DATE: March 2, 2016

FROM: James Lewis Property & Facilities 541-385-1414

TITLE OF AGENDA ITEM:
Consideration of Board signature of Document Number 2015-161, a License between Deschutes County, Licensor, and Oregon State University, Licensee.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:
Oregon State University (OSU-Cascades), which has begun construction of their new campus on the west side of Bend adjacent to the former Deschutes County Demolition Dump, desires the right to access (by vehicle, bicycle, pedestrian and otherwise) the County owned property for site preparation related to construction of campus facilities. OSU-Cascades will access the County property through the existing gate system and will be able to utilize the property for construction related activities as specified in the License. The term begins on January 29, 2016 and continues indefinitely unless sooner terminated by either party according to the terms of the License, or when OSU-Cascades ceases operations on the subject property for university purposes. There is no consideration for this License – the License will help facilitate campus construction as a benefit to the community.

FISCAL IMPLICATIONS:
None.

RECOMMENDATION & ACTION REQUESTED:
Staff recommends signature of Document 2015-161.

ATTENDANCE: James Lewis

DISTRIBUTION OF DOCUMENTS:
One original to James Lewis for the Licensee.
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.)

Date: 3/2/2016 Department: Property & Facilities

Contractor/Supplier/Consultant Name: Oregon State University

Contractor Contact: Kelly Sparks Contractor Phone #: 541-322-3193

Type of Document: License

Goods and/or Services: N/A

Background & History: Oregon State University (OSU-Cascades), which has begun construction of their new campus on the west side of Bend adjacent to the former Deschutes County Demolition Dump, desires the right to access (by vehicle, bicycle, pedestrian and otherwise) the County owned property for site preparation related to construction of campus facilities. OSU-Cascades will access the County property through the existing gate system and will be able to utilize the property for construction related activities as specified in the License. The term begins on January 29, 2016 and continues indefinitely unless sooner terminated by either party according to the terms of the License, or when OSU-Cascades ceases to operations on the subject property for university purposes. There is no consideration for this License – the License will help facilitate campus construction as a benefit to the community.

Agreement Starting Date: 1/29/2016 Ending Date: 06/30/2018

Annual Value or Total Payment: None

✓ Insurance Certificate Received (check box)

Insurance Expiration Date: Not Applicable – Self Insured

N/A Check all that apply:

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

N/A 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

3/2/2016
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: James Lewis Phone #: 385-1414

Department Director Approval: 

Distribution of Document: One original to James Lewis for the Lessee.

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 __________ Date __________

Document Number 2015-161

3/2/2016
LICENSE

THIS LICENSE, made and entered into by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon, herein called "Licensor," and OREGON STATE UNIVERSITY, herein called "Licensee,"

WITNESSETH:

So long as Licensee complies with the terms and conditions of this License, Licensor licenses to Licensee a portion of public land, as described in Exhibit "A" and depicted in Exhibit "A-1", to serve as ingress/egress to land owned by Licensee and described in Exhibit "B".

1. **Term.** The term of this License shall commence on January 29, 2016, and continue indefinitely, unless sooner terminated. If not sooner terminated, License shall automatically terminate when Licensee ceases to operate for university purpose on the adjacent real property described in Exhibit "B".

2. **Possession.** Licensee's right to non-exclusive possession and obligations under the License shall commence as of January 29, 2016.

3. **Title to Property.** 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 said real property, this License shall automatically terminate. Licensee and its assigns and successors herein waive any and all claims for damages resulting from or related to termination of this License.

4. **Consideration.** No considerations.

5. **Additional License fees.** As additional license fees Licensee shall pay the following amounts:

   A. All taxes and assessments upon Licensee's personal property.

   B. All charges for any services or utilities used by Licensee on the licensed real property, if any.

   C. The cost of all insurance for which Licensee is required to pay.

   D. All amounts which Licensee is required to reimburse Licensor for expenses incurred by Licensor in discharging Licensee's obligations.

   E. All other amounts which the Licensee is required to pay by any other provisions of this License, including but not limited to any costs attributable to improvements to the real property which Licensee is herein obligated to undertake.
6. **Permitted Use.** Licensee may utilize the licensed real property for access (vehicle, bicycle, pedestrian and otherwise) to adjacent real property owned and operated by Licensee for site preparation relating to construction of campus facilities and other University purposes. Licensee shall utilize the existing gate system to access the licensed real property. Licensee may also place weigh scales and related structures on the licensed real property, subject to the terms of this License and upon receipt of all requisite regulatory permits and approvals.

7. **Restrictions on Use.** In connection with the use of the real property, Licensee shall:

   A. Obtain Licensor's written approval in advance of any development plans, lay-out plans, construction, reconstruction, or alteration of improvements, or revision of lay-out or construction plans for the real property, which may reasonably be expected to impact Licensor's use of the servient estate.

   B. Maintain the improvements, structures and real property to standards of repair, orderliness, neatness, sanitation and safety acceptable to Licensor. Licensor shall not have any duty or obligation to inspect or maintain the improvements, structures and real property herein licensed.

   C. Conform to all applicable laws and regulations of any public authority affecting the real property and the use in effect as of and following the date of this License, and correct at Licensee's own expense any failure of compliance created through Licensee's fault or by reason of Licensee's use if such failure of compliance arises as a result of conditions occurring after the date of this License.

   D. Refrain from any use which would be reasonably offensive to the Licensor, other tenants, or owners or users of adjoining real property, or which would tend to create a nuisance or damage the reputation of the real property. However, the parties agree that the intended use of the License is for Licensee to use the road for access to Licensee's operation for heavy vehicles hauling rock and aggregate for university needs so long as such use is authorized by valid land use permits.

   E. Refrain from making any unlawful or offensive use of said property or to suffer or permit any waste or strip thereof.

   F. Exercise diligence in protecting from damage the real property and property of Licensor covered by and used in connection with this License.

   G. Avoid interfering with Licensor's use of the licensed real property or any other real property owned by Licensor.

8. **Licensee's Obligations.** The following shall be the responsibility of the Licensee:

   A. Pave and maintain the licensed real property in a safe and dust free condition, reasonably acceptable to Licensor.

   B. Restrict and prevent access by the general public to the licensed real property, except upon invitation of the Licensor. Business
invitees of the Licensee may utilize the licensed real property for access purposes under the supervision of Licensee and subject to the terms of this License.

C. Payment of all real property taxes on the land and improvements constructed and owned by Licensee.

D. Payment of all personal property taxes on personal property placed within the licensed area.

E. Structural repair and maintenance of any and all buildings owned by Licensee and water, sewage, gas and electrical services and other utility services on the property used or ordered by Licensee.

F. Any repairs necessitated by the negligence of Licensee, its officers, board members, agents and employees.

G. Any repairs or alterations required under Licensee's obligation to comply with laws and regulations as set forth in "Restrictions on Use" above.

H. In addition to the fixed license fees provided herein, shall pay all taxes and assessments upon any buildings, structures or improvements constructed or maintained on the real property by Licensee which are assessed during the term of this License.

I. Pay Licensor for any damage resulting from Licensee's negligence or from the violation of the terms of this License.

9. **Environmental Pollution.** The provisions of this section supplement other license provisions that might be applied concerning the Licensee's obligations, responsibilities and liabilities for environmental pollution, present and future, and for compliance with the laws, regulations or orders of any governmental agency concerning environmental pollution, present and future, on the premises. To the extent that the provisions of this section conflict with any such other provisions, the provisions of this section shall control.

Where terms of this section use terms that are found in applicable state and federal environmental pollution laws, those terms shall have the same meaning as they have in those state and federal laws.

Licensee acknowledges that Licensee has inspected and investigated the property and otherwise informed itself on the condition of the premises. Licensee will assume responsibility and liability as set forth below in the removal and indemnification provision for any release or discharge of hazardous, toxic; radioactive or other dangerous substances regulated under state or federal pollution control laws caused by Licensee or its invitees:

Licensee covenants that during the term of this License, licensee will not generate, store, process or dispose of or release or discharge into the environment hazardous, toxic, radioactive or other dangerous substances on or about the licensed premises in any amount, nor will Licensee allow
such prohibited activities to take place on the licensed property during the license term.

Licensee covenants to report, contain and remove in conformance with applicable state and federal law any releases of hazardous, toxic, radioactive or other substances regulated under state or federal pollution control laws that are caused by Licensee and found on or in the premises during the term of this License or any releases of such materials found off the premises that originated from the premises during the license term and which was caused by Licensee and to be responsible for the cost of removal of such substances:

To the extent permitted by law, Licensee agrees to indemnify, defend and hold Licensor, its officers, agents and employees harmless from and against any claims, demands, causes of action or suits for damages, reimbursement or any other cost of compliance, including, but not limited to, remedial action costs, removal costs, natural resources damages, penalties, punitive damages, interest costs, attorney fees and damages of any kind to third parties, arising from the discharge, release or threatened release on or in the premises of any hazardous, toxic or radioactive substances caused by Licensee and occurring during the term of this License or any extension thereof.

The obligations, responsibilities and liabilities of this section are continuing obligations, responsibilities and liabilities and shall not be extinguished by the termination of this License.

10. Inspection of Real Property. Licensor shall have the right to inspect the licensed real property without need to provide notice to Licensee.

11. Indemnification of Licensor. Licensee, Licensee's assigns and successors 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 by Licensee, Licensee's assigns and successors on or in connection with the licensed property; and further agrees, to the extent permitted by law, to indemnify, defend, and hold 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, or failure of Licensee, Licensee's assigns or successors, to comply with applicable federal, state or local laws or the terms of this License.

12. 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 non-payment, 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.

13. Assignment. If the Licensee, through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding, shall cease to serve a university purpose on the adjacent real property as described in Exhibit "B" and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this License shall terminate. But, if the entity to whom such commercial business shall have been transferred in either manner above provided, is reasonably qualified as a Licensee, and is willing that its future use of the real property shall be subject to the terms and provisions of this License, its continued use of the real property shall be authorized by a License to said entity, which shall be for the unexpired term of this License, unless the parties agree to a new License term.

14. 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.

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

A. 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.

B. Failure of Licensee to comply with any term or condition or fulfill any obligation of the License within ninety (90) 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 ninety (90) day period, this provision shall be complied with if Licensee begins correction of the default within the ninety (90) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

16. 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 ninety (90) days grace period for default given under the paragraph entitled "Default." If the property is abandoned by Licensee in connection with a default, termination shall be automatic and without notice.
B. In any of the above set out cases or events, the Licensor, or those having the Licensor’s estate in the real property, lawfully at its option may enter into and upon said real property and every part thereof, and repossess the same of Licensor’s former estate, and expel said Licensee and those claiming by and through or under Licensee, and remove Licensee’s effects at Licensee’s expense, forcibly if necessary, and store the same, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be used for arrears of license fees or preceding breach of covenant.

C. The foregoing remedies shall be in addition to, and shall not exclude, any other remedy available to Licensor under applicable law.

18. **Termination.** Either party shall have the authority to terminate this License without cause upon the giving of written notice one year prior to the effective date of termination. Both parties waive any and all claims for damages or cost associated with termination.

19. **Structures and Fixtures.**

   A. All structures, improvements, fixtures, and 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 structures, improvements, fixtures and personal property owned by Licensee. If Licensee fails to remove all or part of such structures, improvements, and fixtures within one hundred eighty (180) days, and such additional time as is reasonable and necessary to effect such removal as may be agreed upon by the parties, then they shall become the property of the Licensor.

20. **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: Licensee:
   Deschutes County Property Management Oregon State University
   1340 NW Wall Street Attn: Kelly Sparks
   Bend, Oregon 97701 497 SW Century Drive
   #105 Bend, Oregon 97702

   With a Copy to:
   Oregon State University
   Real Estate
   3015 SW Western Blvd.
   Corvallis, OR 97333

21. **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 any other provision.
22. Partnership. Licensor is not by virtue of this License a partner or joint venture 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.

23. Land Use Permit. This License does not constitute a land use permit, nor does acceptance of this License by Licensor constitute approval of any legislative or quasi-judicial action required as a condition precedent to use of the land for the intended purpose.

24. Licensor's Right to Cure Defaults. If the Licensee fails to perform any obligations under this License, the Licensor shall have the option to do so after thirty (30) days written notice to the Licensee. All of the Licensor's expenditures to correct the default shall be reimbursed by the Licensee on Demand with interest at the rate of nine percent (9%) per annum from the date of expenditures by the Licensor.

25. Licensee Not an Agent of Licensor. It is agreed by and between the parties that the Licensee is not carrying out a function on behalf of the Licensor, and the Licensor does not have the right of direction or control of the manner in which Licensee delivers services under this License or exercise any control over the activities of the Licensee.

26. 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.

Dated this 2 day of March, 2016.

LICENSEE: OREGON STATE UNIVERSITY

Nicole Neuschwander
Director, Leasing and Strategic Real Property Management

STATE OF OREGON )
) ss.
County of Benton )

Before me, a Notary Public, personally appeared Nicole Neuschwander, the above-named Director of Leasing and Strategic Real Property Management for Oregon State University and acknowledged the foregoing instrument on its behalf.

DATED this 2 day of March, 2016

Notary Public for Oregon
My Commission Expires: 5-10-19
STATE OF OREGON  )  ss.
County of Deschutes  )

Before me, a Notary Public, personally appeared ALAN UNGER, TAMMY BANEY and ANTHONY DEBONE, 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 ____________, 2016

__________________________  My Commission Expires: ____________________
Notary Public for Oregon
EXHIBIT "A"

LEGAL DESCRIPTION

Demolition Landfill Easement

A strip of land 60' in width lying in the SE 1/4 NW 1/4 of Section 6, Township 18 South, Range 12 East, Willamette Meridian, Clackamas County Oregon, said strip being shown on the survey of Lot Line Adjustment 94-104 as the "60 foot excess easement to TL's 111 & 113", being more particularly described as follows:

Beginning at the #5 rebar with an aluminum cap stamped "LS 1031" monumenting the Center line of said Section 6; thence along the east-west centerline of said Section 6 N59°49'23"W 274.17 feet to a #4 rebar with an aluminum cap stamped "LS 2.45", the Point of Beginning; thence leaving said east-west centerline N07°16'11"W 162.94 feet; thence 220.44 feet along the arc of a 289.27 foot radius curve to the left, the long chord of which bears N29°05'26"W 215.06 feet; thence N50°26'42"W 401.16 feet; thence 1.04.24 feet along the arc of a 266.83 foot radius curve to the right, the long chord of which bears S29°08'96"W 159.09 feet; thence N65°21'SG"W 344.56 feet to a #5 rebar with an aluminum cap stamped "LS 1031" monumenting the westerly 42.06 foot right-of-way line of Sinyip Avenue; thence along said right-of-way line 53.61 feet along the arc of a 1313.24-foot radius non-tangent curve to the right, the long chord of which bears S89°07'36"W 55.01 feet; thence N89°40'51"W 7.12 feet; thence leaving said right-of-way line S05°30'56"E 349.48 feet; thence 211.94 feet along the arc of a 266.83 foot radius curve to the left, the long chord of which bears S29°08'96"E 286.41 feet; thence S50°26'42"E 49.11 feet; thence 174.64 feet along the arc of a 265.27 foot radius curve to the right, the long chord of which bears S29°05'26"E 179.45 feet; thence S07°16'11"E 154.07 feet to the east-west centerline of said Section 6, thence along said east-west centerline S89°49'23"E 60.51 feet to the Point of Beginning. Containing 77,480.66 square feet (1.78 acres) more or less.
EXHIBIT “B”

PARCEL 1:
That land as described in Exhibit A as Parcel 2 of Bargain and Sale Deed, recorded February 13, 2013 in Instrument No. 2013-06507, Deschutes County Official Records. EXCLUDING THEREFROM: Beginning from the Northwest corner of the Northeast quarter of the Southwest quarter (NE1/4SW1/4) of Section 6, Township 18 South, Range 12 East; thence along the North line of said NE1/4SW1/4, South 89°39'11" East, 991.04 feet; thence leaving said North line, South 0°31'48" East, 20.00 feet; thence along a line parallel to and 20.00 feet South of said North line of NE1/4SW1/4, North 89°39'11" West, 991.18 feet to the West line of said NE1/4SW1/4; thence leaving said parallel line, along said West line, North 0°07'54" West, 20.00 feet to the point of beginning. ALSO EXCLUDING THEREFROM: Beginning from the Northerly most corner of Lot 19, Century Washington Center, Phases I, II, III and IV; thence North 0°31'48" West, 66.62 feet; thence South 89°39'11" East, 168.84 feet to the West line of said land described in Exhibit A of Statutory Bargain and Sale Deed, recorded May 19, 1994 in Book 339, Page 2841, Deschutes County Official Records; thence along said West line, South 0°31'48" East, 108.00 feet to the North line of said Lot 19; thence leaving said West line, along the North line of said Lot 19, North 75°56'04" West, 174.45 feet to the point of beginning.

PARCEL 2:
A parcel of land in the Northwest quarter of the Southwest quarter of Section 6, Township 18 South, Range 12 East, Willamette Meridian, in Deschutes County, Oregon, being a portion of Government Lot 5 in said Section 6, and more particularly described as Parcel I in Exhibit A to the Bargain and Sale Deed recorded December 20, 1996 in Book 432, Page 3000, and re-recorded on January 15th, 1997, in Book 435, Page 898, Deschutes County Official Records. TOGETHER WITH: Beginning from the West quarter corner of Section 6, Township 18 South, Range 12 East, Willamette Meridian; thence along the West line of Government Lot 5, North 0°45'09" East, 27.75 feet; thence leaving said West line, along a line parallel to and 27.75 feet North of the South line of said Lot 5, South 89°39'11" East, 1240.59 feet; thence leaving said parallel line, South 6°12'01" West, 27.90 feet to the Southeast corner of said Lot 5; thence along the South line of said Lot 5, North 89°39'11" West, 1237.94 feet to the point of beginning.

PARCEL 3:
Tract D OF BROKEN TOP, PHASES 1C AND 1D, Deschutes County, Oregon. EXCEPTING THEREFROM that portion dedicated in the document entitled "Dedication Deed" recorded April 10, 2012 in Instrument No. 2012-013237, Deschutes County, Oregon.