



Deschutes County Board of Commissioners  
1300 NW Wall St., 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 & STAFF REPORT**

**For Board Business Meeting of March 4, 2015**

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**DATE:** 2/25/2105

**FROM:** Will Groves                      CDD                      Phone 541-388-6518

**TITLE OF AGENDA ITEM:**

Consideration and Signature of Document No. 2015-118, an Improvement Agreement between Deschutes County and Tetherow Rim LLC for the roads and utilities in the the 29-lot single family subdivision granted approval under TP-14-1023.

**PUBLIC HEARING ON THIS DATE?** No.

**BACKGROUND AND POLICY IMPLICATIONS:**

Tetherow Rim LLC is the owner of the 29-lot single family subdivision granted approval under TP-14-1023. The roads and utilities required under the approval have not been completed. Deschutes County Code (DCC) Section 17.24.120 provides that owner may, in lieu of completing roads and utilities, enter into an agreement with the County for the completion of the roads and utilities and provide a good and sufficient form of security, to provide for the completion of the roads and utilities required improvements. This Improvement Agreement will allow the owner to plat the lots, as proposed under Final Plat application No. 247-15-000060-FPA.

Tetherow Rim LLC has proposed to provide a bond in the amount of \$966,434 (Nine Hundred Sixty-Six Thousand, Four Hundred Thirty-Four Dollars) as the "Security" to provide for the completion of the roads and utilities required improvements. The amount of the Security represents one hundred and twenty percent (120%) of the estimated costs, as required under DCC 17.24.120. The estimated cost of construction has been reviewed by the County Road Department. Under this agreement, the required improvements must be completed not later than one (1) year from the recording of the subdivision final plat 247-15-000060-FPA.

**FISCAL IMPLICATIONS:**

None.

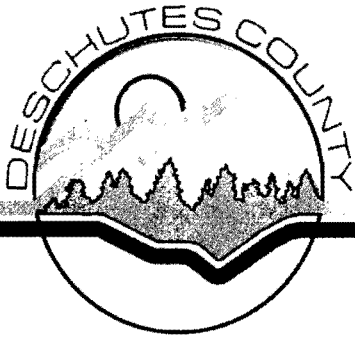
**RECOMMENDATION & ACTION REQUESTED:**

Motion: Approve signature of Document 2015-118.

**ATTENDANCE:** Will Groves, Legal

**DISTRIBUTION OF DOCUMENTS:**

CDD Staff.



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**DATE:** February 25, 2015  
**TO:** Board of County Commissioners  
**FROM:** Will Groves, Senior Planner  
**RE:** Doc No. 2015-118 - Tetherow Rim Subdivision, Improvement Agreement

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#### Background

Tetherow Rim LLC is the owner of the 29-lot single family subdivision granted approval under TP-14-1023. The roads and utilities required under the approval have not been completed. Deschutes County Code (DCC) Section 17.24.120 provides that owner may, in lieu of completing roads and utilities, enter into an agreement with the County for the completion of the roads and utilities and provide a good and sufficient form of security, to provide for the completion of the roads and utilities required improvements. This Improvement Agreement will allow the owner to plat the lots, as proposed under Final Plat application No. 247-15-000060-FPA.

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#### Schedule

This item is scheduled for the Board's regular meeting on March 4, 2015. Please feel free to contact me with any questions or concerns.

#### Attachments

1. Improvement Agreement, Document No. 2015-118
2. Road Department Memo
3. Estimated Cost of Construction
4. Exhibit A – Property Legal Description
5. Draft Bond



## Road Department

61150 SE 27th St. • Bend, Oregon 97702  
(541) 388-6581 • FAX (541) 388-2719

# MEMORANDUM

**Date:** February 6, 2015

**To:** Will Groves, Senior Planner

**From:** George Kolb, County Engineer

**RE:** Cost Estimate for Bonding of File # TP-14-1023; Tetherow Rim Subdivision

**CC:** Keith Dagostino, D'Agostino Parker, LLC  
Laurie Craghead, Deschutes County Legal Counsel

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The Road Department has reviewed and approved the cost estimate supplied by D'Agostino Parker, LLC for bonding of the road improvements for the Tetherow Rim Subdivision (File #TP-14-1023). The required bond for the project will be \$966,434.40 (\$805,362.00 x 1.20%)

Attached is the cost estimate from the Engineer.

Let me know if you need more information.

George Kolb, PE  
County Engineer  
Deschutes County Road Department  
[georgek@co.deschutes.or.us](mailto:georgek@co.deschutes.or.us)  
(541) 322-7113

**COMPLETION BOND**

Bond No.: PENDING

**KNOW ALL MEN BY THESE PRESENTS:**

That we, **TETHEROW RIM LLC** as Principal, and **WESTCHESTER FIRE INSURANCE COMPANY**, as Surety, a corporation organized under the laws of the Commonwealth of **PENNSYLVANIA** and duly authorized to transact business in the State of Oregon, are held and firmly bound unto **DESCHUTES COUNTY**, a political subdivision of the State of Oregon, as Obligee, in the sum of **NINE HUNDRED SIXTY SIX THOUSAND FOUR HUNDRED THIRTY FIVE AND NO/100 DOLLARS (\$966,435.00)** in lawful money of the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal entered into an Improvement Agreement (Roads and Utilities) with Deschutes County, Document No. **2015-118**, by the terms and conditions of the Agreement the Principal agreed to complete together with any needed replacements or repairs all subdivision improvements relating to Document No. **2015-118**, said Agreement being incorporated herein by reference and made a part hereof as if fully set forth herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall well and truly comply with the terms and conditions of said Agreement in all respects, and fully do and perform all matters and things by them undertaken to be performed under said Agreement, upon the terms proposed therein, and within the time prescribed therein, and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to perform said obligation, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, this bond is not subject to cancellation pursuant to ORS 742.366(2), and the surety hereby waives notice of any change, alteration, extension of time or addition to the improvements authorized by the Obligee.

Signed, sealed and dated this **XXTH** day of **FEBRUARY**, **2015**.

**PRINCIPAL:**

**TETHEROW RIM LLC**

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

**SURETY:**

**WESTCHESTER FIRE INSURANCE COMPANY**

By \_\_\_\_\_  
Its: Attorney-in-Fact, Ryan Fernandez

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:  
Deschutes County  
Community Development Department  
147 NW Lafayette Street  
Bend, OR 97701

**IMPROVEMENT AGREEMENT**  
(Roads and Utilities)

This Improvement Agreement ("Agreement"), relating to the construction and installation of certain required improvements (the "Roads and Utilities Required Improvements," as defined below in Section 4) for the Tetherow Rim subdivision, ("Subdivision"), as required in the Subdivision approval in File # TP-14-1023 ("Tentative Plat"), by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon, ("County"), and Tetherow Rim LLC ("Owner").

**RECITALS:**

WHEREAS, Owner is the owner of the Subdivision in the approval granted under TP-14-1023; and

WHEREAS, the Roads and Utilities Required Improvements required under the approval have not been completed; and

WHEREAS, Owner has filed an application for a final subdivision plat for the Subdivision, File No. TP-14-1023, prior to the completion of the Roads and Utilities Required Improvements; and

WHEREAS, Deschutes County Code (DCC) Section 17.24.120 provides that Owner may, in lieu of completing Roads and Utilities Required Improvements, enter into an agreement with the County for the completion of the Roads and Utilities Required Improvements and provide a good and sufficient form of security, to provide for the completion of the Roads and Utilities Required Improvements; and

WHEREAS, this Agreement is contingent upon the recording of the Subdivision Final Plat approved in File No. 247-15-000060-FPA and that plat stating that it is subject to this Agreement; and

WHEREAS, Roads and Utilities Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.010(1)(cc); and

WHEREAS, the Subdivision approval in File #TP-14-1023 subject to this Agreement is exempt from ORS 92.305 to 92.945 for the reason that the County's Comprehensive Land Use Plan and implementing ordinances are acknowledged under ORS 197.251; now, therefore,

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promise hereinafter stated, as follows:

1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.
2. **Real Property Description.** The real property subject to this Agreement, hereinafter the "Real Property" is described on the attached Exhibit "A".
3. **Exhibits.** The exhibits listed below and attached to the Agreement are hereby incorporated herein by reference:
  - 3.1. Exhibit A – Legal description of Real Property.
  - 3.2. Exhibit B -- List of Roads and Utilities Required Improvements and cost estimates – submitted by the Owner.
  - 3.3. Exhibit C – Deschutes County Tentative Plat approval, File No. TP-14-1023. The real property subject to this Agreement, hereinafter the "Real Property" is described on the attached Exhibit "A".
  - 3.4. Exhibit D – Security.
4. **Identification of Roads and Utilities Required Improvements.**
  - 4.1. Owner shall install and complete, or cause to be installed and completed, the improvements listed in Exhibit B required by the land use approval as set forth in Exhibit C to the extent that same remain to be completed ("Roads and Utilities Required Improvements").
  - 4.2. These improvements consist of roads, utilities and other necessary facilities referred to in this Agreement as "Roads and Utilities Required Improvements."
  - 4.3. The final plat shall note and be subject to this Agreement.
5. **Construction of Roads and Utilities Required Improvements.**
  - 5.1. Owner shall install and complete the Roads and Utilities Required Improvements in accordance with the plans and construction specifications related thereto and to any additional County and/or State of Oregon specifications.
  - 5.2. Owner shall promptly repair any damage to existing and new facilities, within and without the Real Property, which occurs during installation of the Roads and Utilities Required Improvements.
  - 5.3. Owner shall cause the Roads and Utilities Required Improvements to be inspected by and receive final written construction approval from County not later than one (1) year from the recording of the Subdivision Final Plat in File No. TP-14-1023 ("Completion Date");
6. **Warranty of Improvements.**

- 6.1. Owner hereby warrants that the Roads and Utilities Required Improvements shall remain free from defects in materials or workmanship and that the Roads and Utilities Required Improvements continue to meet County and/or State of Oregon standards for twelve (12) months following the Completion Date, as outlined in 5.3 above, and any corrections ("Warranty Period").
- 6.2. Upon completion and approval of any portion of the Roads and Utilities Required Improvements, Owner shall obtain a bond or other security in favor of, and reasonably acceptable to, the County in the amount of ten-percent (10%) of the construction costs of such improvements to secure the warranty obligations under this Section.

**7. License to Enter and Remain on Property.**

- 7.1. Owner hereby grants County and County's employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Roads and Utilities Required Improvements.
- 7.2. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify the Owner and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Agreement for the inspections of the Roads and Utilities Required Improvements pursuant to Section 7.1.
- 7.2. If County determines that any portion of the Roads and Utilities Required Improvements have not been completed to County's satisfaction by the applicable Completion Date, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and may cause the applicable portion of the Roads and Utilities Required Improvements to be installed and completed.

**8. Right to Draw on Security.**

- 8.1. Upon failure of the Owner to complete the Roads and Utilities Required Improvements to County's satisfaction by the applicable Completion Date, County shall notify Owner in writing of such failure.
  - 8.1.1. Owner shall have thirty (30) days from County's notification to complete the Roads and Utilities Required Improvements or that portion which is incomplete or unsatisfactory.
    - 8.1.1.1. In the event the parties agree in writing that the completion cannot reasonably be accomplished in thirty (30) days, then the parties shall agree in writing to extend such time by a period of time as is reasonably necessary to allow completion so long as Owner promptly commences and

thereafter diligently pursues completion of the Roads and Utilities Required Improvements.

8.1.1.2. In no event shall the period for completion be extended beyond 180 days from the date of County's notification of failure to complete per Section 8.1.

8.1.2. Should Owner fail to complete the Roads and Utilities Required Improvements within the time period referred to in Section 8.1.1., then County may cause incomplete or unsatisfactory Roads and Utilities Required Improvements to be completed.

8.1.3. If County completes the Roads and Utilities Required Improvements, County may draw upon the Security, as defined below, for any and all costs and expenses anticipated or incurred by County, as determined by County in the completion of the Roads and Utilities Required Improvements.

8.2. For the purposes of this Agreement and access to any security offered and accepted to secure Owner's performance, Owner's failure to complete the Roads and Utilities Required Improvements shall include failure to install or have installed any portion of the Roads and Utilities Required Improvements to County specifications, approved plans or applicable building specialty codes and failure to complete any required inspections by the applicable Completion Date.

9. **No County Guarantee.** County does not guarantee that any of the Roads and Utilities Required Improvements referred to in this Agreement will be constructed, maintained or operated.

10. **License to Use Permits, Specifications and Plans.**

10.1. If County determines that any portion of the Roads and Utilities Required Improvements have not been satisfactorily completed as specified by the applicable Completion Date, subject to Owner's notice and cure rights pursuant to Section 8.1.1, Owner shall, upon request of the County, license and assign to County all of Owner's, applicable permits, plans, specifications, shop drawings, instruments, permits and approvals, and other documents necessary or useful in the completion of or related in any manner to the Roads and Utilities Required Improvements that in County's sole discretion have not been completed as specified.

10.2. Owner shall be responsible for providing within any contracts for supply of labor and materials used in connection with constructing Roads and Utilities Required Improvements, that such contract rights are assignable by Owner.

10.3. Upon such request, Owner shall transfer ownership and deliver physical possession of such Permits, plans, specifications, shop drawings, instruments, permits, approvals, and other documents to the County.

10.4. County may sub-assign or license the rights referred to in this Section 10 for any purpose without further approval from Owner.



11. **No Third Party Beneficiaries.**

11.1. County and Owner are the only parties to this Agreement and are the only parties entitled to enforce its terms.

11.2. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

12. **Restoration of Monuments.** Owner shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land which monument is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Owner or Owner's agents, employees or independent contractors.

13. **Costs of Inspection.** Owner shall pay to County the actual costs incurred by County in the inspection of the completed Roads and Utilities Required Improvements plus any fees, including without limitation plan check fees and structural, electrical, plumbing and other specialty codes inspection fees customarily associated with the review and inspection of any improvements on the Real Property.

14. **Security for Roads and Utilities Required Improvements.**

14.1. Owner's Security shall consist of Performance Bond issued in favor of the County by Servco Insurance Services in the amount of \$966,434.00 (Nine Hundred Sixty-Six Thousand, Four Hundred Thirty-Four Dollars) with a date of expiration of no less than six (6) months past the Completion Date as established by Section 5 herein (the "Security").

14.2. The amount of the Security, attached hereto as Exhibit D, represents one hundred and twenty percent (120%) of the estimated costs, as set forth in Exhibit B, of completing the Roads and Utilities Required Improvements to County standards, as applicable.

15. **Owner's Obligation For Costs.**

15.1. Owner expressly acknowledges, understands, and agrees that this Agreement shall not relieve Owner from the obligation to complete and fully pay for the Roads and Utilities Required Improvements and other costs and fees set forth in this Agreement.

15.2. Should Owner fail to perform its responsibilities under this Agreement in any manner, Owner agrees to compensate County for all costs to complete and warrant the Roads and Utilities Required Improvements and pay costs and fees.

16. **Release of Security or Obligation.**

16.1. After the Roads and Utilities Required Improvements have been inspected and approved by the County, County shall release the Security within fifteen (15)

calendar days provided Owner has procured the warranty security required pursuant to Section 6 of this Agreement.

16.2. Upon written request of Owner, County may release any of Owner's obligations under the terms and conditions of this Agreement in writing upon Owner's completion and County inspection and approval of any portion of the Roads and Utilities Required Improvements, provided County, in its sole discretion, determines that adequate security remains in place for Owner completion of Roads and Utilities Required Improvements in accordance with this Agreement.

16.3. County's partial release of any portion of the Security shall not be construed as a waiver of County's right to require full compliance with this Agreement and Owner's obligation to satisfy any costs and expenses incurred in completion of the Roads and Utilities Required Improvements and the required warranties associated with such improvements.

16.4. If Owner has not yet obtained a bond or other security to guaranty its warranty obligations pursuant to Section 6, then County Treasurer shall withhold from any funds released under Sections 16.2, 16.3 and 16.4 herein an amount equal to ten percent (10%) of the construction costs of completing the Roads and Utilities Required Improvements.

**17. Shortfall in Security.**

17.1. If the amount available to be drawn from the Security is less than the costs and expenses anticipated to be incurred, or actually incurred, by County, County may apply the proceeds of the Security to the anticipated or actual costs and expenses of completion of the Roads and Utilities Required Improvements.

17.2. Owner shall be responsible and liable for the difference between the anticipated or actual costs and expenses incurred by County and the amount of the remaining Security.

**18. Incidental Costs.** Without limiting the generality of the foregoing, if upon County's written notice to financial institution issuing the Security per Section 3.4 ("Surety") of Owner's failure to complete Roads and Utilities Required Improvements, subject to Owner's notice and cure rights pursuant to Section 8.1.1, the proceeds of the Security are not remitted to County within ten (10) days of demand for funds by the County, or the Roads and Utilities Required Improvements is not installed within a reasonable time period determined by County after notice to the Surety, then County's costs of obtaining the proceeds of the Security and/or completing the Roads and Utilities Required Improvements and all incidental costs to the extent not covered by the Security, shall be added to the amount due County from the Owner, and shall be paid to County by Owner, in addition to and with all other amounts due hereunder.

**19. Substandard Improvements.**

19.1. If the Roads and Utilities Required Improvements constructed by Owner fail or are determined by County to be defective within the applicable twelve (12) month warranty period in Section 6 of this Agreement, County shall notify Owner and/or

the Surety of the warranty obligation in writing of such failure or defective Roads and Utilities Required Improvements.

- 19.2. Owner and/or the Surety shall then have sixty (60) days to complete repair or replacement of the defective Roads and Utilities Required Improvements.
- 19.3. In the event that the repair or replacement per Section 19.1. and 19.2 cannot reasonably be completed within sixty (60) days, then the same shall be extended by such period of time as is reasonably necessary, provided Owner and/or the Surety promptly commences and thereafter diligently prosecutes such repair or replacement.
- 19.4. Should Owner fail to complete repair or replacement of the Roads and Utilities Required Improvements within the required time period, County may remedy the defects and demand payment for such from Owner and/or the Surety.

**20. Successors in Interest.**

- 20.1. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Real Property.
- 20.2. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and subject to the terms contained in Section 21, their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or interest in or to the Real Property, including any person who holds such interest as security for the payment of any obligation, including a mortgagee or other secured party in actual possession of said Real Property by foreclosure or otherwise or any person taking title from such security holder.
- 20.3. Upon completion of the Roads and Utilities Required Improvements, and the expiration of the applicable Warranty Period, County, upon request by Owner or any person or persons owning a lot in the Subdivision, shall release a lot from the condition and covenant subsisting under this Agreement.

**21. Residential Lot Purchasers.** Notwithstanding the terms of Section 20, the terms of this Section shall apply to each residential lot ("Residential Lot") created from the Real Property or platted in the Subdivision and sold or transferred to a third party for the principal purpose of constructing and residing therein by such third party (each such buyer or transferee and his or her successors and assigns is a "Residential Buyer") and:

- 21.1. Each such Residential Lot is conveyed free of any obligation to pay money or complete the Roads and Utilities Required Improvements that may arise out of this Agreement;
- 21.2. Each Residential Buyer or Transferee is under no obligation or burden to complete the terms and conditions of this Agreement;
- 21.3. The recordation of this Agreement is for the purpose of putting Residential Buyer or Transferee on notice of the Agreement's terms and that the County has no obligation to construct the Roads and Utilities Required Improvements or any

portion of the Roads and Utilities Required Improvements nor does the Agreement in anyway guarantee that any of the Roads and Utilities Required Improvements will be constructed; and

- 21.4. The Agreement conveys no right or right of action by any Residential Buyer or Transferee against the County for any act or omission of the County, including but not limited to, the County decisions or acts which result in the Roads and Utilities Required Improvements, or any part of the Roads and Utilities Required Improvements, not being constructed.
- 21.5 This Section 21 shall not apply to assignments or transfers of all or any residential lots to a lender, financing entity or third party not intended as the ultimate use of the residential lot or lots.
22. **Binding Authorization.** By signature on this Agreement, each signatory, signing in a representative capacity, certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer's principal.
23. **Expiration.**
- 23.1. Unless otherwise extended, this Agreement shall expire at the conclusion of the applicable Warranty Period or by the express written release of Owner by County from this Agreement granted as part of an approval for a change of use of the Real Property.
- 23.2. Upon expiration, County shall provide Owner with a document in recordable form, formally evidencing such expiration and the parties agree to execute such document with fourteen (14) days of receipt of such document by the other party.
24. **Survival.** Notwithstanding the provisions of Section 23 of this Agreement, County's rights under this Agreement, including County's right to draw upon Owner's Security in whole or in part to pay the full costs and expenses of completing the Roads and Utilities Required Improvements and repairs or replacements required herein along with any licenses granted in this Agreement and any costs of enforcement of this Agreement, shall survive the expiration of this Agreement.
25. **No Agency.**
- 25.1. It is agreed by and between the parties that Owner is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Owner completes performance under this Agreement nor does County have a right to exercise any control over the activities of the Owner.
- 25.2. Owner is not an officer, employee or agent of County as those terms are used in ORS 30.265.
26. **No Joint Venture or Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer with Owner in connection with the Site plan or the Real Property, and shall have no obligation with respect to Owner's debts or other liabilities of each and every nature.

27. **Liens.**

- 27.1. Owner shall pay as due all claims for work done on and for services rendered or material furnished to the Real Property and shall keep the Real Property free from liens.
- 27.2. If Owner fails to pay any such claims or to discharge any lien, County may do so and collect the cost from the Owner or Surety.
- 27.3. County's payment and satisfaction of any lien pursuant to subsection 27.2 shall not constitute a waiver of any right or remedy that County may have on account of Owner's failure to complete the Roads and Utilities Required Improvements or to recover such expenditures from Owner or pursuant to the Security.

28. **Indemnification.** Owner shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Owner under this Agreement and on the Real Property; and further agrees to defend, indemnify and save harmless County, 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.

29. **Limitation of Liability.** This Agreement is subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.

30. **Attorney Fees and Costs.** In the event an action or suit or proceeding, including appeal therefrom, is brought by any party arising directly and/or indirectly out of the provisions of this Agreement or the interpretation thereof, for Owner's failure to complete the Roads and Utilities Required Improvements or to observe any of the terms of this Agreement or the interpretation thereof, County shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney's fees and costs as the court may adjudge in said action, suit, proceeding or appeal.

31. **Waiver.**

- 31.1. Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.
- 31.2. No waiver may be enforced against the County unless such waiver is in writing and signed by the County.

32. **Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**

- 32.1. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.
- 32.2. Any provisions herein, which would conflict with the law, are deemed inoperative to that extent.

- 32.3. Additionally, Owner shall comply with any requirements, conditions or limitations arising under the any Federal or State law, statute, rule, regulation, executive order and policy applicable to the Roads and Utilities Required Improvements.
- 32.4. If this Agreement is in any manner construed to constitute the lending of the County's credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void.
33. **No Inducement.** No representations, statements, warranties have induced the making and execution of this Agreement, or Agreements other than those herein expressed.
34. **Governing Law.**
- 34.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- 34.2. Any claim, action, suit or proceeding (collectively, "Claim") between County and Owner that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon in Eugene, Oregon.
- 34.3. Owner, by signing below, hereby consents to the in personam jurisdiction of said courts. The parties agree that the UN Convention on International Sales of Goods shall not apply.
35. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held void, invalid unenforceable.
36. **Counterparts.**
- 36.1. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
- 36.2. Each copy of this Agreement so executed shall constitute on original.
- 36.3. If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement and each counterpart shall be noted on the recorded plat map.
37. **Notice.**
- 37.1. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Owner or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing.

- 37.2. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.
- 37.3. Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 37.4. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective between the parties, such facsimile transmission shall be confirmed by telephone notice to County's Director of Administrative Services or Weston Investments.
- 37.5. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

To Owner:  
Tetherow Rim LLC  
c/o Jack Willing  
2440 W. Commodore Way #200  
Seattle WA 98199  
Phone: 425-576-2088  
Email: jack@lylehomes.com

To County:  
County Administrator  
Deschutes County Administration  
1300 NW Wall Street, Ste 200  
Bend, Oregon 97701  
Fax: 541-388-4752

- 37.6. Notices shall be deemed delivered upon the earlier of actual delivery or refusal of a party to accept delivery thereof, which refusal shall include a party ignoring attempted delivery; *provided, however*, that notices sent by facsimile or email shall be deemed given on the date delivered if delivered before 5:00 pm Pacific Time as shown on a facsimile transmittal sheet or an e-mail record and if simultaneously transmitted by another means allowed by this Section 37.
- 37.7. Either party may change its address for notices by giving written notice to the other given in accordance with this Section 37.
- 37.8. Counsel for a party may give notices on behalf of such party.

38. **Time is of the Essence.** Time is of the essence of each and every provision of this Agreement.

39. **Captions.**

- 39.1. The captions contained in this Agreement were inserted for the convenience of reference only.
- 39.2. Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

40. **Merger Clause.**

- 40.1. This Agreement and the attached exhibits constitute the entire agreement between the parties and supersede any and all prior or contemporaneous

negotiations and/or agreements among the parties, whether written or oral, concerning the subject matters of this Agreement which are not fully expressed herein.

- 40.2. All understandings and agreements between the parties and representations by either party concerning this Agreement are contained in this Agreement.
- 40.3. This Agreement shall bind all parties and its terms may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by all parties.
- 40.4. Except as otherwise expressly provided herein, any written waiver, consent, modification or change shall be effective only when in writing and signed by the parties in the specific instance and for the specific purpose given.

[SIGNATURES CONTINUED ON NEXT PAGE]



DATED this \_\_\_\_ day of \_\_\_\_\_, 2015

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, Chair

ATTEST:

\_\_\_\_\_  
ALAN UNGER, Vice-Chair

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
TAMMY BANEY, Commissioner

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Before me, a Notary Public, personally appeared TAMMY BANEY, ANTHONY DEBONE and ALAN UNGER the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Notary Public, State of Oregon  
My Commission Expires: \_\_\_\_\_

**OWNER:**

**Tetherow Rim LLC**

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2015

\_\_\_\_\_  
Jack Willing, Member

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Before me, a Notary Public, personally appeared Joseph Weston and acknowledged the foregoing instrument as member of Weston Investment Co. LLC.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Notary Public, State of Oregon  
My Commission Expires: \_\_\_\_\_

**Exhibit "A"**  
**Property Description**  
**Tetherow Rim**

All that portion of land located in the Southwest Quarter(SW 1/4) of Section 12, Township 18 South, Range 11 East, Willamette Meridan, in Deschutes County, Oregon, more particularly described as follows:

All those portions of land described in Statutory Warranty Deed from VRE Tract AC, LLC to Tetherow Rim, LLC recorded June 30, 2014, as document number 2014 -021104, Official Records, Deschutes County, Oregon.



*Keith Dap* 1-20-15



RENEWAL DATE: 12-31-15

**EXHIBIT B**  
**Tetherow Rim**  
**Infrastructure Bid Schedule / Cost Estimate**  
**January 20, 2015**

ITEM NO.	DESCRIPTION	ESTIMATED QNTY.	UNIT PRICE	TOTAL
1.	CLEARING AND GRUBBING INCLUDING OFF-SITE DISPOSAL OF ALL MATERIALS	2.0 AC	\$2,500.00	\$5,000.00
2.	FURNISH AND APPLY CONSTRUCTION WATER.	1 LS	\$5,000.00	\$5,000.00
3.	ROADWAYS UNCLASSIFIED EXCAVATION AND EMBANKMENT, UNLESS OTHERWISE SPECIFIED IN THIS BID SCHEDULE. ESTIMATED QUANTITIES ARE IN-PLACE VOLUMES WITHOUT ADJUSTMENT FOR EXPANSION, SHRINKAGE, SUBEXCAVATION, OR SETTLEMENT. <b>THE ESTIMATED QUANTITY ON ITEM 3. LINE WILL BE THE FINAL PAY QUANTITY, UNLESS A CHANGE ORDER IS EXECUTED FOR A CHANGE IN THE WORK SCOPE.</b> EST. EXCAVATION= 2,900 CY EST. EMBANKMENT = 1,500 CY	2,900 CY	\$8.00	\$23,200.00
4.	FURNISH MATERIALS AND CONSTRUCT 3/4" MINUS AGGREGATE BASE COURSE, 6" MINIMUM COMPACTED DEPTH FOR ROADS AND STREETS.	5,650 SY	\$6.80	\$38,420.00
5.	FURNISH MATERIALS AND CONSTRUCT 3" MINIMUM COMPACTED DEPTH CLASS C ASPHALT CONCRETE PAVEMENT FOR ROADS .	5,650 SY	\$13.55	\$76,557.50
6.	FURNISH MATERIALS AND CONSTRUCT 3/4" MINUS AGGREGATE BASE COURSE, 2" MINIMUM COMPACTED DEPTH UNDER CONCRETE WALKS,SURFACING, RAMPS, & UTIL. PADS.	9,340 SF	\$0.50	\$4,670.00
7.	FURNISH MATERIALS AND CONSTRUCT 4" THICK CONCRETE SURFACING FOR WALKS, HYDRANT AND UTILITY PADS, INCL. ALL RAMPS AND DETECTABLE WARNING STRIPS.	9,340 SF	\$3.40	\$31,756.00
8.	FURNISH MATERIALS AND CONSTRUCT MOUNTABLE CONCRETE CURB.	2,820 SF	\$9.25	\$26,085.00
9.	FURNISH MATERIALS AND CONSTRUCT 12" STD. CONCRETE CURB	930 LF	\$8.75	\$8,137.50
10.	SAWCUT AC PAVEMENT.	190 LF	\$2.00	\$380.00
11.	FURNISH MATERIALS AND INSTALL ROAD END OBJECT MARKERS MUTCD FIGURE 2C-13, OM4-1, ON STD. CITY OF BEND SIGNPOSTS	6 EA	\$1,450.00	\$8,700.00
12.	FURNISH MATERIALS & CONSTRUCT STD. DOUBLE CATCH BASIN PER CITY OF BEND STD. DWG. R-14	7 EA	\$1,300.00	\$9,100.00
13.	FURNISH AND INSTALL 8" C 900 PVC STORM DRAIN, INCLUDING TRENCH EXCAVATION, BEDDING, AND BACKFILL.	20 LF	\$24.00	\$480.00
14.	FURNISH AND INSTALL 12" ASTM D3034-SDR 35 PVC STORM DRAIN, INCLUDING TRENCH EXCAVATION, BEDDING, AND BACKFILL.	300 LF	\$30.00	\$9,000.00
15.	FURNISH AND INSTALL 12" C 900 PVC STORM DRAIN, INCLUDING TRENCH EXCAVATION, BEDDING, AND BACKFILL.	40 LF	\$37.50	\$1,500.00
16.	FURNISH & CONSTRUCT STORM SEDIMENTATION MANHOLE PER CITY OF BEND STD. DWG. STRM-7 WITH RING AND COVER PER CITY OF BEND STD. DWG. S-3A.	1 EA	\$2,800.00	\$2,800.00

**EXHIBIT B**  
**Tetherow Rim**  
**Infrastructure Bid Schedule / Cost Estimate**  
**January 20, 2015**

ITEM NO.	DESCRIPTION	ESTIMATED QNTY.	UNIT PRICE	TOTAL
17.	FURNISH AND CONSTRUCT PRECAST DRAINAGE DRYWELL PER CITY OF BEND STD. DWG. R-12, WITH 75 CUBIC YARDS DRAIN ROCK, INCL. CONCRETE CAP, AND SLOTTED COVERS WHERE APPLICABLE.	4 EA	\$8,500.00	\$34,000.00
18.	DRAINAGE DRYWELL TESTING	1 LS	\$3,200.00	\$3,200.00
19.	FURNISH AND PLACE ROUNDED RIVER ROCK SURFACING	160 SF	\$26.50	\$4,240.00
20.	FURNISH MATERIALS AND CONSTRUCT ROCK RETAINING WALL INCLUDING DRAIN, FABRIC, AND SELECT BACKFILL(PAY QUANTITY IS FACE AREA BASED ON H- HEIGHT PER DETAIL 5 ON SHEET C1.1, AND SPECIFIED PLAN ELEVATIONS)	260 SF	\$13.50	\$3,510.00
21.	FURNISH, INSTALL AND MAINTAIN SILT FENCING PER CITY OF BEND STD. DWG. E-1.	920 LF	\$3.00	\$2,760.00
<b>GRADING, DRAINAGE, AND ROAD IMPS. SUBTOTAL</b>				<b><u>\$298,496.00</u></b>
22.	POTHOLE EXISTING UTILITIES PRIOR TO CONSTRUCTION.	1 LS	\$2,100.00	\$2,100.00
23.	MODIFY EXISTING SEWER MANHOLE #1 BASE .	1 LS	\$3,280.00	\$3,280.00
24.	FURNISH MATERIALS AND CONSTRUCT SANITARY SEWER MANHOLE PER CITY STD. DWG. S-3B AND S-3A. VERTICAL HEIGHT 14 TO 15 FEET.	4 EA	\$5,575.00	\$22,300.00
25.	FURNISH MATERIALS AND CONSTRUCT SANITARY SEWER MANHOLE PER CITY STD. DWG. S-3B AND S-3A. VERTICAL HEIGHT 7 TO 8 FEET.	4 EA	\$4,500.00	\$18,000.00
26.	FURNISH & INSTALL 8" ASTM D3034-SDR 35 PVC SANITARY SEWER, PER CITY OF BEND SPECS. INCL. TRENCH EXCAVATION, BEDDING, AND BACKFILL, AT DEPTH OF 10 FEET OR GREATER.	740 LF	\$60.00	\$44,400.00
27.	FURNISH & INSTALL 8" ASTM D3034-SDR 35 PVC SANITARY SEWER, PER CITY OF BEND SPECS. INCL. TRENCH EXCAVATION, BEDDING, AND BACKFILL, AT DEPTH OF LESS THAN 10 FEET.	805 LF	\$50.00	\$40,250.00
28.	FURNISH & INSTALL 4" ASTM D3034-SDR 35 PVC SANITARY SEWER SERVICE PER CITY OF BEND SPECS. INCLUDING TRENCH EXCAVATION, BEDDING AND BACKFILL.	625 LF	\$35.00	\$21,875.00
29.	COMPLETE SANITARY SEWER TESTING OF ALL NEW SEWER PER CITY OF BEND SPECIFICATIONS.	1 LS	\$1,600.00	\$1,600.00
30.	TRENCH AND SURFACE RESTORATION IN EXISTING ROAD PER CITY OF BEND STD DWG. R-10 AND PLANS.	1 LS	\$5,000.00	\$5,000.00
<b>SANITARY SEWER SUBTOTAL</b>				<b><u>\$158,805.00</u></b>
31.	FURNISH MATERIALS AND INSTALL 8" CLASS 52 DI WATER MAIN INCLUDING TRENCH EXCAVATION, BEDDING AND BACKFILL	1,925 LF	\$68.00	\$130,900.00
32.	FURNISH MATERIALS AND INSTALL 6" CLASS 52 DI WATER PIPE INCLUDING TRENCH EXCAVATION, BEDDING AND BACKFILL	70 LF	\$68.00	\$4,760.00
33.	FURNISH MATERIALS AND INSTALL 1" WATER SERVICE PER CITY OF BEND STD. DWG. W-4.	685 LF	\$75.00	\$51,375.00

**EXHIBIT B**  
**Tetherow Rim**  
**Infrastructure Bid Schedule / Cost Estimate**  
**January 20, 2015**

ITEM NO.	DESCRIPTION	ESTIMATED QNTY.	UNIT PRICE	TOTAL
34.	FURNISH AND INSTALL 12" X 8" DI REDUCER AND RESTRAINED JOINTS	1 EA	\$520.00	\$520.00
36.	FURNISH AND INSTALL 8"-45° DI BEND AND RESTRAINED JOINTS.	2 EA	\$375.00	\$750.00
37.	FURNISH AND INSTALL 8"-11.25° DI BEND AND RESTRAINED JOINTS	2 EA	\$365.00	\$730.00
38.	FURNISH AND INSTALL 8"-11.25° DI VERT. BEND & RESTRAINED JOINTS.	4 EA	\$1,500.00	\$6,000.00
39	FURNISH AND INSTALL 8"-22.5° DI VERT. BEND & RESTRAINED JOINTS	2 EA	\$1,500.00	\$3,000.00
40.	FURNISH AND INSTALL 8"x8"x8" DI TEE & RESTRAINED JOINTS.	4 EA	\$960.00	\$3,840.00
41.	FURNISH AND INSTALL 8"x6"x8" DI TEE & RESTRAINED JOINTS.	4 EA	\$760.00	\$3,040.00
42.	FURNISH MATERIALS AND INSTALL 8" GATE VALVE ASSEMBLY PER CITY OF BEND SPECIFICATIONS.	9 EA	\$1,200.00	\$10,800.00
43.	FURNISH MATERIALS AND INSTALL 6" GATE VALVE ASSEMBLY PER CITY OF BEND SPECIFICATIONS.	4 EA	\$900.00	\$3,600.00
44.	FURNISH MATERIALS AND CONSTRUCT FIRE HYDRANT ASSEMBLY COMPLETE IN PLACE PER CITY OF BEND STD. DWGS. W-7 AND W-8.	4 EA	\$2,600.00	\$10,400.00
46.	FURNISH MATERIALS AND INSTALL 1" WATER METER BOX AND SERVICE PER CITY OF BEND STD. DWG. W-4A AND W-4B.	29 EA	\$650.00	\$18,850.00
46A	FURNISH MATERIALS AND INSTALL 2" COMMERCIAL WATER SERVICE AND METER BOX PER CITY OF BEND STD. DWG. W-5A FOR COMMON IRRIGATION SERVICE.	1 EA	\$1,800.00	\$1,800.00
47.	FURNISH EQUIPMENT AND MATERIALS AND COMPLETE 8" HOT-TAP OF EXISTING 16' DI WATER MAIN	1 EA	\$3,100.00	\$3,100.00
48.	COMPLETE WATER LINE CHLORINATION AND TESTING PER CITY OF BEND SPECIFICATIONS	1 LS	\$2,500.00	\$2,500.00
<b>WATER SYSTEM SUBTOTAL</b>				<b>\$255,965.00</b>
49.	PROVIDE FRANCHISE UTILITY TRENCH FOR POWER/COMMUNICATIONS CONDUITS, AND GAS MAIN/SERVICE, INCL. ALL TRENCH EXCAVATION, BEDDING AND BACKFILL.	2,200 LF	\$18.00	\$39,600.00
50.	FURNISH MATERIALS AND INSTALL 2" SCH. 40 PVC CONDUIT, INCLUDING SWEEPS, AND APPURTENANCES.	2,595 LF	\$2.40	\$6,228.00
51.	FURNISH MATERIALS AND INSTALL 3" SCH. 40 PVC CONDUIT, INCLUDING SWEEPS AND APPURTENANCES.	2,050 LF	\$4.25	\$8,712.50
52.	FURNISH MATERIALS AND INSTALL 4" SCH. 40 PVC CONDUIT, INCLUDING SWEEPS AND APPURTENANCES.	2,490 LF	\$5.20	\$12,948.00

**EXHIBIT B**  
**Tetherow Rim**  
**Infrastructure Bid Schedule / Cost Estimate**  
**January 20, 2015**

ITEM NO.	DESCRIPTION	ESTIMATED QNTY.	UNIT PRICE	TOTAL
53.	FURNISH MATERIALS AND INSTALL PACIFIC POWER SINGLE PHASE TRANSFORMER PAD VAULT-OLDCASTLE PRECAST 644-TRANS-PCORP-STOCK ITEM 7992977, INCLUDING EXCAVATION AND BACKFILL.	5 EA	<u>\$3,500.00</u>	<u>\$17,500.00</u>
54.	FURNISH MATERIALS AND INSTALL PACIFIC POWER SINGLE PHASE SECTIONALIZING CABINET PAD VAULT-OLDCASTLE PRECAST 444-SECT-PCORP-STOCK ITEM 7992607, INCLUDING EXCAVATION AND BACKFILL.	1 EA	<u>\$2,700.00</u>	<u>\$2,700.00</u>
55.	FURNISH MATERIALS AND INSTALL PACIFIC POWER 3-PHASE SECTIONALIZING CABINET PAD VAULT - OLDCASTLE PRECAST 575-SECT-PCORP STOCK ITEM 7992605, INCLUDING EXCAVATION AND BACKFILL	1 EA	<u>\$4,407.00</u>	<u>\$4,407.00</u>
<b>FRANCHISE/DRY UTILITIES CONSTRUCTION SUBTOTAL</b>				<b><u><u>\$92,095.50</u></u></b>
<b>TOTAL BID SCHEDULE A AMOUNT</b>				<b><span style="border: 1px solid black; padding: 2px;">\$805,362</span></b>