



Road Department

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

MEMORANDUM

Date: August 1, 2016

To: Board of County Commissioners

From: George Kolb, County Engineer

RE: Bischoff License to Use the Public Right of Way

Chris Bischoff, 22399 Alfalfa Market Road, approached the County about the maintenance of the vegetation in the right of way located along Powell Butte Highway by the roundabout. In the past, Mr. Bischoff has maintained the vegetation in the right of way and with the completion of the roundabout; he would like to continue this maintenance. To be able to do this, Mr. Bischoff needs to obtain a License to Use the Right of Way to allow him to do this work. What the license will allow him to do is install a fence within the right of way and maintain the vegetation located within the fence that will be located within the right of way.

The main issue that has come up with the license is the liability in case of an accident as a result of the maintenance work being done. Paragraph number 11 of the agreement contains language concerning the Indemnification of the County in the event of an accident. Obtaining the required certificate of insurance would be large expense for a citizen and he is not willing to accept the liability for any type of accident. The Road Department has been working with Legal and Risk to come up with a solution to this issue and it was determined that since this is a very low risk use of the right of way and it does help the Road Department in the maintenance of the right of way, the Indemnification of the Licensor could be removed from the license. Prior to removing this paragraph, we want to get the opinion and recommendation of the Board.

DESCHUTES COUNTY DOCUMENT SUMMARY

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

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

Date:

Department:

Contractor/Supplier/Consultant Name:

Contractor Contact:

Contractor Phone #:

Type of Document: Document Number 2016-535; License to Use Right of Way

Goods and/or Services: This License will allow Chris Bischoff to install a fence within the public right of way of Powell Butte Highway in the vicinity of the roundabout and also maintain the vegetation in the public right of way.

Background & History: Deschutes County is installing a roundabout at the intersection of Powell Butte Highway, Neff Road and Alfalfa Market Road. Mr. Bischoff owns property in the southeast corner of the roundabout. Upon completion of the roundabout, there will be an area between the roadway and Mr. Bischoffs property that will require maintenance in the form of vegetation removal/mowing. Mr. Bischoff approached the County about allowing him to maintain this piece of property after completion of the project. In order for him to get his equipment into this area for the purposes of mowing the vegetation, he will need to install his fence approximately 10 feet from the toe of slope of the roadbed. This puts his fence within the public right of way necessitating the need for a License to Use the Right of Way. This license will benefit both Mr. Bischoff and the Road Department.

Agreement Starting Date:

Ending Date:

Annual Value or Total Payment:

Insurance Certificate Received (check box)

Insurance Expiration Date:

Check all that apply:

RFP, Solicitation or Bid Process

Informal quotes (<\$150K)

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

Funding Source: (Included in current budget? Yes No

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

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

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

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

Contact information for the person responsible for grant compliance:

Name:

Phone #:

Departmental Contact and Title:

Phone #:

Department Director Approval: _____
Signature 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 _____

REVIEWED

LEGAL COUNSEL



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 **Christopher M. Bischoff**, 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 **installation of a fence and maintenance of vegetation within the public right of way of Powell Butte Highway**

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 upon signature of all parties, 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 **installation of a fence and maintenance of vegetation within the public right of way of Powell Butte Highway** 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 Licensor 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. Licensor shall have the right to inspect the real property at any reasonable time without need for formal notice.

11. Liens.

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

amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under a lien.

12. 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.
13. 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.
14. 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.
15. 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.

16. 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.

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

Licensor:
Deschutes County
1300 NW Wall Street
Bend, OR 97703

Licensee:
Christopher M. Bischoff
22399 Alfalfa Market Road
Bend, OR 97701-7302

18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. Time is of the Essence. Time is of the essence in each and every provision of this License.

- 25. 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.
- 26. 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 _____, 2015.

Deschutes County

Tom Anderson, County Administrator

STATE OF OREGON)
) ss.
 County of Deschutes)

Before me, a Notary Public, personally appeared Tom Anderson.

DATED this ____ day of _____, 2015.

 Notary Public for Oregon
 My Commission Expires: _____

State of Oregon)
) ss.
 County of Deschutes)

LICENSEE: DATED this ____ day of _____, 2016.

Christopher M. Bischoff

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2016.

 Notary Public for Oregon
 My Commission Expires: _____