



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 21, 2016**

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**DATE:** March 10, 2016

**FROM:** George Kolb, County Engineer. Road 541-322-7113

**TITLE OF AGENDA ITEM:**

Consideration of Signature of Document No. 2016-181, A License to Use the Right-of-Way on Cline Falls Highway for the Installation of a Monument Sign for the Tumalo Business Association

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

**BACKGROUND AND POLICY IMPLICATIONS:**

The County Road Department was contacted by Mel Stout with the Tumalo Business Association (TBA) concerning the installation of a monument sign to be located within the public right of way off of Cline Falls Highway at the north end of Tumalo (see Exhibit A of the License). The purpose of the sign is to let drivers know they are entering the community of Tumalo. The sign will be located outside of our typical clear zone area (10 ft. from edge of travel lane, per policy), outside of any sight lines obscuring sight distance, and the speed limit in this area is 25 mph.

Because this sign will be located within the public right of way, the TBA is required to sign a License to Use the Public Right of Way. This license insures that the TBA is allowed to have the sign in the right of way and that they are responsible for all maintenance associated with the sign.

**FISCAL IMPLICATIONS:**

None. There is no cost to the Road Department concerning the utilization of this permit

**RECOMMENDATION & ACTION REQUESTED:**

Move approval of Board Signature on Document No. 2016-181, granting a license to use the right-of-way on First Street in La Pine, OR to the La Pine Park and Recreation District

**ATTENDANCE:** George Kolb, County Engineer

**DISTRIBUTION OF DOCUMENTS:**

Copy to Sheila Odle (ext. 7148) at the Road Department

## 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:** March 10, 2016

**Department:** Road

**Contractor/Supplier/Consultant Name:** Tumalo Business Association

**Contractor Contact:** Mel Stout

**Contractor Phone #:** 541-323-1879

**Type of Document:** License to Use Right of Way

**Goods and/or Services:** This License will allow the Tumalo Business Association to install a monument sign in the right of way for Cline Falls Highway

**Background & History:** The County Road Department was contacted by Mel Stout with the Tumalo Business Association (TBA) concerning the installation of a monument sign to be located within the public right of way off of Cline Falls Highway at the north end of Tumalo (see Exhibit A of the License). The purpose of the sign is to let drivers know they are entering the community of Tumalo. The sign will be located outside of our typical clear zone area (10 ft. from edge of travel lane, per policy), outside of any sight lines obscuring sight distance, and the speed limit in this area is 25 mph. Because this sign will be located within the public right of way, the TBA is required to sign a License to Use the Public Right of Way. This license insures that the TBA is allowed to have the sign in the right of way and that they are responsible for all maintenance associated with the sign.

**Agreement Starting Date:** 03/23/2016

**Ending Date:** N/A

**Annual Value or Total Payment:** N/A

☐ 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:

Phone #:

Department Director Approval:

Signature

03/11/16  
Date

**Distribution of Document:** Who gets the original document and/or copies after it has been signed? Include complete information if the document is to be mailed.

**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 2016-181



For Recording Stamp Only

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

THIS LICENSE, made and entered into by and between **Deschutes County**, herein called "Licensor," and **Tumalo Business Association**, herein called "Licensee,"

**WITNESSETH:**

Licensee is hereby authorized to use the real property, described in Exhibit "A," attached hereto and by this reference incorporated herein and together referred to as the "Property," for the purpose of **the installation of a Tumalo monument sign**:

The Property is depicted on the map marked Exhibit "A," attached hereto and by this reference incorporated herein.

1. Term. The term of this License shall commence on **March 23, 2016**, and continue until terminated or abandoned as provided herein.
2. Possession. Licensee's right to utilize the Property and obligations contained herein shall commence as of the date of this License. Pursuant to the terms and limitations of this license, Licensee shall have exclusive use and possession of the real property described in Exhibits "A" for the purposes set forth herein.
3. Condition of Property. Licensor represents that it has full right, power, and authority to enter into this License 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. Additional License Fees. As additional license fees Licensee shall pay the following amounts:
  - A. All real property taxes and assessments payable on the licensed real property, as a consequence of this License.
  - B. All amounts which Licensee is required to reimburse Licensor for expenses incurred by Licensor in discharging Licensee's obligations.
  - C. All other amounts, which the Licensee is required to pay by any other provisions of this License.

6. 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 **the installation and maintenance of a Tumalo monument sign** in accordance with the laws of the State of Oregon.
7. Restrictions on Use. In connection with the use of the real property, Licensee shall:
  - A. Obtain a utility locate and all necessary approvals or permits prior to any uses of the property.
  - B. Maintain the real property to standards of repair, orderliness, neatness, sanitation and safety acceptable to Licensor.
  - C. Conform to all applicable laws and regulations of any public authority affecting the real property and the use after 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, or owners or users of adjoining real property, or which would tend to create a nuisance or damage the reputation of the real property.
  - 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.
8. 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 licensed real property.
  - 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. Licensee shall pay all real property taxes assessable and 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 lease period.
  - E. Pay Licensor for any damage resulting from Licensor'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.
  - A. 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.
  - B. Licensee acknowledges that Licensee has inspected and investigated the property and otherwise informed itself on the condition of the premises and based upon such inspection and investigation, Licensee is satisfied that the premises does not now contain any amounts of hazardous, toxic, radioactive or other substances for which a property owner or operator may be made liable under state or federal environmental

pollution or health and safety laws. Accordingly, Licensee agrees that as between the Licensors and Licensee, 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 found hereafter on, in or about the premises.

- C. 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.
- D. 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 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 to be responsible for the cost of removal of such substances.
- E. Licensee agrees to indemnify, defend and hold the County, 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 occurring during the term of this License or any extension thereof. For the purposes of this section, any release of hazardous substances discovered on the premises during the term of this License shall be deemed to have occurred after the execution of this License.
- F. 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. Licensors shall have the right to inspect the real property at any reasonable time without need for formal notice.

11. Indemnification. The Board of County Commissioners waived the indemnification requirement for this License at the Monday, February 29, 2016 work session.

12. Liens.

- A. Except with respect to activities for which the Licensors are 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, Licensors 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 Licensors and shall be payable on demand. Such action by Licensors shall not constitute a waiver of any right or remedy, which Licensors 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 Licensors'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 Licensors cash or a sufficient corporate surety bond or other surety satisfactory to Licensors 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. 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.
14. Default. The following shall be events of default:
  - A. Abandonment of the licensed real property or the cessation of use of the real property described in Exhibits "A".
  - 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.
15. Termination. Said License shall terminate:
  - A. By mutual agreement of the parties;
  - B. Upon one year's 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.
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 thirty (30) 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.

17. 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.
18. 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.
- |   |   |
|---|---|
| <p>Licensor:<br/><b>Deschutes County</b><br/><b>1300 NW Wall Street</b><br/><b>Bend, OR 97703</b></p> | <p>Licensee:<br/><b>Tumalo Business Association</b><br/><b>65765 Highway 20</b><br/><b>Bend, OR 97703</b></p> |
|---|---|
19. 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.
20. 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.
21. 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.
22. 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.
23. Licensee Not An Agent of Licensor. It is agreed by and between the parties that Licensee is not carrying out a function on behalf of the Licensor, and Licensor does not have the right of direction or control of the manner in which Licensee transports or disposes of materials so long as Licensee meets criteria set forth herein.
24. 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.
25. Time is of the Essence. Time is of the essence in each and every provision of this License.



26. 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.
27. 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 \_\_\_\_\_, 2016.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ALAN UNGER, CHAIR

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

\_\_\_\_\_  
ANTHONY DEBONE, COMMISSIONER

**LICENSEE:** DATED this 5<sup>TH</sup> day of MARCH, 2016.

TUMALO BUSINESS ASSOCIATION:

\_\_\_\_\_  
Mike Ludeman, President

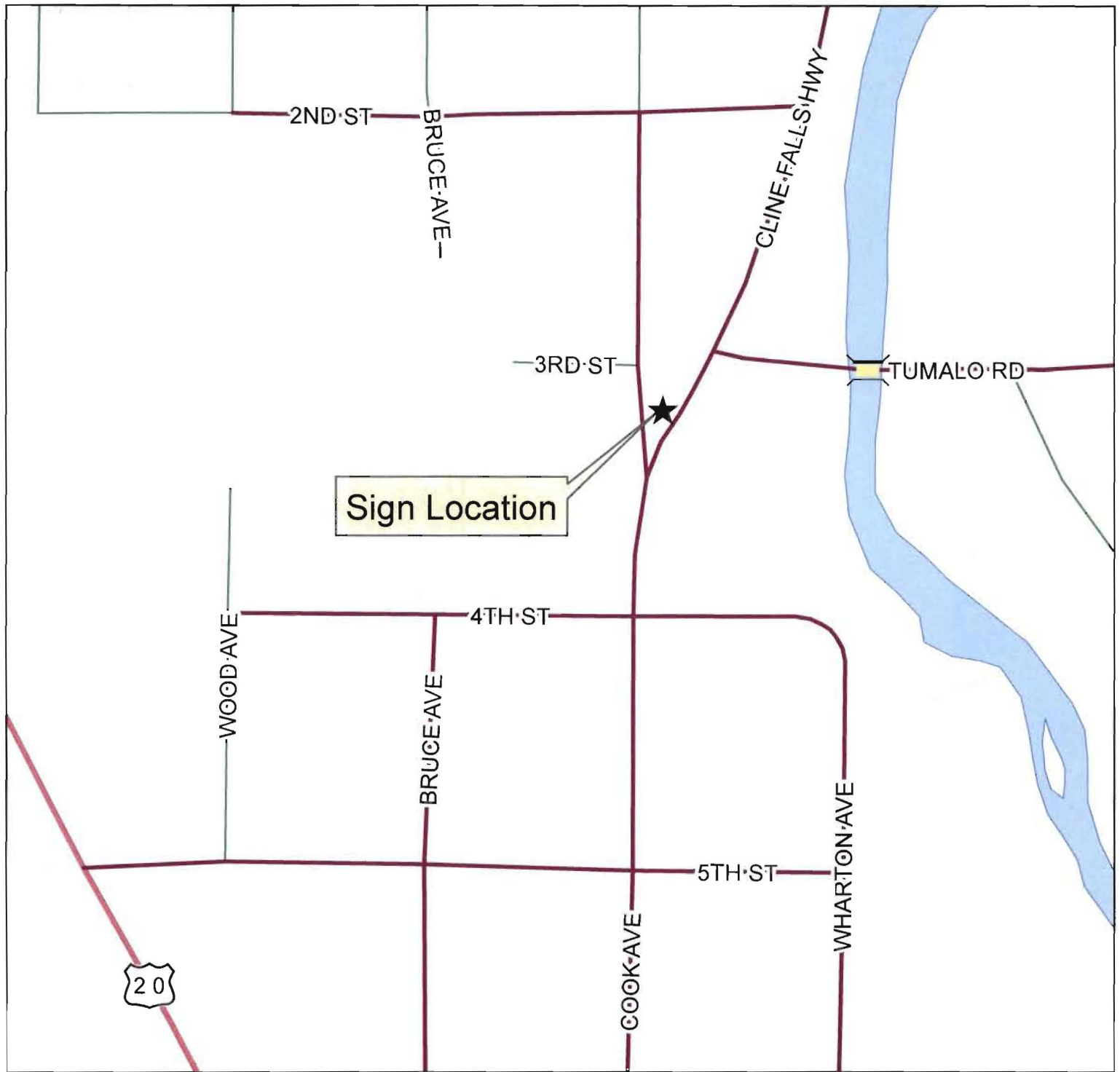
\_\_\_\_\_  
Board Member

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Board Member

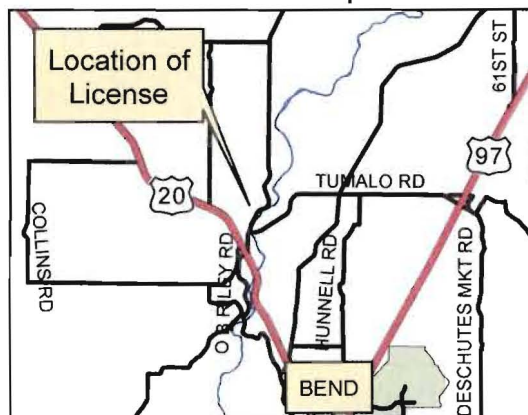
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Board Member

\_\_\_\_\_  
Board Member

License to use Public Right-of-Way  
 EXHIBIT "A" Monument Sign - Tumalo Business Association



Locator Map




Legend

- County Routes
- State Highway
- Bridge
- River
- Taxlots

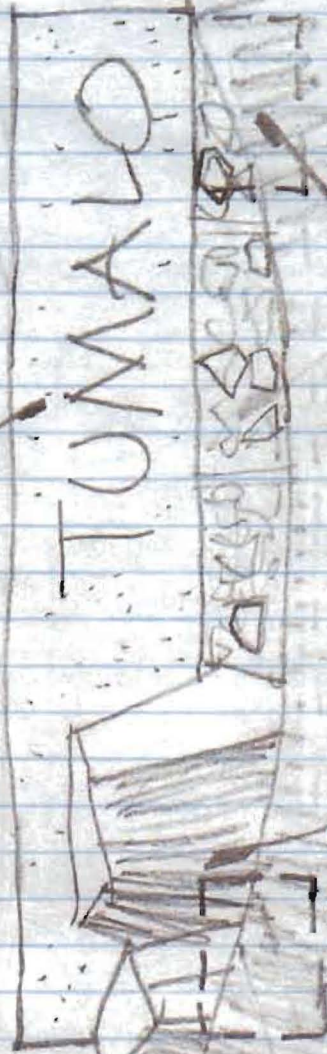
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

Printed: February 23, 2016


**DESCHUTES COUNTY**  
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 Phone: (541) 322-7102  
 Email: john.anderson@deschutes.org  
 Address: 61150 SE 27th St  
 Bend, OR 97702  
**Road Department**



CONCRETE SIGN  
(8'x2'x15')



CONCRETE FOOTING

BOULDERS FRONT  
AND BACK SIDES  
FOR VISUAL STABILITY

NORTH MONUMENT CONCEPT  
4/5/2015





↑ NORTH  
NTS.

TUMALO - NORTH SITE MONUMENT PLAN  
4/5/2015