



Bend Metro Park & Recreation District

September 20, 2016

Board of Directors Agenda and Reports

www.bendparksandrec.org



play for life



Our Vision

To be a leader in building a community connected to nature, active lifestyles and one another.

Our Mission

To strengthen community vitality and foster healthy, enriched lifestyles by providing exceptional park and recreation services.

We Value

Excellence by striving to set the standard for quality programs, parks and services through leadership, vision, innovation and dedication to our work.

Environmental Sustainability by helping to protect, maintain and preserve our natural and developed resources.

Fiscal Accountability by responsibly and efficiently managing the financial health of the District today and for generations to come.

Inclusiveness by reducing physical, social and financial barriers to our programs, facilities and services.

Partnerships by fostering an atmosphere of cooperation, trust and resourcefulness with our patrons, coworkers and other organizations.

Customers by interacting with people in a responsive, considerate and efficient manner.

Safety by promoting a safe and healthy environment for all who work and play in our parks, facilities and programs.

Staff by honoring the diverse contributions of each employee and volunteer, and recognizing them as essential to accomplishing our mission.

play for life

District Office | Don Horton, Executive Director

799 SW Columbia St., Bend, Oregon 97702 | www.bendparksandrec.org | (541) 389-7275

BOARD AGENDA COMMUNICATION

AGENDA DATE:	September 20, 2016
SUBJECT:	Lead & Copper in Drinking Water Update
STAFF RESOURCE:	Mark Ellington, BPRD Asset Program Manager Michelle Healy, Planning and Park Services Director Sasha Sulia, Superintendent of Park Operations
PREVIOUS BOARD ACTION:	N/A
ACTION PROPOSED:	N/A
STRATEGIC PLAN:	
Theme:	Operational Excellence
Objective:	Improve Business Practices
Initiative:	Provide a safe and healthy environment for all who work and play in our parks, facilities and programs.

BACKGROUND

At the July 16, 2016 board meeting, staff presented an Action Plan to test for the presence of lead and copper in the drinking water at District buildings and parks. The plan utilized the Environmental Protection Agency's (EPA) technical document, "3T's for Reducing Lead in Drinking Water in Schools" for guidance.

Lead and copper products were used extensively in domestic water pipe solder and fixtures until 1986. Since then, federal regulations have significantly decreased amounts in these products. Several District buildings and parks were either constructed or renovated before 1986, and therefore could contain lead and copper in water. A list of these potential locations and the prioritization criteria were shared at the July 16 board meeting.

Following the July 16 board meeting, staff completed initial-sample collection from 155 drinking water outlets at 13 District locations built prior to 1986. These samples were analyzed by Umpqua Research Company and the results were compared to state and federal action levels. The EPA sets a federal action level of 20ppb for lead, while the current Oregon Health Authority (OHA) recommends a stricter standard of 15ppb. For copper in drinking water, the action level is 1.3ppm.

Of the 155 initial samples collected, seven tested above the EPA and OHA's Maximum Concentration Level (MCL) for lead. It's important to note that all seven of these fixtures are infrequently used and are not primary drinking water sources. Locations which have tested at or above the MCL for lead include the Genna Stadium Umpire Shower, the Old Admin Building janitor sink, the hose bib at the Tillicum Ranch rental house, two hose bibs at the Shevlin Park Caretaker House, a pool deck hose bib at Juniper Swim and Fitness Center (JSFC), and the indoor pool water supply by-pass valve at JSFC. Follow up flush-testing intended to locate the source of the lead within the plumbing system of these locations has been completed. It appears that the source of

lead in these locations originate within the fixtures rather than building infrastructure. The results of the initial testing and follow up testing are listed on the attached BPRD Lead/Copper Water Testing Summary document (Exhibit A). Test results found that copper levels are well below the MCL in all locations.

Occupants of tested buildings have been notified of the initial and flush-sample results and have been provided a copy of the lab tests. For those locations with outlets testing above MCL results, occupants have been instructed not to consume the water from the specific outlet, and signage has been ordered. In some cases, where possible (e.g., JSFC) the faucet handles have also been removed.

Remediation or mitigation plans for the seven locations are pending. However, based on the results it is anticipated that remediation involves replacing older fixtures with new models. Once remediation work is complete, staff will conduct follow-up testing to confirm success of corrective measures.

Sharing this information with the public is an important part of the District's Action Plan. Currently, public communications plans include:

- News release to media and posting on BPRD website of summary results,
- Social media outreach to share summary results, and
- Include link to test results on website and social media.

Finally, as previously discussed with the Board, some District programs are located in facilities owned by others, including the Bend-LaPine School District. In these situations, BPRD collaborates with the managers of these facilities. Staff has received a copy of Bend-La Pine School District's initial testing conducted in June. In this study, a single sample was gathered from each building rather than each fixture at each location. Results from that study report a significant number of samples were Not Detectable, with others being 5ppb or less. The District will continue to coordinate with the School District on their lead and copper testing program.

BUDGETARY IMPACT

The cost for the initial water testing was \$3,645. The funding for this testing was covered in the 2016-2017 Park Services Department budget. Additional costs for any follow up testing and/or remediation are unknown at this time. However, based on the initial testing results, remediation costs are not anticipated to be significant and any costs should be able to be covered with existing funding resources.

STAFF RECOMMENDATION

None at this time.

MOTION

None – this information is provided for Board discussion only.

ATTACHMENT

Exhibit A - BPRD Lead/Copper Water Testing Summary document

BPRD LEAD/COPPER WATER TESTING SUMMARY

	Number of Fixtures to Sample	Actual Cost By Location	Initial Sampling			Flush Sampling		
			Sample Date	Samples Collected By	Pb Summary Results - Initial Samples	Sample Date	Sample Collected By	Pb Summary Results - 1st Flush Samples
JRFC	75	\$ 1,732.50	8/14/2016	Mark Ellington, Michelle Healy, Sasha Sulia	42ppb - Indoor Pool Supply, 68ppb - Indoor Pool hose bib, 66 ND's, 2ppb, 3ppb, 2ppb,, 3ppb, 2ppb, 3ppb, 2ppb	8/31/2016	Mark Ellington	Pending
Shelvin Caretaker/Rental House	6	\$ 180.00	7/29/2016	Mark Ellington	55ppb - NE hose bib, 66ppb - N hose bib, 1 ND, 5ppb, 12ppb, 3ppb	8/22/2016	Mark Ellington	20-sec flush; 5ppb, 4ppb Conclusion: source of lead in fixture
Tillicum Caretaker House	5	\$ 135.00	8/1/2016	Amy Crawford	20ppb - hose bib, 2ppb, 2ppb, 2ppb, 4ppb,	8/22/2016	John Sterling	20-sec flush; ND Conclusion: source of lead in fixture
Genna Stadium	22	\$ 517.50	8/5/2016	Mark Ellington	124ppb - Umpire Shower, 4 ND's, 3ppb, 5ppb, 6ppb, 7ppb, 13ppb, 7ppb, 5ppb, 7ppb, 6ppb, 11ppb, 2ppb, 2ppb, 2ppb, 2ppb, 5ppb, 6ppb	8/23/2016	Mark Ellington	20-sec flush; 2ppb Conclusion: source of lead in fixture
Old Admin Building (Cascade School of Music, Pacific Park)	5	\$ 135.00	8/4/2016	Mark Ellington	19ppb- Janitor Sink, 3 ND's, 2ppb,	8/23/2016	Mark Ellington	20-sec flush; ND Conclusion: source of lead in fixture
Old Bend Gym (Boy's & Girls Club)	12	\$ 270.00	8/5/2016	Mark Ellington & John Sterling	10 ND's, 2ppb, 10ppb	N/A		
Park Services Complex	9	\$ 202.50	7/29/2016	Mark Ellington	6 ND's, 3ppb, 2ppb, 11ppb	N/A		
Harmon Hobby Hut	3	\$ 67.50	7/29/2016	Mark Ellington	3ppb, 2ppb, 12ppb	N/A		
Aspen Caretaker House	7	\$ 157.50	8/2/2016	Angie Lute	5 ND's, 5ppb, 2ppb	N/A		
Franklin Rental House	5	\$ 112.50	8/11/2016	Mark Ellington	5 ND's	N/A		
Genna Caretaker House	4	\$ 90.00	7/26/2016	Mark Ellington	3 ND's, one 3ppb	N/A		
Larkspur Park (new park with brass d/f fittings)	1	\$ 22.50	7/28/2016	Mark Ellington	1 ND	N/A		
Pioneer Park drinking fountains	1	\$ 22.50	7/28/2016	Mark Ellington	1 ND	N/A		
Σ:	155	\$ 3,645.00						

BOARD AGENDA COMMUNICATION

AGENDA DATE:	September 20, 2016
SUBJECT:	Comprehensive Plan Update
STAFF RESOURCE:	Quinn Keever, Planner Steve Jorgensen, Planning Manager Michelle Healy, Planning & Park Services Director
PREVIOUS BOARD ACTION:	Awarded professional services contract with MIG, August 25, 2016
ACTION PROPOSED:	None
STRATEGIC PLAN:	
Theme:	Community Connection
Objective:	Analyze and Adapt to Changing Community Need
Initiative:	Review, monitor and periodically revise the Comprehensive Plan and Strategic Plan to ensure that they provide direction to address system deficiencies, respond to the needs of a growing community and plan for equitable distribution of facilities.

BACKGROUND

On August 25, 2016, the Board approved a consultant contract to develop a new Bend Park and Recreation District Comprehensive Plan. This Board Report serves to update the Board on the progress over the last month.

The project team held a kick-off meeting on September 1, 2016. Since that time, staff has collected and delivered several District-wide and planning-related documents to the consultant team. The project team is currently reviewing those documents to help develop a summary of background information for the public.

Additionally, the team has been preparing an extensive Public Involvement Plan to establish the framework for the next year of soliciting input from the community-at-large, BPRD patrons, staff, Board, and District residents who have never experienced a BPRD program or park. This Public Involvement Plan will be a crucial element in understanding a changing and rapidly expanding population's needs and concerns over the next ten years. Staff will share and solicit input on several key elements of the Public Involvement Plan with the Board on September 20, 2016.

BUDGETARY IMPACT

None

STAFF RECOMMENDATION

None

MOTION

None

ATTACHMENT

None

- BPRD Goals
- Geese Management
- Goose Management Plan

2. Mirror Pond MOU – Don Horton and Neil Bryant

Executive Director Horton said that the District had been working on this project for a number of years. He provided background on the project; sharing that a community vision had been adopted by the Board and City Council in March of 2015. He explained that since that vision was adopted, staff continued to work with PacifiCorp to attempt to negotiate the sale of the dam, power operation and land that was adjacent to the dam. Those negotiations ended without any agreement. At the same time Mirror Pond Solutions (MPS) was created and they acquired all of the land under Mirror Pond not owned by PacifiCorp. After the District ceased negotiations with PacifiCorp, Mirror Pond Solutions made an attempt to negotiate as well. As a result, PacifiCorp made a decision that they would retain ownership of the dam for an undetermined amount of time. This decision changed the intent of the MOU adopted by the Board in June of 2016 resulting in the new MOU that is before the Board for consideration. [The MOU and complete agenda brief is available at http://www.bendparksandrec.org/about_us/board_meetings/]

Mr. Bryant responded to a concern voiced by Director Grover about the potential of the dam removal in the future. He stated that whoever removes the dam in the future has a lot of responsibility in the way they remove it. He shared that PacifiCorp understands that a “blow and go” approach is not acceptable and the attorney confirmed that they are going to continue operating the dam and continue maintenance. MPS proposal in the MOU is a new course of direction for them; they are focusing on how to dredge and raise the estimated \$3.3 million dollars to remove the sediment. MPS is agreeable that the MOU is acceptable to them; the MOU is important for them to be able to contact other groups such as the City, PacifiCorp and property owners, to find the additional funding.

Visitors

Keith Scott – Mr. Scott provided comment on Mirror Pond, Troy Field and geese management. He said that BPRD and the City should exert pressure to dredge the pond. He also stated that BPRD should purchase Troy Field from the school district at a feasible price and retained for recreation not development. Mr. Scott added that if geese are euthanized as part of the management plan that the remains should be preserved for impoverished people.

Foster Fell – Mr. Fell provided comment on the Mirror Pond MOU and said it comes as a fallback plan due to the decisions by PacifiCorp and the legislature. He said, fortunately the MOU is non-binding and does not commit public expenditures, however it is the latest incarnation to preserve the pond and some of the assumptions should be challenged. Mr. Fell requested that the Board submit a question for the November 8th ballot asking the public if they want to preserve Mirror Pond and the dam or have a free flowing river.

Executive Director Horton replied to Mr. Fell’s comment stating that what he was asking the voters to do is to vote on whether the pond should stay as is or be returned to a free flowing river. He said that the problem with asking the question is that removing the dam is not an option for the District. It is owned by PacifiCorp, the District can’t remove the dam. The work that the District is doing on the bank restoration on river right, regardless of if the dam stays or goes, is an

investment that will not be a bad one either way. He added that the District does not have authority to put a theoretical question on the ballot, the City and County can, but not Special Districts. Mr. Bryant confirmed that to be correct.

The Board provided their feedback and position on the MOU and collectively supported moving forward.

Visitor

Lynn McKay – Ms. McKay provided comment on Mirror Pond. She said that everything in the MOU seems to be contingent on MPS finding the money. She shared that she had not read the MOU, but feels the problem with the MOU is that it is not binding. She said that the partnership seems to have no true responsibility, time limits, binding conditions, penalties, liability or obligation for the dredging.

Director Fuller made a motion to authorize the Executive Director to negotiate and execute a MOU with Mirror Pond Solutions, LLC for the creation of a partnership to address the future of Mirror Pond. The MOU should remain in substantially the same form as presented in the Board packet. Director Grover seconded.

Vice Chair Hovekamp stated that he would like to invite the public to help us with this. He said we are all very wary of this complex project and trying to reach a solution that works for most people in the community. He shared that the Board had not operated without the best of intention and would like help in moving this forward.

The motion passed unanimously, 4-0.

3. Lease Extension for Cascade School of Music – Don Horton

Executive Director Horton shared background on the old District office building that is currently being leased to the Cascade School of Music. He said that the request is for a lease extension of two years. Executive Director Horton said that future needs of the District need to be considered along with future changes in the area and building maintenance needs. He said that the Cascade School of Music had recently submitted a letter sharing an interest in being a long term resident. Executive Director Horton recommended that the Board approve the extension for two years, allowing the necessary conversations to take place about the future needs of the District to serve their patrons and the request for a longer term lease by Cascade School of Music.

Director Grover made a motion to authorize the Executive Director to extend the lease for Cascade School of Music an additional two years from the current lease termination date of August 2017. Director Fuller seconded. The motion passed unanimously, 4-0.

STAFF REPORTS

Staff reports were provided to the Board for informational purposes only. There was no formal presentation or discussion.

EXECUTIVE DIRECTOR'S REPORT

- **OPRD Commission here Sept 13-14**
 - **Invitation for reception at Hollinshead Barn Sept 13 (in folders)**
- **Open Streets - September 18**
- **Discover Nature Festival - September 24**
- **ORPA – Nov 7-9, Eugene**

- **Art Station**

Executive Director stated that this would normally be a formal agenda item, because the discussion is time critical, he would like to have the discussion now. He shared that staff had met with the Art Station Board last week to talk about their financial condition and if they are looking for someone to take over programs and the possibility of the District taking over the Art Station piece of Art Central. He reported that they would very much like for the District to take over the Art Station. He said that the Board needs to decide whether or not they want staff to pursue this further. Executive Director Horton explained that one challenge is that the lease for the depot is only available for fourteen more months; there may be an opportunity to lengthen the lease, however Bill Smith is looking at what they are going to do with all of the other undeveloped property including the train depot. He said that if the District does take over the programs he would recommend it be as a pilot program. He shared that many of the costs they had would not be costs for the District; for example many of the programs are already in our Playbook, we would not need additional office space for staff and existing positions would take over program coordination.

Mr. Mercer explained that the Art Station had been one of the District's larger independent contractors for programs for years. The vast majority of youth classes that they offer were co-registered programs. The art station is a loss to the community and a loss to our program offerings. He discussed budget, growth potential, staffing and purchase of assets. He stated that if someone does not take over those programs they will likely get parsed out and fragmented and would make it difficult to create the base of community service and support that the Art Station has created over the years.

Executive Director stated that we already have in the budget to do something like this; the questions is if the Board felt comfortable with staff moving forward or would the Board like staff to come back with a formal presentation and budget for your approval.

The Board agreed to have a Special Call meeting on Friday, September 9 at 1:00 pm for further discussion and to consider taking on services previously provided at the Art Station.

BOARD MEETINGS CALENDAR REVIEW**GOOD OF THE ORDER**

ADJOURN 9:22 pm

EXECUTIVE SESSION - The board did not meet in executive session.

BOARD AGENDA COMMUNICATION

AGENDA DATE:	September 20, 2016
SUBJECT:	Train Depot Lease Agreement
STAFF RESOURCE:	Matt Mercer, Recreation Director Don Horton, Executive Director
PREVIOUS BOARD ACTION:	Authorized Executive Director to pursue plans to take on programs and services previously provided at the Train Depot
ACTION PROPOSED:	Approval of Lease Agreement
STRATEGIC PLAN:	
Theme:	Community Connection
Objective:	Analyze and Adapt to Changing Community Need
Initiative:	Acquire land, and plan and develop trails, river access, parks, natural areas and recreation facilities to meet identified community demand and future need.

BACKGROUND

Note: for the purpose of this communication form, the “Train Depot” refers to the facility and the “Art Station” refers to the art program.

The District has partnered with Arts Central and the Art Station for 13 years to provide art enrichment and education programs for the community. After the closure of the Not-For-Profit, Art Central in August 2016, District staff worked with the Arts Central board of directors on a proposal to assume the programs previously provided at the Art Station. Staff presented a proposal to the Board of Directors at a special called meeting on September 9, 2016. The Board authorized the Executive Director to pursue the proposal for taking on the operations and programming of the Art Station including assuming the lease of the existing facility.

River Bend Limited Partnership is the owner of the Train Station currently housing the Art Station programs. According to River Bend Limited Partnership, Art Central is not currently in default of the lease and has agreed to the District assuming the lease. The original lease originated in September 1999 and has been amended five times in order to extend the initial lease period. The current amendment (#5) expires December 31, 2017 and calls for a rent of \$550 per month through December 31, 2016 and \$600 per month from January 1, 2017 through December 31, 2017. The Assumption Agreement calls for the District to assume the lease terms including Amendment #5. District legal counsel has reviewed the original lease and the Assumption Agreement.

BUDGETARY IMPACT

The Pro Forma Budget presented to the Board on September 9, 2016 estimates that assuming the operations of the Art Station would require an annual subsidy ranging from \$500 to \$21,900 with

an estimated subsidy of \$10,800 in the current fiscal year. The Pro Forma included the rent payments and other obligations required under the lease (utilities, maintenance, insurance, etc.). The 2016-17 Adopted Budget included \$200,000 in revenue and \$200,000 in expenditures for unidentified recreation program expansion. The Recreation Department also typically exceeds budget goals resulting in a higher cost recovery and lower subsidy than budgeted. As a result, the District has the capacity to assume this operation without requiring a budget amendment.

STAFF RECOMMENDATION

Staff recommends that the District assume the lease of the Train Depot previously held by Arts Central with River Bend Limited Partnership.

Attached to this board communication form is a “proposed” Assumption Agreement. Staff and legal counsel have some clarifying questions about the lease that we may ask to be clarified in the Assumption Agreement. It is requested that the Board authorize the negotiation and execution of the Assumption Agreement to allow for those questions to be clarified and included in the Assumption Agreement if necessary.

MOTION

I move to authorize the Executive Director to negotiate and execute the Assumption Agreement with River Bend Limited Partnership for the lease of the Train Depot located on Shevlin Hixon Drive.

ATTACHMENT

- Original Commercial Lease Agreement between River Bend Limited Partnership and Central Oregon Arts Association, Inc.
- “Proposed” Assumption Agreement

COMMERCIAL LEASE

Date: Sept 27, 1999.

Between: **RIVER BEND LIMITED PARTNERSHIP,** ("Landlord")
an Oregon limited partnership
15 S.W. Colorado Avenue, Suite A
Bend, Oregon 97702

And: **CENTRAL OREGON ARTS ASSOCIATION, INC.** ("Tenant")
875 N.W. Brooks Street
Bend, Oregon 97701

Landlord leases to Tenant and Tenant leases from Landlord the former Bend railroad depot located on the following described property (the "Premises") on the terms and conditions stated below:

Lot 3, Westside-North, Phase I, City of Bend, Deschutes County, Oregon.

Section 1. Occupancy

1.1 Original Term. The term of this lease shall commence October 1, 1999, and continue through December 31, 2009, unless sooner terminated as hereinafter provided.

1.2 Possession. Tenant's right to possession and obligations under the lease shall commence on October 1, 1999, or on such later date as the work to be performed by Landlord pursuant to Section 6.2 is substantially complete and the Premises are available for possession by Tenant if possession is not given on the opening day of the term. Landlord shall have no liability for delays in delivery of possession and Tenant will not have the right to terminate this lease because of delay in delivery of possession except as hereinafter provided. If Landlord is not able to give Tenant possession of the Premises on or before October 1, 1999, subject only to delays caused by matters not within Landlord's reasonable control, Tenant may rescind the lease by notice in writing to Landlord given at any time thereafter prior to the date on which possession is tendered by Landlord. Once Tenant has obtained possession of the Premises, Tenant shall complete Tenant's work to be completed pursuant to Section 6.2.

1.3 Landlord's Use of the Premises. Landlord shall have the right to use the Premises for an event to be hosted by Landlord up to four times each year. Landlord's use shall occur only outside of Tenant's normal hours of operation, which for purposes of this Section shall be 9:00 a.m. to 5:00 p.m., Monday through Friday, not including legal holidays, and shall be subject to events previously scheduled by Tenant; provided, however, Landlord shall have first priority for use of the Premises for any event for which Landlord has given Tenant a minimum of 90 days written notice unless Landlord has previously consented in writing to the date of the conflicting use.

Section 2. Rent

2.1 Base Rent. During the first four years of the original term, Tenant shall have no obligation to pay base rent, but shall be obligated to complete the work described in Section 6.2 by the time set forth therein, pay the amounts described in Section 3 and pay all amounts designated as additional rent herein. Beginning on January 1, 2004, in addition to the charges set forth above, Tenant shall pay to Landlord as base rent the sum of \$2,000 per month. Rent shall be payable on the first day of each month in advance at such place as may be designated by Landlord.

2.2 Additional Rent. All taxes, insurance costs, percentage rents, utility charges that Tenant is required to pay by this lease, and any other sum that Tenant is required to pay to Landlord or third parties shall be additional rent.

2.3 Escalation. The base rent provided in Section 2.1 shall be increased to \$2,500 per month on January 1, 2006, and increased to \$3,000 per month on January 1, 2008.

2.4 Below Market Rent. The basic rents set forth in Section 2.1 and as escalated in Section 2.3, together with all items of additional rent herein, have been set at a below market rate to reflect anticipated savings resulting from the property tax exemption for which the parties expect the Premises will qualify given the use of the Premises set forth under Section 4.1. Tenant hereby agrees to make any required filings or do any other acts which may be required to obtain such property tax exemption.

Section 3. Special Event Rentals

3.1 Amount. In addition to the base rent, Tenant shall pay to Landlord as percentage rent an amount equal to 60% of Tenant's annual gross receipts from rental of the Premises to third parties and/or for special events held on the Premises in which rental or other income is generated; provided, however, events organized and sponsored by Tenant to benefit Tenant shall be excluded from the foregoing percentage rent calculation. In addition, events hosted by Landlord pursuant to Section 1.4 shall be excluded from the foregoing percentage rent calculation. As Tenant's use is nonprofit in nature, the parties anticipate that the percentage rent paid shall be well below market as such rent shall only be derived from incidental activities which may occur on the Premises. After January 1, 2004, the foregoing percentage of gross receipts shall be reduced to 40%.

3.2 Definition of Gross Receipts. "Gross receipts" means the amount of any rent or other income received by Tenant from third parties for use of the Premises.

3.3 Monthly Payments. Payments of percentage rental shall be made on the 10th day of each month with an adjustment to an annual basis at the end of each calendar year as provided below. Each monthly payment shall be determined by applying the percentage to the gross receipts for the month.

3.4 Annual Adjustment. On or before February 15 of each year, Tenant shall submit to Landlord an unaudited statement for the preceding year showing Tenant's total gross receipts, the aggregate percentage rental payable, and the amount actually paid. Any deficiency shall be paid upon submission of the statement. Any excess shall be reimbursed to Tenant by Landlord within 30 days after receipt of the statement unless within that time Landlord requests an audit.

3.5 Audit. At any time after Tenant's statement of annual receipts and rent is due, whether or not it has been submitted and whether or not Landlord has accepted a deficiency payment or refunded an excess, Landlord may request an audit of Tenant's gross receipts by an independent certified public accountant chosen by Tenant from a list of not fewer than three submitted by Landlord in conjunction with the request. If Tenant does not make the choice within five days, Landlord may do so. The auditor shall have access to all of Tenant's records and shall take such steps as the auditor deems necessary to make a certified audit. The report shall be final and binding on both parties, and payments required to make adjustments in rent to conform to the report shall be made within five days after receipt of the report. The cost of the audit shall be borne by either or both parties depending on the difference in percentage rent shown to be due, as follows: less than 1% additional due--by Landlord; from 1% to 3% additional due--by Tenant and Landlord equally; over 3% additional due--by Tenant. If the audit discloses more than 6% additional due, Landlord shall have the right to terminate this lease.

3.6 Records. Tenant shall keep proper books of account and other records pertaining to gross receipts and render monthly statements of gross receipts at the time monthly payments of percentage rent are due. The books and records shall be kept or made available at a location reasonably accessible to Landlord, who may inspect all such books and records, and copies of Tenant's federal and state income tax returns for relevant years, at all reasonable times to verify Tenant's gross receipts. Tenant shall submit to Landlord a copy of any sales report filed by Tenant with any local, state or federal taxing authority promptly after filing.

3.7 Approval of Special Event Uses. All assignments, subletting or any other permissive use of the Premises for special events or other uses by third parties are subject to Landlord's prior written approval as set forth in Section 13 of this Lease.

3.8 No Partnership. Landlord is not by virtue of this section a partner or joint venturer with Tenant in connection with the business carried on under this lease, and shall have no obligation with respect to Tenant's debts or other liabilities, and no interest in Tenant's profits.

Section 4. Use of the Premises

4.1 Permitted Use. The Premises shall be used for a nonprofit center for art classes, public and private meeting space, some gallery displays, public and private meeting space, special fund-raising events as scheduled and approved by Landlord and Tenant and for

no other purpose. The Premises shall be open to the public to the extent required of Landlord by any governmental unit.

4.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance unless such changes are required because of Tenant's specific use.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord.

(6) Refrain from any use that would alter any historic elements of the Premises, or place Landlord in violation of Landlord's agreement with the Oregon Department of Transportation.

4.3 Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 4.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health,

safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

Section 5. Repairs and Maintenance

5.1 Landlord's Obligations. The following shall be the responsibility of Landlord:

- (1) Repairs and maintenance of the roof and gutters, exterior walls (including painting), bearing walls, structural members, floor slabs, and foundation.
- (2) Repair of sidewalks, driveways, curbs, parking areas, and areas used in common by Tenant and Landlord or tenants of other portions of the same building.
- (3) Repair and maintenance of exterior water, sewage, gas, and electrical services up to the point of entry to the leased Premises.
- (4) Repair of the heating and air conditioning system other than ordinary maintenance.

5.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

- (1) Repair of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing from the point of entry to the premises.
- (2) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 7.2 dealing with waiver of subrogation, but including repairs that would otherwise be the responsibility of Landlord under Section 5.1.
- (3) Ordinary maintenance of the heating and air conditioning system and any repairs necessary because of improper maintenance.
- (4) Ordinary maintenance of sidewalks, parking areas and landscaping, including, but not limited to, snow and ice removal.
- (5) Ordinary maintenance and repair of interpretive historical displays.
- (6) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 4.2(1).
- (7) All other repairs to the premises which Landlord is not required to make under Section 5.1.

5.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant. Tenant shall have no right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

5.4 Reimbursement for Repairs Assumed. If either party fails or refuses to make repairs that are required by this Section 5, the other party may make the repairs and charge the actual costs of repairs to the first party. Such expenditures by Landlord shall be reimbursed by Tenant on demand together with interest at the rate of 10% per annum from the date of expenditure by Landlord. Such expenditures by Tenant may be deducted from rent and other payments subsequently becoming due or, at Tenant's election, collected directly from Landlord. Except in an emergency creating an immediate risk of personal injury or property damage, neither party may perform repairs which are the obligation of the other party and charge the other party for the resulting expense unless at least 15 days before work is commenced, and the defaulting party is given notice in writing outlining with reasonable particularity the repairs required, and such party fails within that time to initiate such repairs in good faith.

5.5 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the repairs that are required.

Section 6. Alterations

6.1 Alterations Prohibited. Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes, including, but not limited to, any restrictions or other requirements imposed by any law or regulation due to the historical nature of the Premises. As used herein, "alterations" includes the installation of computer and telecommunications wiring, cables, and conduit.

6.2 Alterations Required. The improvements and alterations delineated on the work sheet attached as Exhibit "A" and made a part of this lease shall be performed by the party designated and within the time stated in the work sheet.

6.3 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed unless the applicable Landlord's consent or work sheet specifically provides otherwise. Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant and the premises restored unless the applicable Landlord's consent or work sheet specifically provides otherwise.

6.4 Waiver. Landlord may condition its consent to installation of a work of visual art in the Premises, as defined in the Visual Artists Rights Act of 1990 (VARA) at 17 USC §101, on Tenant's delivery to Landlord of a written waiver of moral rights under the VARA executed by the artist and to be executed by Landlord acknowledging that the work may be subject to destruction upon removal.

Section 7. Insurance

7.1 Insurance Required. Landlord shall keep the Premises insured at Tenant's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall pay the premiums on any such policies maintained by Landlord within 10 days of receiving a copy of a premium invoice from Landlord. Tenant shall carry similar insurance insuring the property of Tenant on the Premises against such risks.

7.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 8. Taxes; Utilities

8.1 Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises. Tenant shall pay as due all real property taxes and special assessments levied against the Premises in the event Tenant fails to qualify the Premises for any property tax exemption in whole or in part. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant. Tenant shall reimburse Landlord for any taxes or assessments paid by Landlord which are the responsibility of Tenant under this Section 8.

8.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Tenant may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 8.1.

8.3 Contest of Taxes. Tenant shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment. Landlord shall cooperate in any reasonable manner with such contest by Tenant.

8.4 Proration of Taxes. Tenant's share of real property taxes and assessments for the years in which this lease commences or terminates shall be prorated based on the portion of the tax year that this lease is in effect.

8.5 New Charges or Fees. If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Tenant shall pay such charge or fee. Tenant, however, shall have no obligation to pay any income, profits, or franchise tax levied on the net income derived by Landlord from this lease.

8.6 Payment of Utilities Charges. Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including (but not limited to) charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. If any utility services are provided by or through Landlord, charges to Tenant shall be comparable with prevailing rates for comparable services. If the charges are not separately metered or stated, Landlord shall apportion the charges on an equitable basis, and Tenant shall pay its apportioned share on demand.

Section 9. Damage and Destruction

9.1 Partial Damage. If the Premises are partly damaged and Section 9.2 does not apply, the Premises shall be repaired by Landlord at Landlord's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord and shall be performed in accordance with the provisions of Section 5.3.

9.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If neither party elects to terminate, Landlord shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

9.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

9.4 Damage Late in Term. If damage or destruction to which Section 9.2 would apply occurs within one year before the end of the then-current lease term, Tenant may elect to terminate the lease by written notice to Landlord given within 30 days after the date of the damage. Such termination shall have the same effect as termination by Landlord under Section 9.2.

Section 10. Eminent Domain

10.1 Partial Taking. If a portion of the Premises is condemned and Section 10.2 does not apply, the lease shall continue on the following terms:

(1) Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(2) Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

(3) After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

(4) If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 10.1(1) and 10.1(3) apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

10.2 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Tenant was then making of the premises, the lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as termination by Landlord under Section 9.2. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

10.3 Sale in Lieu of Condemnation. Sale of all or part of the premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 10 as a taking by condemnation.

Section 11. Liability and Indemnity

11.1 Liens.

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 10% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord 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 the lien.

11.2 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Landlord's own negligence or failure to effect any repair or maintenance required by this lease. Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises.

11.3 Liability Insurance. Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry the following insurance at Tenant's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than \$1,000,000 and a per occurrence limit of not less than \$1,000,000. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises whether or not related to an occurrence caused or contributed to by Landlord's negligence. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under Section 11.2, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 10 days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property.

11.4 Increase in Limits. The limits of liability set forth in Section 11.3 above shall be increased by \$250,000 for each 25 percent increase in the Consumer Price Index published by the United States Bureau of Labor. Comparison shall be made using the index entitled U.S. City Average -- All Items and Major Group Figures for All Urban Consumers (1982-84 equals 100), or the nearest comparable data on changes in the cost of living if such index is no longer published. The change shall be determined by comparison of the figure for January 1, 1999 with that of January 1 of each succeeding year.

Section 12. Quiet Enjoyment; Mortgage Priority

12.1 Landlord's Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease them. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

12.2 Mortgage Priority. This lease is and shall be prior to any mortgage or deed of trust ("Encumbrance") recorded after the date of this lease and affecting the Premises. However, if any lender holding such an Encumbrance requires that this lease be subordinate to the Encumbrance, then Tenant agrees that the lease shall be subordinate to the Encumbrance if the holder thereof agrees in writing with Tenant that as long as Tenant performs its obligations under this lease no foreclosure, deed given in lieu of foreclosure, or sale pursuant to the terms of the Encumbrance, or other steps or procedures taken under the Encumbrance shall affect Tenant's rights under this lease. If the foregoing condition is met, Tenant shall execute the written agreement and any other documents required by the holder of the Encumbrance to accomplish the purposes of this paragraph. If the premises are sold as a result of foreclosure of any Encumbrance thereon, or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee.

12.3 Estoppel Certificate. Either party will, within 20 days after notice from the other, execute and deliver to the other party a certificate stating whether or not this lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 13. Assignment and Subletting

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord. This provision shall apply to all transfers by operation of law. If Tenant is a corporation or partnership, this provision shall apply to any transfer of a majority voting interest in stock or partnership interest of Tenant. No consent in

one instance shall prevent the provision from applying to a subsequent instance. Landlord may withhold or condition such consent in its sole and arbitrary discretion.

Section 14. Default

The following shall be events of default:

14.1 Default in Rent. Failure of Tenant to pay any rent or other charge within 10 days after it is due.

14.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

14.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 14.3 shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

14.4 Abandonment. Failure of Tenant for 10 days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

Section 15. Remedies on Default

15.1 Termination. In the event of a default the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

15.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

15.3 Damages. In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

(1) The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out.

(2) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 15.5, or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

(3) Any excess of the value of the rent and all of Tenant's other obligations under this lease over the reasonable expected return from the premises for the period commencing on the earlier of the date of trial or the date the premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

15.4 Right to Sue More than Once. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

15.5 Landlord's Right to Cure Defaults. If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 10% per annum from the date of expenditure by Landlord. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

15.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

Section 16. Surrender at Expiration

16.1 Condition of Premises. Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

16.2 Fixtures.

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

16.3 Holdover.

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and at a rental rate equal to 150% of the rent last paid by Tenant during the original term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 16.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 10 days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 17. Miscellaneous

17.1 Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

17.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

17.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

17.4 Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

17.5 Recordation. This lease shall not be recorded without the written consent of Landlord.

17.6 Entry for Inspection. Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

17.7 Interest on Rent and Other Charges. Any rent or other payment required of Tenant by this lease shall, if not paid within 10 days after it is due, bear interest at the rate of 10% per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid. In addition, if Tenant fails to make any rent or other payment required by this lease to be paid to Landlord within five days after it is due, Landlord may elect to impose a late charge of five cents per dollar of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to

all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

17.8 Proration of Rent. In the event of commencement or termination of this lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

17.9 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this lease.

"Landlord"

"Tenant"

**RIVER BEND LIMITED
PARTNERSHIP, an Oregon limited
partnership**

**CENTRAL OREGON ARTS
ASSOCIATION, INC.**

By The Bend Co GP
Its William Z

By Maria MacDonald Pres. COAA
Its _____

Exhibit "A"

WORK SHEET

Attached to and made part of a lease dated Sept 22, 1999, between **RIVER BEND LIMITED PARTNERSHIP**, Landlord, and **CENTRAL OREGON ARTS ASSOCIATION, INC.**, Tenant.

The following work is to be done on the Premises by the Landlord at the Landlord's expense:

Landlord shall provide a building shell on the Premises, including plumbing (which shall include working sinks and toilets in two restrooms), wiring (110/220) to the interior, and site improvements including parking lot, landscaping, a shed for kilns, site lighting, and signage. Landlord may also provide additional improvements to the interior of the building shell at its option. Tenant shall provide Landlord with plans for the kiln shed referenced above for Landlord's approval prior to construction of the kiln structure and no later than October 1, 1999.

The following work is to be done on the Premises by the Tenant at the Tenant's expense:

Tenant shall provide interior improvements to the building to a plan and standard approved by Landlord, and further approved, if required, by Deschutes County Landmarks Commission and ODOT. Tenant has also agreed as part of its lease of the Premises, to manage the installation of historic interpretive displays - to be approved by the Deschutes County Historical Society. Tenant acknowledges and agrees that further approvals for interior restoration as well as the exterior renovation and ongoing maintenance will need to be obtained from ODOT and/or the Deschutes County Landmarks Commission. Tenant agrees to work and cooperate with both agencies during the renovation process and obtain necessary approvals through all. Interior restoration is to be completed by a date to be agreed upon by Tenant and Landlord, but in any case, no later than May 1, 2000.

Tenant's work shall be commenced as soon as possible following completion of Landlord's work, subject only to delays caused by factors not within Tenant's reasonable control.

Tenant shall be required at Landlord's election upon termination of the lease to remove any or all of the alterations and improvements effected by the above work and to restore the premises to the condition that existed before the work was done.

"Landlord"

**RIVER BEND LIMITED
PARTNERSHIP, an Oregon limited
partnership**

By The Bend Co GP
Its William Z. J. Pres

"Tenant"

**CENTRAL OREGON ARTS
ASSOCIATION, INC.**

By Maude MacDonald Pres. COAA
Its _____

Assumption Agreement

Bend Metro Park & Recreation District, an Oregon Special District, hereby assumes the obligations of Arts Central for the facility known as the Art Station under the Lease Agreement dated September 22, 1999, and as amended, including Amendment No. 5 of the lease between River Bend Limited Partnership and Arts Central dated July 16, 2015.

Arts Central is not in default under the terms of the lease and has paid rent through September 30, 2016.

The assumption is to be effective as of October 1, 2016.

AGREED AND ACCEPTED:

LANDLORD: River Bend Limited Partnership TENANT: Bend Metro Park & Recreation District, an Oregon Special District

By: The Bend Company,
an Oregon Corporation, General Partner



By: William L. Smith, President

9/12/16

Date

By: Don Horton, Executive Director

Date

Arts Central

By: President

Date

BOARD AGENDA COMMUNICATION

AGENDA DATE:	September 20, 2016
SUBJECT:	Sponsorship Request: 2016 Bend Energy Challenge
STAFF RESOURCE:	Don Horton
PREVIOUS BOARD ACTION:	Approval of sponsorship request in May of 2015
ACTION PROPOSED:	Approval of the \$10,000 sponsorship request for 2016
STRATEGIC PLAN:	
Theme:	Operational Excellence
Objective:	Improve Business Practices
Initiative:	Continually evaluate operational procedures with the goal of improving and increasing the District's sustainable practices.

BACKGROUND

Mike Riley, Environmental Center Executive Director, gave a presentation to the Board on the Bend Energy Challenge at the May 5, 2015 meeting. At that time, Mr. Riley requested that the District take the energy challenge pledge, provide a financial sponsorship of \$10,000, and endorse the project. The Board approved the request for the \$10,000 sponsorship for the first year, expecting to support the second year at the same level of sponsorship.

Mr. Riley will present the Board with an update on the Bend Energy Challenge and ask the Bend Park and Recreation District to renew their sponsorship of the Bend Energy Challenge for 2016 at the \$10,000 Energy Hero level.

BUDGETARY IMPACT

The budgetary impact of \$10,000 is currently budgeted and available in the Administration Department's General Fund budget for this purpose.

STAFF RECOMMENDATION

Approve the sponsorship request for the Bend Energy Challenge for 2016 at the \$10,000 Energy Hero level.

MOTION

I make a motion to renew sponsorship of the Bend Energy Challenge for 2016 at the \$10,000 Energy Hero level.

ATTACHMENT

None

**Board Calendar
2016-2017**

**This working calendar of goals/projects is intended as a guide for the board and subject to change.*

October 4 (NRPA – canceled)

October 18

Work Session

- ◆ Update on Community Sponsored Project Program – *Quinn Kever* (30 min)
- ◆ The Pavilion Year-end Update - *Matt?* (30 min)
- ◆ Bend Whitewater Park Year-end Evaluation

Business Session

- ◆ Award construction contract for Hillside Park – *Brian Hudspeth* (15 min)
- ◆ Award Professional Services Contract for Mirror Pond Design – *Jim Figurski* (20 min)
- ◆ Land Acquisition
- ◆ Movement as Medicine Grant Support

November 1

Work Session

- ◆ Trail counts and usage report – *Jeff Amaral and Robin Thompson* (30 min)

Business Session

- ◆ CIP 1st Quarter Review & Financial update on Fiscal Year 2015-16 – *Michelle Healy & Lindsey Lombard* (20 min)
- ◆ Bend Whitewater Park Winter Work – *Brian Hudspeth* (30 min)

November 15

Work Session

- ◆ District-wide Website – *Colleen McNally and Julie Brown* (30 min)
- ◆ Report on Events in Parks – *Chris Zerger* (30 min)

Business Session

- ◆ Codify Personnel Policies – *Theresa Albert* – (consent)
- ◆ Receive Budget Committee Applications – *Lindsey Lombard*
- ◆ Award construction contract for Eagle Park – *Brian Hudspeth* (15 min)
- ◆ Review Larkspur Center Updated Master Plan – *Jim Figurski* (30 min)

December 6

Work Session

- ◆ Mirror Pond Quarterly Update
- ◆ Recreation Annual Report

Business Session

- ◆ Appoint Budget Committee Member(s) – *Lindsey Lombard*

December 20

Work Session

Business Session

- ◆ Accept 2015-16 Audited Financial Statement – *Amy Crawford & Price/Fronk CPAs*
- ◆ Award construction contract for Riley Ranch Nature Reserve – *Brian Hudspeth* (15 min)

January 3 2017

Board Workshop - 8:00 a.m. – 4:00 p.m.

- ◆ Annual Action Plan – mid-year review – *Michelle Healy*
- ◆ CIP (2nd Quarter Review and Draft Proposed for 2017-18) – *Michelle Healy, Lindsey Lombard*
- ◆ Financial Forecast – *Lindsey Lombard*
- ◆ Cost Recovery/Subsidy Allocation Strategy – *Matt Mercer*
- ◆ Discussion on Budget Priorities – *Don Horton*

January 17

Work Session

- ◆ Mirror Pond Quarterly Update

Business Session

February 7

Work Session

Business Session

February 21

Work Session

Business Session

- ◆ Award construction contract for Shevlin Park Wayfinding Signs – *Quinn Kever* (20 min)

March 7

Work Session

- ◆ Mirror Pond Quarterly Update

Business Session

March 21

Work Session

Business Session

- ◆ Adopt Resolution No. X – 2017-18 SDC Fee Schedule – *Lindsey Lombard* (15 min)

April 4

Work Session

Business Session

April 18

Work Session

Business Session

April 19 - Budget Committee Tour

May 2

Work Session

Business Session

May BUDGET MEETINGS (May 15, 17 & 18)

May 16

Board Meeting Cancelled?

June 6

Work Session

- ◆ Mirror Pond Quarterly Update

Business Session

- ◆ Budget Hearing and Adopt Resolution No. X – Adopting Budget Fiscal Year 2016-17, and Adopt Resolution No. X - Imposing and Categorizing Taxes – *Lindsey Lombard*
- ◆ Adopt Resolution No. X – Adopting the Capital Improvement Plan (CIP) Fiscal Years Ending 2017-21 – *Michelle Healy*

June 20

Work Session

Business Session

TBD

Latino Outreach Program

Facility user priority allocation – *Matt Mercer*

Athletic Field Report (Nov) – *Matt Mercer*

Approve DRT easements for Putnam to RRNR segment – *Steve Jorgensen (consent)*

Strategic Plan measurements

DRT - Kirkaldy Ct. to Putnam Rd. easement

Larkspur Center Expansion Business and Programming Plan

Cost Recovery Pricing Review – *Matt Mercer*

Sponsorship Policy

Comprehensive Plan Project Updates – *Steve Jorgensen and Quinn Keverer (multiple)*

River stewardship planning update – *Chelsea Schneider (20 min)*

IGA with the School District – *Matt Mercer and Don Horton (45 min)*

IGA with the City for Planning – *Michelle Healy and Don Horton (45 min)*

Park Rules Update – *Jeff Hagler and Michelle Healy (30 min)*

Review Economic Impact Study Findings – *Don Horton, Michelle Healy and Lindsey Lombard (45 min)*

Approve Juniper Park Master Plan update – *Chelsea Schneider (20 min)*

Approve Pioneer Park Master Plan update – *Chelsea Schneider (20 min)*

Approve Big Sky master plan update – *Steve Jorgensen and Chelsea Schneider (30 min)*

Approve Master Plan for SE Community Park property – *Chelsea Schneider (30 min)*

Troy Field - *Don Horton*