Licensee shall waive any and all claims or causes of action against Licensor.

4. Consideration. The real property herein licensed is held by Licensor for the purpose of public interest. The consideration for said License is the payment of a one-time fee of \$1.00.
5. Permitted Use. The Licensee may utilize the licensed real property described in Exhibit "A" attached hereto and by this reference incorporated herein, for the purpose of **constructing and maintaining a fence** in accordance with the laws of the State of Oregon and as approved by Licensor.
6. Restrictions on Use. In connection with the use of the real property, and as applicable, Licensee shall:
  - A. Obtain a utility locate and all necessary approvals or permits prior to any uses of the property.
  - B. Maintain the authorized fence to standards of repair, orderliness, neatness, sanitation and safety acceptable to Licensor.
  - C. Refrain from any use which would be reasonably offensive to the Licensor, or owners or users of adjoining real property, or which would tend to create a nuisance or damage the reputation of the real property.
  - D. Refrain from making any unlawful or offensive use of said property or to suffer or permit any waste or strip thereof.
7. Licensee's Obligations. The following shall be the responsibility of the Licensee:
  - A. Any repairs necessitated by the negligence of Licensee, its agents, employees and invitees to the authorized fence.
  - B. Any repairs or alterations required under Licensee's obligation to comply with laws and regulations as set forth in "Restrictions on Use" above.
  - C. Real property at end of License period shall be in as good condition as it was in at the beginning of the term, reasonable wear and tear excepted.
  - D. Pay Licensor for any damage resulting from Licensee's negligence or from the violation of the terms of this License.
8. Indemnification. Licensee shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of construction and maintenance of the authorized fence within the Easement; and further agrees to indemnify, defend, and save harmless the Licensor, its officers, agents, and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury.

To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Licensor shall defend, save, hold harmless and indemnify Licensee and its directors, officers, employees and agents from and against all

claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of public use of the Easement provided that the public use was for or associated with Deschutes River access at Harper Bridge, excepting any claim which is directly or indirectly associated with construction and maintenance of the authorized fence

9. Liens.

- A. Except with respect to activities for which the Licensor is responsible, the Licensee shall pay as due all claims for work done on and for services rendered or material furnished to the licensed real property and shall keep the real property free from any liens. If Licensee fails to pay any such claims or to discharge any lien, Licensor may do so and collect the cost as additional license fees. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Licensor and shall be payable on demand. Such action by Licensor shall not constitute a waiver of any right or remedy, which Licensor may have on account of Licensee's default.
- B. Licensee may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Licensor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Licensee shall, within thirty (30) days after knowledge of the filing, secure the discharge of the lien or deposit with Licensor cash or a sufficient corporate surety bond or other surety satisfactory to Licensor in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under a lien.

10. Continuing Obligation. Said License shall be an ongoing, continuous and binding obligation and privilege for Licensee, Licensee's successors and assigns. The protections, rights and authority reserved to the Licensor herein shall inure to the benefit of any successor governmental authority.

11. Default. The following shall be events of default:

- A. Abandonment of the licensed fence or the cessation of use of the licensed fence.
- B. Failure of Licensee to pay any license fees or other charge within thirty (30) days after it is due and written notice is given by Licensor to Licensee.
- C. Failure of Licensee to comply with any term or condition or fulfill any obligation of the License within thirty (30) days after written notice by Licensor specifying the nature of the default with reasonable particularity. If the default is in such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Licensee begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

12. Termination. Said License shall terminate:

- a. By mutual agreement of the parties;
- b. Upon 90-days written notice by Licensor that the public interest requires the termination of the License;
- c. Upon Licensee's written notice to Licensor;
- d. Upon default which is not cured in accordance with the paragraph above entitled "Default";
- e. Automatically upon vacation of the public right of way underlying the property.

13. Remedies on Default.

- A. In the event of a default, the License may be terminated at the option of the Licensor by notice in writing to Licensee. The notice may be given at any time after the thirty (30) days grace period for default given under the paragraph entitled "Default." If the licensed fence is abandoned by Licensee in connection with a default, termination shall be automatic and without notice.
- B. The foregoing remedies shall be in addition to, and shall not exclude, any other remedy available to Licensor under applicable law.

14. Structures and Fixtures.

- A. All equipment or other personal property placed upon the licensed real property during the term by Licensee shall remain the property of Licensee except as otherwise provided herein.
- B. Upon abandonment, termination, revocation, or cancellation of this License, the Licensee shall remove, within a reasonable time, all equipment and other personal property except those owned by Licensor. If Licensee fails to remove all or part of such personal property within thirty (30) days, and such additional time as is reasonable and necessary to effect such removal as may be agreed upon by the parties, then upon election of Licensor they shall become the property of Licensor.

15. Notices. Any notice by Licensee to Licensor or Licensor to Licensee must be served by certified or registered mail, postage prepaid, addressed to the other at the address given below or at such other address as either may designate by written notice.

Licensor:  
Deschutes County Road Department  
61150 SW 27<sup>th</sup> Street  
Bend, OR 97702

Licensee:  
Sunriver Owners Association  
57455 Abbot Drive  
PO Box 3278  
Sunriver, OR 97707

16. Nonwaiver. Waiver by either party of strict performance of any provision of this License shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
17. Partnership. Licensor is not by virtue of this License a partner or joint venturer with Licensee in connection with activities carried on under this License, and shall have no obligation with respect to Licensee's debts or any other liabilities of each and every nature.
18. Litigation Fees and Expenses. In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this License, each party shall be responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.
19. Time is of the Essence. Time is of the essence in each and every provision of this License.
20. Severability. The parties agree that if any term or provision of this License is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the License did not contain the particular term or provision held to be invalid.

21. Authority. The signatories to this License covenant that they have the legal authority to bind their respective principals to the terms, provisions and obligations contained within this License.

LICENSOR: DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
TAMMY BANEY, CHAIR

\_\_\_\_\_  
ANTHONY DEBONE, VICE CHAIR

\_\_\_\_\_  
ALAN UNGER, COMMISSIONER

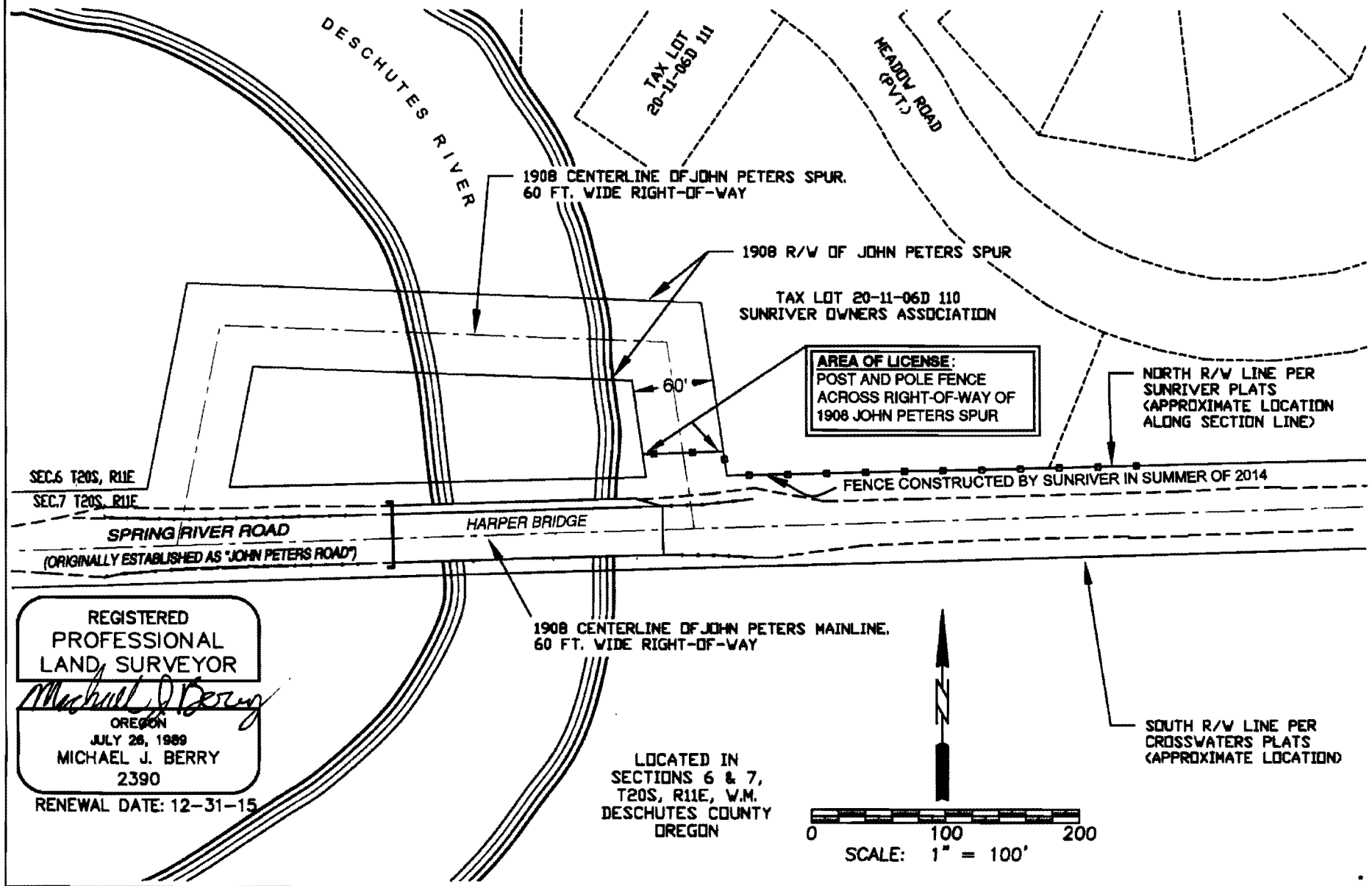
LICENSEE: DATED this 27<sup>th</sup> day of January, 2015.

Patricia A. Hensley  
PAT HENSLEY, PRESIDENT  
SUNRIVER OWNERS ASSOCIATION



# EXHIBIT "A"

LICENSE TO USE RIGHT-OF-WAY, SUNRIVER OWNERS ASSOCIATION



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Michael J. Berry*  
OREGON  
JULY 26, 1989  
MICHAEL J. BERRY  
2390  
RENEWAL DATE: 12-31-15

LOCATED IN  
SECTIONS 6 & 7,  
T20S, R11E, W.M.  
DESCHUTES COUNTY  
OREGON

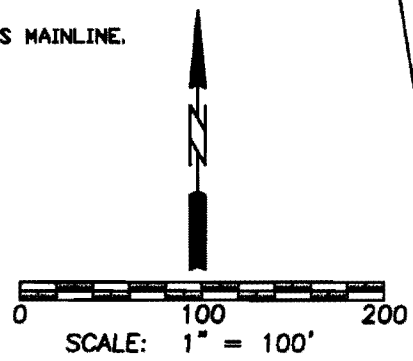


Exhibit A - License to use Right-of-Way  
Spring River Road & John Peters Spur in the E 1/2 of Sections 6 & 7, T20S, R11E, W.M., Deschutes County, Ore.  
DESCHUTES COUNTY ROAD DEPARTMENT 361150 S.E. 27TH STREET, BEND, OR. 97702  
SCALE: 1" = 100' DRAWN BY: M.J.B. DATE: 10/7/2014  
FILE: RD4192-SpringRiverBridge-Peters RW.dwg  
REVISIONS:  
SHEET 1 OF 1