VISITORS
Work sessions are scheduled for the board to receive and discuss information regarding district operations, projects, and planning to aid in their decision-making process. The board can choose to accept comment on work session agenda items at the end of their discussion. The chair may ask for comment from visitors at the appropriate time. Please state your name and address and limit your comments to three minutes in the interest of allowing the board to complete their work session agenda.

5:30 PM WORK SESSION
1. Simpson Pavilion
2. Sample agreement with funding partners

7:00 PM REGULAR MEETING
VISITORS
This is the time provided for individuals wishing to address the Board regarding items not listed in the business session. The Board may elect to ask for comment on business session items at the appropriate time. The visitor’s section is not designed for a lengthy presentation. If you have a proposal for Board consideration, briefly introduce the subject, and request that the Board consider adding discussion to a future Board meeting agenda. Visitors who wish to speak are asked to sign up on the public comment card provided. Please state your name and address at the time you address the Board. Please limit your remarks to three minutes.

CONSENT AGENDA
1. Minutes: December 3, 2013, Regular Meeting
BUSINESS SESSION
1. Bend FC Timbers Ground Lease
2. SDC Resolution No. 360

EXECUTIVE DIRECTOR’S REPORT

BOARD MEETINGS CALENDAR REVIEW

GOOD OF THE ORDER

ADJOURN
AGENDA DATE: December 17, 2013

SUBJECT: Simpson Pavilion Update

STAFF RESOURCE: Jim Figurski, Landscape Architect
Don Horton, Executive Director
Michelle Healy, Strategic Planning and Design
Director, Matt Mercer, Recreation Director

PREVIOUS BOARD ACTION: Approved contract with OPSIS Architecture to provide Master Plan and Architectural Services on July 2, 2013.

ACTION PROPOSED: None – Informational Only

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

Work is continuing on the planning and development of the bond-funded, covered, outdoor recreational facility (i.e., the Pavilion) at the Simpson site. The Board of Directors reviewed general site concepts and structural options for the Pavilion proposed for the Simpson site during the December 3 board meeting and discussed moving forward with the Catenary structure type.

Staff has since worked with OPSIS to refine the site plan for the Pavilion area and to gain a better understanding of the structure and function of the Catenary form and related elements. The form and various elements of the structure will continue to be refined throughout the design development and construction drawing process. Staff and members of OPSIS’ team will provide the board an overview of the conceptual design and discussion of issues being resolved as they relate to both the site and Pavilion structure.

Public outreach and stakeholder (e.g., user groups, direct neighbors) engagement on the plan for the site and structure is anticipated to begin in January.
**BUDGETARY IMPACT**

The fiscal year 2013-14 budget includes $2,270,000 in bond funds for planning, design and initial construction of the Simpson Pavilion. The total project estimate including design fees, permitting and construction of the pavilion, site work and off street requirements is $11,350,000.

**STAFF RECOMMENDATION**

None – For information and discussion only

**MOTION**

None – project update provided for information and discussion only.

**ATTACHMENT**

None. Information and graphics will be presented to the board at the meeting.
AGENDA DATE: December 17, 2013

SUBJECT: Sample Agreement with Funding Partners

STAFF RESOURCE: Matt Mercer, Recreation Director  
                  Don Horton, Executive Director

PREVIOUS BOARD ACTION: Approved MOU on July 17, 2012

ACTION PROPOSED: Approve and Authorize Executive Director to  
                  Execute

COMMITTEE ACTION: None

STRATEGIC PLAN:
Theme: Community Connection
Objectives: Cultivate Partnerships  
           Analyze and Adapt to Changing Community Need
Initiatives: Seek partnerships to support targeted capital projects.  
            Manage ongoing partnerships to support district operations.  
            Plan and Develop trails, river access, parks, natural areas and recreation facilities to meet identified community need and future demand.

BACKGROUND

The district is currently engaged with a number of community non-profit organizations to support the development and/or operations of future facilities. These include Bend Paddle Trail Alliance, Bend Pickleball Club, Bend Ice, and Bend FC Timbers. The focus to date has been on developing Memorandums of Understanding that outline the respective responsibilities of the district and supporting organization for the funding, development and, in some cases, operations of the facility. As these projects become feasible due to successful fundraising efforts, the district has begun developing agreements that specifically address operations, maintenance and other issues related to the ongoing management of the asset. Where the supporting organization is developing and operating the facility on district property, a ground lease is typically used. The agreement with Bend FC Timbers for the development and operations of soccer/multi-purpose fields is an example of this as is the Bend Elks development of the Field House on property owned by the district. In most cases, however, the district will develop and manage the asset. In these cases, the supporting organizations role and responsibilities in supporting facility operations and expectations for use of the facility may vary greatly from project to project. The
district has recently completed a draft agreement with Bend Pickleball Club that can serve as a template for future agreements. While each of these agreements will be unique, there are common issues to address such as ownership of assets, use and scheduling, maintenance, sponsorship opportunities, future improvements, liability, etc. Staff will describe how these agreements will be developed and seek board input regarding issues and considerations to address in future agreements. Staff will also seek board direction on whether or not these operational-oriented agreements require board approval.

**BUDGETARY IMPACT**

Budget impact will vary from agreement to agreement but will generally support operations of facilities and therefore have a positive impact on the district budget.

**STAFF RECOMMENDATION**

Staff recommends that ground leases and other agreements that commit district resources continue to be approved by the board of directors whereas agreements of an operational nature that do not have significant budget impact are approved at the Executive Director level.

**MOTION**

None

**ATTACHMENT**

Draft Agreement with Bend Pickleball Club
AGREEMENT

Dated: _____________, 2013

Parties:

BEND METRO PARK AND RECREATION DISTRICT, an Oregon Special District ("District")
799 SW Columbia Street
Bend, OR 97702

Bend Pickleball Club, an Oregon non-profit corporation ("BPC")
20322 Mariner Drive
Bend, OR 97701

(District and BPC are collectively referred to as the “Parties”)

WHEREAS District and BPC entered into a Memorandum of Understanding (“MOU”) dated October 2, 2012 to support the development and operation of a public pickleball facility in Bend, Oregon for BPC activities and open community play;

WHEREAS BPC successfully led a community fundraising effort to raise a minimum of 50% of the cost of constructing the Facility;

WHEREAS District is completing construction of an 8-court pickleball facility (the “Facility”) and infrastructure to support the courts including access, parking, restrooms, utilities, etc. at Pine Nursery Community Park (the “Park”); and

NOW, THEREFORE it is the desire of the Parties to enter into an Agreement (“Agreement”) for the operation of the Facility.

Section 1: Ownership of Assets

1. All permanent assets and improvements are owned by the District including courts, fencing, shade structures and site furnishings. BPC understands that the financial support provided for the project is a donation to a public project and does not constitute any form of ownership of the facility or asset.

2. Any future improvements shall be owned by the District unless otherwise agreed upon in writing by Parties.

Section 2: Use

1. District will oversee and manage the scheduling and reservations of the facility.
2. BPC will organize, coordinate and oversee ongoing, organized group-play sessions (the “Sessions”). The intention of the Sessions is to provide an opportunity for individuals and groups to play at appropriate levels in a semi-structured, supportive and fun environment.

   a. The schedule for the Sessions shall be agreed upon annually by both Parties.

   b. There will be no charge to BPC for use of the Facility for the Sessions.

   c. The Sessions will be open to interested members of the public and not exclusive to BPC members.

   d. BPC may charge and collect a fee for the Sessions in order to cover the expense of providing the program and maintaining the courts.

      i. Fee to be agreed upon annually by both Parties.

      ii. 50% of the fees collected shall be retained by BPC to offset the costs of operating the Sessions.

      iii. 50% of the fees collected shall be donated to the Bend Park and Recreation Foundation (the “Foundation”) for future maintenance and improvements at the Facility.

      iv. Fees may not be used to support club functions other than the cost of providing the Sessions and maintenance of the Facility.

      v. BPC shall provide District a monthly report of fees collected for the Sessions along with the 50% of the funds collected. The report will include number of members and non-members by day and Session.

3. BPC may reserve the Facility for up to four (4) tournaments per year at no facility rental charge.

   a. There may be fees assessed by District for special services that may be required by District and/or requested by BPC (e.g., restroom stocking and cleaning fee, delivery and use of portable bleachers, reservation of the pavilion shelter, etc.).

   b. Reservations must be made through District’s regular reservation process to coordinate and avoid conflict with other events occurring in the Park.

   c. Special events that are not contained within the Facility area may require a Special Event application and other fees.

4. District may reserve the Facility for other District-sponsored activities and rent the Facility to other user groups. The District will endeavor to schedule to avoid conflicts
with scheduled Sessions; however, occasionally, a special event may require cancellation of one or more Sessions.

5. The Facility will be open to public for drop-in use free of charge at all times with the exception of the Sessions, tournaments. District programs and District rentals.

Section 3: Collaborative Programming

1. It is the intention that District and BPC will coordinate and collaborate on providing pickleball programs (organized play, instructional classes, leagues, tournaments, etc.) in order to maximize use of Facility, provide opportunities for the public and avoid unnecessary duplication of services.

2. BPC and District representatives will meet at least annually, prior to February 1, to discuss pickleball programming and agree upon programs and appropriate roles of respective organizations. At each annual meeting, the Parties will agree on the Session schedule and non-BPC-member use fees, which will be attached to this Agreement by annual addendum.

Section 4: Maintenance

1. District will be responsible for regular maintenance of the Facility, including: bi-annual cleaning and inspection of the court surface, annual surface crack repairs (unless sooner required to address a safety issue), net replacement and fence repairs as needed, and periodic court resurfacing (approximately 5-7 years). Repairs will be funded through the District general operations fund and/or through the Foundation Pickleball Court Fund.

2. BPC will provide for the ongoing sweeping and cleaning of courts to meet the desired standard for daily and tournament play. Cleaning materials, chemicals and procedures must be approved by District to ensure that there is no damage or disruption to the Facility or the surrounding Park, and all cleaning supplies will be purchased by BPC.

Section 5: Facility Improvements

1. All improvements or alterations to the Facility must be approved by District and become a part of the Park property unless otherwise agreed in writing by Parties.

2. Current and future funds held in the Foundation Pickleball Court Fund account are identified for future maintenance and improvements of the Facility. District will consult BPC on priorities prior to requesting funds from the Foundation; however, District will have final authority on requests to the Foundation for distribution of funds.

3. BPC has expressed a desire to construct a storage building adjacent to the Facility in the future. The storage structure must be approved by District, meet all applicable building code requirements and be consistent with the design and character of other structures.
in the Park. Prior to construction, an addendum to this agreement will be executed to address the cost, use and maintenance of the storage structure.

4. Space has been set aside for the potential construction of eight (8) additional pickleball courts. There is currently no timeline or financial resources to construct these additional courts. Should the courts be constructed they will be subject to a future and amended agreement.

**Section 6: Donor Recognition and Sponsorship Opportunities**

1. Major donors to the Facility construction will be recognized on a permanent donor plaque to be designed and installed adjacent to Facility by District as part of the project. BPC will provide names and donor hierarchy for recognition and proofread and approve of the final text and layout.

2. Donors who gave $5,000 or more may be recognized as court sponsors for the first full year of Facility operations. Court sponsors will be recognized by signs at the gates to each court. Design of the sign will be determined by District in accordance with its sign standards and in compliment to the District’s interest in limiting the commercialization of District properties.

3. Tournament sponsors may be recognized by banners or other approved methods for the duration of the tournament so long as they meet District sponsorship guidelines.

4. BPC may develop an ongoing Court Sponsorship program with District approval. The purpose of the Court Sponsorship program is to improve, enhance or expand the existing Facility. Revenue raised through a Court Sponsorship program will be deposited in the Foundation Pickleball Court Fund. All other future sponsorship programs and recognition must be approved by District in writing and meet District standards and guidelines.

**Section 7: Insurance**

1. District liability insurance does not cover BPC organized and sponsored activities.

2. BPC shall maintain commercial general liability insurance covering bodily injury and property damage with a combined single limit of not less than the current tort limit as it may change from year to year (currently $1,266,000) and covering BPC’s indemnity obligations set forth in this Agreement. The policy must name District as an additional insured and provide at least ten (10) days advance notice of cancellation. A copy of the policy shall be provided annually to District.

3. District is not responsible for loss or damage to BPC property stored on site. BPC is responsible for maintaining its own property insurance for equipment stored on site.
Section 8: Indemnity

1. BPC will defend and indemnify District for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including but not limited to reasonable attorney’s fees, resulting from or arising out of BPC’s use of the Facility and other activities under this Agreement.

Section 9: Term

1. The term of this Agreement is for ten (10) years from the date listed above unless otherwise amended and approved by both Parties.

2. Annual scheduling, fee review and collaborative programming described above will be considered a part of the Agreement.

District

By: ____________________________
Name: __________________________
Its: ____________________________

Bend Pickleball Club

By: ____________________________
Name: __________________________
Its: ____________________________
2014 Addendum

1. Schedule for organized group play Sessions is Monday-Saturday, 7:00 a.m. - 12:30 p.m.
2. Maximum fee charged to non-BPC members is $5.00 per Session.
3. BPC to manage reservations and sign-ups for Sessions for club and non-club members.
4. District will promote organized group times in its program guide and on its web site referring interested individuals to BPC for more information or reservations.
Bend Metro Park & Recreation District
Board of Directors
Executive Session & Regular Meeting
Minutes
December 3, 2013

BOARD PRESENT: Scott Wallace, Dan Fishkin, Scott Asla, Ted Schoenborn and Craig Chenoweth.

STAFF PRESENT: Don Horton, Michelle Healy, Lindsey Lombard, Theresa Albert, Jan Taylor, Matt Mercer, Pat Erwert, Brian Hudspeth, Steve Jorgensen, Chelsea Schneider, Jim Figurski, Norm Ziesmer and Paula Lowery

LEGAL COUNSEL: Paul Taylor and Neil Bryant.

MEDIA: None

VISITORS: Keith Scott, Wade Fagen, Mike Olin and Tim Koester.

EXECUTIVE SESSION
Chair Scott Wallace convened an executive session at 6:35 pursuant to ORS 192.660(2)(e) for the purpose of discussing real property transactions. The executive session was concluded at 7:14 pm.

REGULAR MEETING
Chair Scott Wallace called the regular meeting to order at 7:15 pm.

VISITORS
Keith Scott addressed the board regarding Mirror Pond. He stated he supported the Mirror Pond Ad Hoc Committee’s decision to retain Mirror Pond and continue negotiations with Pacific Power. He stated he would favor a bond measure for the preservation and maintenance of the pond.

Wade Fagen addressed the board regarding Mirror Pond. He stated it is more valuable to preserve the culture, traditions and heritage of Bend over all other cultural activities that can be obtained in a metropolitan area. He stated he sees Mirror Pond as part of the culture and heritage of Bend and he would like to see it preserved. He suggested that Don Horton and Mark Capell negotiate with Pacific Power to demonstrate how this dam is not economically feasible when it is producing power now. He stated he agrees with Keith Scott’s suggestion to pass a bond measure to address the sediment issue.

CONSENT AGENDA
Minutes: November 19, 2013, Work Session & Regular Meeting
Scott Asla moved to approve the consent agenda. Ted Schoenborn seconded the motion. Scott Wallace, Dan Fishkin, Scott Asla, Ted Schoenborn and Craig Chenoweth all voted aye. Motion passed.

Discovery Park Purchase & Sale Agreement
Don Horton stated that Discovery Park is the final substantial park and trail element in the NorthWest Crossing master plan included in the 2003 Park and Trail Proposal with West Bend Properties. He reported Bratton Appraisal Group appraised the property as a developable lot as a highest and best use.
He noted the appraisal considered 5.4 acres of residentially zoned property and approximately 7.6 acres of industrial zoned property. He stated the combined appraised value of the property is $1,930,000 and it is the staff recommendation to acquire the property from West Bend Properties for the appraised value plus related closing costs. He stated the closing will not occur until the park is built and accepted by the district. Ted Schoenborn clarified that the park will be built to district standards with district approval of the design. Don explained the developer agreement to be approved by the board addresses the design standards. He noted that staff has been working with West Bend Properties landscape architects on concept designs that will be presented to the community for input. Scott Wallace asked Don to summarize the purchase in terms of funding. Don explained the acquisition will be funded through the General Fund from the Facility Reserve Fund, and it is anticipated the money will not be expended until next fiscal year. Dan Fishkin asked how the development costs will be paid and reimbursed. Don explained that once the park is designed a development cost estimate is established, and becomes an exhibit to the developer agreement. He stated the developer is reimbursed $1 million towards the park development at the time the district acquires the property and all remaining costs are reimbursed by future collection of SDCs. He noted that based on early estimates it is not anticipated there will be an excess of SDC fees that NorthWest Crossing will cover and as Discovery Park is a community park, there will be SDCs collected from other areas that can go toward funding the development of the park. Scott Wallace asked when the final design would be completed. Jim Figurski reviewed the public comment steps to be followed by the creation of a final design which he expected to occur in early to mid-January. He stated that would be followed by a refined cost estimate. Craig Chenoweth moved to approve the Discovery Park Purchase and Sale Agreement with West Bend Property Company, LLC, with the purchase price amount of $1,930,000 and related closing costs pending final legal review. Dan Fishkin seconded the motion. Scott Wallace, Dan Fishkin, Scott Asla, Ted Schoenborn and Craig Chenoweth voted aye. Motion passed. Dan Fishkin moved to approve the Discovery Park Development Agreement with West Bend Property, LLC pending final legal review. Ted Schoenborn seconded the motion. Scott Wallace, Dan Fishkin, Scott Asla, Ted Schoenborn and Craig Chenoweth voted aye. Motion passed.

Ponderosa Park Playground Installation Contract Amendment
Michelle Healy reviewed previous board action to approve a contract with Wystan Brown Excavating in the amount of $49,178 with a not to exceed amount of $54,095 to build a playground at Ponderosa Park. She stated the work has proceeded over the summer and is approximately 85% complete. She stated that over the course of the project three change orders have been requested increasing the total amount of the contract to $74,028. She identified the scope of the change orders as removal of a portion of the earth berm to create better vision of the playground area from the picnic shelter; installation of a playground slide and associated landing area on the earth berm; and installation of a concrete retaining wall between the earth berm and playground structure. Michelle explained necessary changes to meet current playground safety codes that would include the poured in-place concrete retaining wall. Dan Fishkin expressed concern regarding the safety of a concrete retaining wall next to the playground. Norm Ziesmer explained this approach expands the safety zone for the playground equipment. Scott Asla expressed concern about diminishing the look of the playground with a concrete wall. Dan asked if this was our plan and design and our mistake. Norm stated it was our miscalculation with the siting of some of the playground pieces that created a
shorter safety zone. Scott Wallace asked how long it would take to complete the project. Brian Hudspeth stated that it is anticipated to be finished before Christmas providing the permits are received from the city. He added the remaining work includes not only the wall, but completion of the curbs and surfacing. Dan Fishkin asked about maintenance concerns. Norm explained the poured in place surfacing is somewhat problematic as it lasts only seven to ten years and that time is shortened if it is used on a slope. He stated the use of chips is easier to maintain and matches the forest theme of the playground. Ted Schoenborn moved to approve an amendment to the contract with Wystan Brown Excavating for the Ponderosa Park Playground Installation to increase the contract from $49,178.00 to $74,028.00 with a total project amount not to exceed $81,500.00. Craig Chenoweth seconded the motion. Scott Wallace, Dan Fishkin, Scott Asla, Ted Schoenborn and Craig Chenoweth voted aye. Motion passed.

Resolution No. 359 – Mirror Pond Ad Hoc Committee Recommendations
Don Horton reported that following the Mirror Pond Ad Hoc Committee meeting on December 2, the committee determined to go forward with a recommendation to move forward in trying to find a solution to save Mirror Pond. He stated the board and city council are being asked to approve Resolution No. 359, Mirror Pond Ad Hoc Committee Recommendations and read the resolution into the record. He stated that while the resolution provides clear direction on working with the community to find a preferred alternative, it doesn't circumvent the planning process that we have undertaken. He stated the planning process will continue including communication with the community and various user groups to create an alternative that meets the intent of the majority of the community. Ted Schoenborn stated this is an important resolution due to the fact that the negotiating team with PacifiCorp needs the direction of the full committee and the support of both the city council and park board to provide the guidance it takes to be able to negotiate from a position. He stated he thinks this will strengthen our ability to ultimately resolve the Mirror Pond question. Dan Fishkin agreed and stated it is an important sign to PacifiCorp that there is a response to what they have been asking for which is to have some input from the community before they make their decision. Scott Wallace stated it is essential to having a position to negotiate, and this moves the process forward significantly. He stated we are getting some positions staked out so we know where we can go and make further progress. Don reported that the Oregon Water Resources Department will not do a dam inspection. He explained the department has observed PacifiCorp's inspection to ensure it was done to state standards and they have no concern regarding danger to life or property if the dam were to fail, and as a result the department will not require PacifiCorp to provide them with their report. He added that if we get into serious negotiation about ownership, part of our due diligence will be our access to those reports. Scott Wallace stated that ultimately in consideration of the community's due diligence there would need to be an independent evaluation at some point as we move ahead. Scott Asla stated he appreciates the committee's work and preserving Mirror Pond is very important to this community. Ted Schoenborn moved to approve Resolution No. 359, adopting the recommendations of the Mirror Pond Ad Hoc Committee. Scott Asla seconded the motion. Scott Wallace, Dan Fishkin, Scott Asla, Ted Schoenborn and Craig Chenoweth voted aye. Motion passed.

Capital Improvement Plan Projects Update
Michelle Healy conducted a PowerPoint presentation providing an update on the status of the current 2013-14 capital projects in preparation of the board's upcoming workshop. She noted the total five-year CIP is $59,897,155 including $29,995,643 in bond projects, $20,851,512 in SDC funding, $4,700,000 in Facility Reserve funds and $4,350,000 in other funds. She stated the total 2013-14 CIP is $16,375,422 including bond-funded projects, SDCs, the Facility Reserve Fund and other funding. Michelle reviewed the status of the bond projects including land acquisition, the Colorado Dam Safe Passage, First Street Rapids, McKay Park, Simpson Pavilion, Riley Ranch Nature Reserve, Deschutes River Trail, and Pine Nursery Park.
also provided status updates for non-bond funded projects including the Ponderosa Park Skatepark, Ponderosa Park Community Park, Miller’s Landing Park, Canal Row Park, Discovery Park, Bend Senior Center, Alpine Neighborhood Park Trailhead and SDC land acquisition. She provided information regarding a change in how the CIP information will be presented in the future including project expenditure tracking, capital and project budgeting, CIP detail sheets and public information. She explained staff intends to implement the new format with the 2014-15 budget process. Michelle shared a new concept being developed for the program guide and website for providing public information on various projects including the status and description of each project.

EXECUTIVE DIRECTOR’S REPORT
Don Horton reported that staff has been working on the Simpson Pavilion and shared two concepts created by the architect. He stated that staff has had a difficult time determining a preferred design. He explained that the architect’s presentation is coming to the board soon and staff would like input on a preferred option. Jim Figurski reviewed components of each concept, a barrel vault and a catenary structure and the orientation of the buildings on the site. The board and staff conducted a lengthy discussion regarding the features of each concept to accommodate ice and other uses.

Don Horton reported the district has closed on the Jeffers property.

Don Horton reminded the board of the workshop scheduled for January 7, and recommended the session begin at 9:00 am and run until 4:00 pm to adequately cover the proposed agenda.

As there was no further business the meeting was adjourned at 9:40 pm.

Prepared by,

Paula Lowery
Executive Assistant

__________________________________          ___________________________________
Scott Wallace, Chair     Dan Fishkin, Vice-Chair

__________________________________      __________________________________
Ted Schoenborn     Scott Asla

__________________________________
Craig Chenoweth
AGENDA DATE: December 17, 2013

SUBJECT: Bend FC Timbers Ground Lease

STAFF RESOURCE: Matt Mercer, Recreation Director
Don Horton, Executive Director

PREVIOUS BOARD ACTION: Approved MOU on July 17, 2012

ACTION PROPOSED: Approve and Authorize Executive Director to Execute

COMMITTEE ACTION: None

STRATEGIC PLAN:
Theme: Community Connection
Objectives: Cultivate Partnerships
Analyze and Adapt to Changing Community Need
Initiatives: Seek Partnerships to support targeted capital projects.
Plan and Develop trails, river access, parks, natural areas and recreation facilities to meet identified community need and future demand.

BACKGROUND

On July 17, 2012, the board of directors approved a Memorandum of Understanding between the district and Deschutes Academy Futbol Club (previously Oregon Rush and now Bend FC Timbers) outlining the terms of a potential partnership for the development of four soccer/multipurpose fields at Pine Nursery Community Park. On July 2, 2013, the board discussed and provided input to staff on a draft ground lease that defined the binding terms for the development, operations and maintenance of the proposed fields and related improvements. Since then, staff has worked with district legal counsel and Bend FC Timbers staff and legal counsel to develop a final draft ground lease to be considered for board approval by both organizations. A copy of the draft ground lease is attached. Staff and district legal counsel will provide a brief overview and be available to answer questions from board.

BUDGETARY IMPACT

There is no impact on the district budget for the development and operations of the fields. Per the ground lease, the development, operations and maintenance will be fully funded by Bend FC Timbers, and the district has completed its responsibilities for providing infrastructure to support the field development. Some staff resources will be required to review plans and specifications, oversee construction and manage the agreement.
STAFF RECOMMENDATION

Staff recommends that the board approve the ground lease with any modifications that are recommended.

MOTION

I move to authorize the Executive Director to negotiate and execute a ground lease agreement with Deschutes Academy Futbal Club for the development and operations of four soccer/multi-purpose fields and related improvements at the Pine Nursery Community Park.

ATTACHMENT

Ground Lease
Memorandum of Understanding
GROUND LEASE

Date: ____________, 2013

Landlord: Bend Park & Recreation District ("Landlord")
799 SW Columbia Street
Bend, Oregon 97702

Tenant: Deschutes Academy and Futbol Club ("Tenant")
dba Bend FC Timbers
PO Box 8340
Bend, Oregon 97708

Landlord is the owner of that certain real property commonly known as Pine Nursery Community Park (the “Park”). Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, that portion of the Park consisting of approximately 8.5 acres and generally depicted on the attached Exhibit A (the “Premises”). Upon completion of the Improvements (as defined below), the parties will amend Exhibit A to show the exact area of the Premises.

Tenant intends to develop the Premises with four soccer/multi-purpose fields, together with related improvements to support the fields.

Landlord and Tenant agree as follows:

Section 1. Agreement to Lease

1.1 Subject to the terms and conditions contained in this Ground Lease (the “Lease”), Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord. Landlord and Tenant will be bound in accordance with the terms of this Lease from and after the date of the parties’ mutual written execution of this Lease (the “Effective Date”).

1.2 Tenant represents and warrants that (a) Tenant has entered into this Lease on the basis of its own examination and personal knowledge of the Premises and Park, and (b) Tenant has not relied on any representations or warranties made by Landlord other than those expressly provided in this Lease. Except as described in this Lease, Landlord has made no promise or agreement to repair, alter, construct, and/or improve the Premises and/or Park.

Section 2. Term

Subject to the terms and conditions contained in this Lease, the term of this Lease will commence on the Effective Date and will continue for a period of thirty (30) years thereafter (the “Lease Term”), unless sooner terminated as provided in this Lease.

Section 3. Project Conditions

3.1 Tenant will construct four soccer/multi-purpose fields consisting of approximately
320,000 sq. ft (total) (the "Fields") and related improvements on, under, and over the Premises, which will include a minimum of two synthetic fields and up to two natural turf surface fields, associated irrigation system, fencing, lighting and related fixtures. Other related improvements may include a field house to serve as offices, meeting space, changing rooms, concession services for the Fields, and equipment storage for Tenant. The Fields and all the related improvements are referred to in this Lease as the “Project.” The Project and any future alterations, additions, replacements, or modifications to the Project during the Term of this Lease are referred to in this Lease as the “Improvements.” A preliminary site plan for the Project is attached as Exhibit A. This Lease shall be conditioned on Tenant and Landlord determining that the Project is feasible after obtaining all necessary governmental approvals, approval of final plans and specifications by Landlord, and Tenant providing satisfactory evidence that it has raised sufficient funds to fund Project construction in its entirety (the “Condition”).

3.2 The foregoing Condition shall be for the benefit of both parties and must be satisfied or waived by both the parties on or before 5:00 p.m. on May 1, 2015, or this Lease shall terminate and be of no further force and effect. In that event, neither party shall have any further liability under this Lease except for liability accrued before the date of termination. Tenant shall have the right to one (1) extension of the Condition for a period of one (1) year if Tenant produces firm commitments of not less than One Million Dollars ($1,000,000.00) in funds or in-kind contributions for the project prior to May 1, 2015.

3.3 Landlord shall cooperate with Tenant in all respects in connection with satisfying the Condition. Landlord shall execute such land use applications and other instruments reasonably necessary to satisfying the Condition, provided that Landlord shall not be required to pay any application fees or incur any other costs or liability in connection with satisfying the Condition beyond Landlord’s fees for any professional advice Landlord desires. Landlord shall appear as a witness in any legal or administrative proceedings to the extent reasonably necessary to satisfy the Condition, and will provide whatever easements or licenses are reasonably necessary to accommodate the construction of the Improvements.

3.4 Within a reasonable time following the Effective Date, Tenant shall provide Landlord with a site plan showing the location of all Improvements to be constructed during the initial construction of the Project (the “Site Plan”). Within a reasonable time after Landlord receives the Site Plan, Landlord shall either approve or disapprove the Site Plan for reasonable and material reasons (which shall be limited to the following): (i) adverse effect on the Park structure or mechanical systems; (ii) non-compliance with Landlord’s minimum Park and Field design standards and specifications; (iii) non-compliance with applicable codes; or (iv) unreasonable interference with the anticipated normal and customary operation and use of the Park (each, a “Design Problem”) and return the Site Plan to Tenant. In such event, Landlord shall require, and Tenant shall make, the minimum changes necessary in order to correct the Design Problems and shall return the Site Plan to Landlord. This procedure shall be repeated until the Site Plan is finally approved by Landlord.

3.5 Promptly after approval of the Site Plan, Tenant shall provide Landlord with plans and specifications for the Improvements, and any other additional information related to the Improvements that Landlord deems necessary or appropriate (the “Plans and Specifications”). Landlord shall provide Tenant with its standard specifications for park, facility, and athletic field.
development and Tenant shall instruct its designer or engineer to provide Plans and Specifications that meet or exceed Landlord’s standard specifications. Landlord shall approve the Plans and Specifications within a reasonable time following receipt or designate, by written notice given within such time period to Tenant, the specific changes reasonably required to be made to the Plans and Specifications in order to correct any Design Problem with the Plans and Specifications.

3.6 In order to facilitate construction of the Improvements, Landlord will construct the following improvements: offsite improvements to Yeoman Road and Purcell Boulevard, Park access drives and parking lots, and community park restrooms. In addition, Landlord will bring electrical service (sufficient for field lighting and field house electrical power) and water service (for both irrigation and domestic use) to the boundary of the Premises. Sewer service is not available onsite, and Tenant will be responsible for permitting and installing a septic system sufficient to support the development of the Premises. Landlord’s construction obligations shall not arise until after satisfaction of the Condition. Further, Landlord’s construction obligations shall apply only to the initial construction of the Improvements. Tenant shall be solely responsible for any additional improvements to either the Park or surrounding public property that are required as a result of any proposed Modification (as defined below). The improvements constructed by Landlord pursuant to this Section 3.6, including but not limited to parking areas, access drives, trails, restrooms and shelters shall not be considered part of the Premises, and Tenant shall not have exclusive use of any such improvements without Landlord’s prior written approval.

Section 4. Construction of the Project

Upon satisfaction of the Condition, Tenant shall construct the Project in accordance with the final plans and specifications approved by Landlord. Tenant shall, subject to acts of God, strikes, or any other reason beyond the reasonable control of Tenant, diligently prosecute the work to completion no later than one (1) year from the satisfaction of the Condition. Tenant shall have the right to one extension equal to the time of the extension obtained, if so obtained, pursuant to Section 3.2. Tenant shall be responsible for the entire cost of the Project, including but not limited to permit costs and any conditions imposed for permit issuance, other than Landlord’s construction obligations pursuant to Section 3.6. The work shall be performed in accordance with all Legal Requirements and in a good and professional manner. For the purposes of this Lease, the term “Legal Requirements” includes all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, including but not limited to the Americans with Disabilities Act, which are applicable to the construction of the Improvements, or to the Premises and Tenant’s use thereof including, but not limited to, Landlord’s Rules and Regulations Ordinance. Landlord shall have the right to inspect the work at all times. The foregoing shall include any applicable prevailing wage laws where applicable. In the event of any dispute regarding the construction of the Project, the matter shall be arbitrated in accordance with the provisions of Section 28 of this Lease.

Section 5. Rent

5.1 Tenant shall pay to Landlord the sum of zero dollars ($0.00) per year as Base
Rent for the Premises from the Effective Date. In lieu of Base Rent, consideration for the use of the Premises shall be the obligations regarding construction, operation, maintenance and control of the Premises and other obligations of Tenant otherwise identified herein.

5.2 Tenant shall pay when due all charges for electricity, water, and all other services or utilities used on or in connection with the Premises. Electricity, domestic water and irrigation water will be supplied through Landlord. Landlord will provide for separate metering of the utility services provided through Landlord, and Tenant shall pay the cost of such services monthly within fifteen (15) days of invoice by Landlord. All utility services provided through Landlord shall be billed to Tenant at the actual costs charged by the service provider and incurred by Landlord without any markup or profit; provided, however, irrigation water shall be billed at a rate equal to 80% of the water rate billed to the Landlord by Avion Water Company. Landlord shall provide Tenant with copies of utility billings upon Tenant’s request. Tenant shall arrange and pay for all other utilities and services required for its use of the Premises, including but not limited to any telephone, garbage collection and septic charges. Tenant and Landlord shall meet periodically to address utility and service cost allocation pertaining to Landlord’s use of the Premises, and any such allocation shall be listed on the Operations Exhibit from time to time.

5.3 Tenant shall also pay, as additional rent, all sums, impositions, costs, and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay, and in the event of any nonpayment, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law in the case of nonpayment of the Rent.

Section 6. Use; Naming Rights

6.1 Tenant shall use the Premises and the Improvements for the purpose of conducting soccer training, practices and games, as well as meetings, educational purposes and all other lawful purposes directly related to Tenant’s use of the soccer/multi-purpose fields (the “Permitted Use”). Tenant may also use the Premises and Improvements for non-soccer athletic activities (“Ancillary Uses”) with the prior written approval of Landlord, which shall not be unreasonably withheld. It shall be presumed that field sports, including but not limited to, lacrosse, football, rugby and Frisbee, shall be approved Ancillary Uses. (Landlord and Tenant shall review the list of approved Ancillary Uses at least annually to determine if any of the Ancillary Uses are damaging to the Premises, disruptive or otherwise inconsistent with the use of the Park as a whole by the general public.) Tenant will have first priority use of the Premises, but Landlord shall have the right of first refusal on all other available times. Landlord’s use of the Premises shall be without cost to Landlord. Subject to Landlord’s use rights, Tenant shall have the right to allow use of the Premises by third parties. Tenant may charge for such third party use, and shall be entitled to retain any revenues generated, provided any fees charged to such third parties shall not exceed the use fees approved in advance by Landlord from time to time. The use of the Premises by third parties shall be limited to the Permitted Use and approved Ancillary Uses. The “Operations Exhibit” attached as Exhibit B sets forth those matters that will be subject to periodic review by Landlord and Tenant, including but not limited to: the approved Ancillary Uses (including approved concessions), the use of the Premises by third parties, the approved use fees to be charged to third parties, and operation and maintenance
requirements and standards for the Premises. Landlord and Tenant will review and update the Operations Exhibit annually, and the Operations Exhibit, as revised from time to time, shall become part of this Lease.

6.1.1 If Tenant imposes any “charge” for use of the Premises, as defined in ORS 105.672(1), Tenant shall include in the waiver or receipt associated with the “charge” language identifying (a) the limited uses of the land for which the charge is made, and the immunities provided under ORS 105.682 for other uses of the land and (b) the portion of the land the use of which is subject to the charge, and the immunities provided under ORS 105.682 for the remainder of the land.

6.2 Tenant may limit public access to the Premises and the Improvements to Permitted and Ancillary Uses; however, Landlord is not responsible for enforcing the restrictions or liable for any damages that result from use of the Premises and Improvements by the public. Tenant is responsible for any fencing, signs, security or other measures required to restrict access to the Premises and the Improvements. Tenant shall have the right to refuse access to the Premises, subject to reasonable notice, to any potential user in the event Tenant determines that the use of the Premises is likely to result in material harm to the Premises, e.g., any event incompatible with turf fields, excessive cleaning or maintenance, or the presence of animals.

6.3 Tenant’s use of the Premises shall be subject to all Legal Requirements, including but not limited to Landlord’s Rules and Regulations ordinance, as the same may be amended or replaced from time to time. Tenant shall not use or occupy, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied (1) for any unlawful or illegal business, use, or purpose, (2) in any such manner to constitute a nuisance of any kind, or (3) for any purpose or in any way that is in violation of any Legal Requirements, including but not limited to Legal Requirements regulating Hazardous Substances, or (4) for any business, use, or purpose deemed disreputable. The term “Hazardous Substance” means any hazardous, toxic, or dangerous substance, waste, or material that is the subject of Legal Requirements for the protection of public health and the environment. Tenant acknowledges that the term “Legal Requirements” includes, but is not limited to, all environmental protection laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC §§9601–9675), the Water Pollution Prevention and Control Act (33 USC §§1251–1387), and the Air Pollution Prevention and Control Act (42 USC §§7401–7671q).

6.4 Tenant shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that now apply to the Premises or that have been granted to or contracted for by Landlord or Tenant in connection with any existing or presently contemplated use of the Premises or the Improvements.

6.5 All use of the Premises other than for the Permitted Use or approved Ancillary Uses (including temporary uses such as food vendors) shall be subject to the prior written approval of Landlord, not to be unreasonably withheld. Tenant shall not allow any person to occupy the Premises or the Improvements in such manner as might reasonably give rise to a claim of adverse possession. Tenant acknowledges that Landlord does not consent, expressly or
by implication, to the unrestricted use or possession of the whole or any portion of the Premises or Improvements by any person other than Tenant. Tenant shall not grant any right to use the Premises which extends beyond the Lease Term.

6.6 Tenant shall have all rights and revenues derived from any naming rights associated with the Premises, including but not limited to naming rights for the Fields and/or any of the Improvements; provided, however, any such naming rights shall be consistent with Landlord’s naming policies and shall apply only to the Premises, and not to the Park as a whole. The term for any naming rights shall not exceed the Lease Term, and shall expire upon termination of this Lease, however terminated. Any logos, signage, illumination, and digital display boards shall comply and be consistent with any governmental regulations associated with the Premises, including Landlord’s policies and standards, and require Landlord’s prior written consent. Any other sponsor recognition shall only be allowed in accordance with Landlord’s policies and standards, and with Landlord’s prior written consent. Approved sponsor recognition programs will be listed on the Operations Exhibit from time to time.

6.7 Food and beverage concessions shall be conducted from specifically designated areas of the field house and from no other locations within the Premises without Landlord’s prior consent. Mobile concessions may be brought in for special events of four (4) or fewer days, but may not operate from the Premises on a regular basis without the prior written consent of Landlord. Approved concessions will be listed on the Operations Exhibit from time to time.

Section 7. Liens

7.1 Tenant shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Landlord or on any interest of Landlord in the Premises.

7.2 Tenant shall not suffer or permit any liens to attach to the interest of Tenant in all or any part of the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or anyone occupying or holding an interest in all or any part of the Improvements on the Premises through or under Tenant. If any such lien shall at any time be filed against the Premises, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, by payment, deposit or bond.

7.3 Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Landlord’s interest in the Premises or against Landlord’s interest, if any, in the Improvements. Tenant is not intended to be an agent of Landlord for the construction of Improvements on the Premises. Landlord shall have the right to post and keep posted at all reasonable times on the Premises and on the Improvements any notices that Landlord shall be required to post for the protection of Landlord and of the Premises and of the Improvements.
from any such lien.

Section 8. Taxes and Other Charges

8.1 Tenant acknowledges that, as an Oregon special district, Landlord’s property is exempt from property taxes. Tenant shall therefore be responsible for, and shall pay before any fine, penalty, interest, or cost may be added for nonpayment, all real or personal property taxes, and all other governmental impositions and charges of every kind and nature whatsoever, which:

8.1.1 Shall be levied, assessed, or imposed against the Premises or the Improvements or any interest of Landlord or Tenant under this Lease; or

8.1.2 Shall be or become liens against the Premises or the Improvements or any interest of Landlord or Tenant under this Lease.

8.2 If by law, any tax is payable in installments, Tenant may pay the same, and any accrued interest on any unpaid balance, in installments as each installment becomes due and payable.

8.3 Tenant covenants to furnish to Landlord, within thirty (30) days after the last date when any tax must be paid by Tenant as provided in this section, official receipts or other proof evidencing payment of the tax.

8.4 Tenant shall have the right, at Tenant’s expense, to contest the amount or validity of any tax, or to seek a reduction in the assessed valuation on which any tax is based, by appropriate legal proceedings. Any contest as to the validity or amount of any tax, or assessed valuation on which such tax was computed or based, whether before or after payment, may be made by Tenant in the name of Landlord or of Tenant, or both, as Tenant shall determine, and Landlord agrees that it will, at Tenant’s expense, cooperate with Tenant in any such contest to such extent as Tenant may reasonably request, it being understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant covenants to indemnify, defend and hold Landlord harmless from any such costs or expenses. Tenant shall be entitled to any refund of any such tax and penalties or interest that have been paid by Tenant or by Landlord and reimbursed to Landlord by Tenant.

8.5 Notwithstanding the foregoing, Landlord will co-operate with Tenant, at no out-of-pocket expense to Landlord, in making any necessary application or filing to obtain an exemption of the Premises or Improvements from property taxes because of Tenant’s non-profit status.

8.6 The parties shall use reasonable efforts to see that all communications from the governmental authorities regarding taxes are sent directly by such authorities to Landlord. Landlord shall forward any and all communications to Tenant within forty-eight (48) hours of Landlord’s receipt.

8.7 Tenant shall also be responsible for, and shall pay when due, all special assessments, permit fees, system development charges and all other governmental impositions
and charges of every kind and nature whatsoever which shall arise in connection with any future improvements to the Premises proposed by Tenant, or because of any change in Tenant’s use of the Premises or Improvements.

Section 9. Insurance

9.1 Tenant, at Tenant’s sole cost and expense, shall maintain, for the mutual benefit of Tenant and Landlord, property insurance covering loss or damage by fire, and such other risks covered by special form coverage insuring the full replacement cost of the Improvements (excluding foundation and excavation cost and subject to a Landlord-approved deductible amount). The amount of such insurance policy shall be increased from time to time as the full replacement cost of the Improvements increases.

Unless the casualty occurs within two (2) years of the expiration of the Lease Term, Tenant shall promptly repair or replace the damaged and destroyed Improvements in substantially the form on the date of the casualty or in a manner reasonably satisfactory to Landlord. If the damage occurs within two (2) years of the expiration of the Lease Term of this Lease, then Landlord shall have the option of Terminating this Lease and retaining all the insurance proceeds. Neither party, nor its officers, directors, employees, agents, or invitees, nor, in case of Tenant, its subtenants, shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property that are caused by or result from risks or perils insured against under any property insurance policies required by the Lease to be carried by Landlord and/or Tenant and in force at the time of any such damage or loss.

9.2 Upon the earlier of (a) the commencement of the construction of the Improvements or (b) Tenant otherwise takes action to restrict public access to the Premises, Tenant, at its expense, shall obtain and maintain at all times during the Lease Term, commercial general liability insurance covering the Premises and the conduct or operation of its business, with a combined single limit of not less than Two Million Dollars ($2,000,000), or its equivalent. Such policies shall contain such endorsements and deductibles as are reasonably requested by Landlord and the exclusions shall be limited to those approved by Landlord, such approval not to be unreasonably withheld. Tenant shall require that all third parties who stage events on the Premises shall maintain comparable liability insurance to that required to be maintained by Tenant.

9.3 All insurance policies (except workers’ compensation policies) shall be written as primary policies and shall not be contributing with or be in excess of any insurance that Landlord may carry. All such insurance policies shall be issued in the name of Tenant with Landlord named as an additional insured.

9.4 All policies of insurance shall be issued by good, responsible companies, reasonably acceptable to Landlord and that are qualified to do business in the state of Oregon. Executed copies of such policies of insurance, including additional insured endorsements specifically providing coverage for Landlord, shall be delivered to Landlord prior to the Effective Date, and renewal policies shall be delivered to Landlord within thirty (30) days before the expiration of the term of each such policy. Insurance certificates will not be accepted in lieu
of the actual policies and endorsements. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. The certificates or additional insured endorsements will provide that such insurance will not be canceled except on at least ten (10) days’ prior written notice to Landlord.

9.5 Landlord may from time to time, but not more frequently than once every two (2) years, require that the amount of commercial general liability insurance to be maintained by Tenant under Section 9.2 be increased so that the amount adequately protects Landlord’s interest.

Section 10. Landlord’s Right to Perform Tenant’s Covenants

10.1 If Tenant at any time fails to pay any tax in accordance with the provisions of this Lease or fails to make any other payment or perform any other act on its part to be made or performed, then Landlord, after ten (10) days’ notice to Tenant (or without notice in case of an emergency), and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease or from any default by Tenant, and without waiving Landlord’s right to take such action as may be permissible under this Lease as a result of such default, may (but shall be under no obligation to):

10.1.1 Pay any tax payable by Tenant pursuant to the provisions of this Lease; or

10.1.2 Make any other payment or perform any other act on Tenant’s part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take all such action, as may be necessary.

10.2 All sums so paid by Landlord and all costs and expenses incurred by Landlord, including reasonable attorney fees, in connection with the performance of any such act, together with, if Tenant does not pay the same within the thirty (30) day period after notice from Landlord, interest from the date of such payment or incurrence by Landlord of such cost and expense until paid, at the annual rate of twelve percent (12%), shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

Section 11. Compliance with Legal Requirements

11.1 Throughout the Lease Term, Tenant shall promptly comply with all Legal Requirements that may apply to the Premises or to the use or manner of uses of the Premises or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Improvements, and whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Lease Term commences. Tenant shall pay all costs of compliance with Legal Requirements, but Tenant shall have the right to cease occupation or use of the Premises in lieu of compliance with any Legal Requirement that may require expenditures on behalf of Tenant for continued use or occupation of the Premises.

11.2 Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Tenant or Landlord or both, without cost or expense to Landlord, the validity or application of any Legal
Requirement subject to the following:

11.2.1 If, by the terms of any Legal Requirement, compliance may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge, or liability of any kind against all or any part of the Premises or the Improvements and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure to comply, Tenant may delay compliance until the final determination of such proceeding; or

11.2.2 If any lien, charge, or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest the matter and delay compliance, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant:

11.2.2.1 furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and

11.2.2.2 prosecutes the contest with due diligence.

11.3 Landlord shall execute and deliver any appropriate papers that may be necessary or proper to permit Tenant to contest the validity or application of any Legal Requirement, provided all the requirements of this section have been satisfied by Tenant and Landlord will incur no cost.

Section 12. Repair, Replacement, and Maintenance Requirement

Tenant shall maintain, repair and, if necessary, replace the Premises and the Improvements (including the Fields, structures, landscaping and fixtures) as necessary to keep them in good order, condition, and repair throughout the entire Lease Term. Tenant’s obligations shall extend to both structural and nonstructural items and to all maintenance, repair and replacement work, including but not limited to unforeseen and extraordinary items. Tenant shall maintain the Premises to at least the levels provided for in Landlord’s maintenance standards for its other athletic field properties, as the same may be amended from time to time. Landlord’s current maintenance standards shall be included in the Operations Exhibit. In addition, Tenant shall comply with the maintenance standards provided by the manufacturer of any item incorporated in the Improvements, including but not limited to the manufacturer of any synthetic turf surface. Tenant may self-perform its maintenance and repair obligations, or may contract for such performance with Landlord or a third party.

Section 13. Alterations, Additions, and New Improvements

13.1 The term “Modifications” means any demolition, improvement, alteration, change, or addition, of, in, or to all or any part of the Premises or the Improvements. All Modifications (whether temporary or permanent) shall require the prior written consent of Landlord which shall not be unreasonably withheld. In seeking Landlord’s consent for a Modification, Tenant shall submit to Landlord, prior to Landlord’s written consent, detailed plans and specifications prepared by architects and engineers (if required by law). Landlord reserves the right to impose additional requirements of Tenant as a condition of Landlord’s consent in connection with any and all Modifications.
13.2 All Modifications shall be at Tenant’s sole cost and expense, and performed: (i) in a thoroughly first-class, professional and workmanlike manner, (ii) only with materials that are new, high quality, and free of material defects, (iii) strictly in accordance with plans, specifications, and other matters approved or designated by Landlord in advance in writing, and (iv) in compliance with all Legal Requirements, the provisions of this Lease, and such other requirements as Landlord may reasonably impose concerning the manner and times in which such Modification shall be done. If Tenant fails to perform any Modification as required herein or the materials supplied fail to comply herewith or with the specifications approved by Landlord, and Tenant fails to cure such failure within forty-eight (48) hours after notice by Landlord (except notice shall not be required in emergencies), Landlord shall have the right to stop the Modification until such failure is cured.

Section 14. Title to Improvements

All Improvements constructed by Tenant shall become part of the realty and will be the Property of Landlord to the extent the Improvements attach to the Premises. Title to the Improvements (to the extent the Improvements attach to the Premises) shall automatically pass to, vest in, and belong to Landlord without further action on the part of either party and without cost or charge to Landlord. At no time shall Tenant remove the Improvements without Landlord’s prior written consent. During the Lease Term, Tenant shall be entitled for all taxation purposes to claim cost recovery deductions and the like on the Improvements. Notwithstanding the foregoing, in order to facilitate funding the construction of the Improvements, Tenant shall have the right to sublease the Premises to a funding partner (“Funder”). Any sublease shall be subject to Landlord’s reasonable approval, and shall be expressly subject to the terms and conditions of the Lease, including but not limited to a prohibition on the removal of the Improvements during the Lease Term. Such sublease shall allow for the donation of any Improvements to Landlord during the Lease Term, or, in the event that the Funder donates the Improvements to Tenant, Tenant shall promptly transfer title of the Improvements to Landlord. Upon termination of the Lease Term, title to all Improvements shall automatically pass to, vest in, and belong to Landlord without further action on the part of either party and without cost or charge to Landlord.

Section 15. No Waste

Tenant shall not do or suffer any waste or damage, disfigurement, or injury to the Premises or the Improvements.

Section 16. Inspection and Access

Landlord may enter the Premises at all times for the purposes of inspecting the same and making any repairs or performing any work that Tenant has neglected or refused to make in accordance with the terms, covenants, and conditions of this Lease. Nothing in this Lease shall imply any duty or obligation on the part of Landlord to do any such work or to make any Improvements of any kind whatsoever to the Premises (including, but not limited to, repairs and other restoration work made necessary due to any fire, other casualty, or partial condemnation, irrespective of the sufficiency or availability of any fire or other insurance proceeds, or any award in condemnation, which may be payable). The performance of any work by Landlord shall
not constitute a waiver of Tenant’s default in failing to perform the same. Except in cases of emergency, any Landlord entry to buildings on the Premises shall require at least twenty-four (24) hours’ advance notice to Tenant.

Section 17. Landlord’s Exculpation and Indemnity

17.1 Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements or any injury or damage to the Premises or the Improvements or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the Premises or of the Improvements. Landlord acknowledges that it remains responsible for any liability to any third party to the extent such liability arises from Landlord’s negligence or other misconduct or as a result of any negligence or other misconduct by Landlord’s agents, contractors, servants, employees, subtenants, licensees, or invitees.

17.2 Tenant shall indemnify and hold Landlord harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorney fees that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Lease Term:

17.2.1 Any work or thing done in, on, or about all or any part of the Premises or the Improvements by Tenant or any party other than Landlord;

17.2.2 Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements by Tenant or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees;

17.2.3 Any negligence on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees;

17.2.4 Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements by Tenant or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees; or

17.2.5 Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with.

17.3 Landlord shall indemnify and hold Tenant harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorney fees that may be imposed on or incurred by or asserted against Tenant by reason of any of the following occurrences during the Lease Term:

17.3.1 Any work or thing done in, on, or about all or any part of the Premises or the Improvements by Landlord;

17.3.2 Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements by Landlord or any of its
agents, contractors, servants, employees, subtenants, licensees, or invitees;

17.3.3 Any negligence on the part of Landlord or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees other than Tenant;

17.3.4 Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements by Landlord or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees other than Tenant; or

17.3.5 Any failure on the part of Landlord to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with.

17.4 In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant on written notice from Landlord shall, at Tenant’s expense, defend such action or proceeding by counsel approved by Landlord in writing, which approval shall not be unreasonably withheld. In case any action or proceeding is brought against Tenant by reason of any such claim, Landlord on written notice from Tenant shall, at Landlord’s expense, defend such action or proceeding by counsel approved by Tenant in writing, which approval shall not be unreasonably withheld.

Section 18. Condemnation

18.1 If all the Premises and the Improvements are taken or condemned, by right of eminent domain or by purchase in lieu of condemnation, or if such portion of the Premises or the Improvements shall be so taken or condemned that the portion remaining is not sufficient and suitable, in Tenant’s sole judgment, to permit the restoration of the Improvements following such taking or condemnation, then this Lease and the Lease Term, at Tenant’s option, shall cease and terminate as of the date on which the condemning authority takes possession (any taking or condemnation of the land described in this section being called a “Total Taking”).

18.2 If this Lease expires and terminates as a result of a Total Taking, the rights and interests of the parties shall be determined as follows.

18.2.1 The total award or awards for the Total Taking shall be apportioned and paid in the following order of priority:

18.2.1.1 Landlord shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award which is defined and referred to as the “Land Award,” and Tenant shall not be entitled to receive any part of the Land Award. The term Land Award shall mean that portion of the award in condemnation or change of grade proceedings that represents the fair market value of the Premises, considered as vacant, unimproved but encumbered by this Lease, the consequential damage to any part of the Premises that may not be taken, the diminution in value of the Premises not so taken and all other elements and factors of damage to the Premises; but in all events such damage or valuation shall take into consideration that the Premises is encumbered by this Lease;
18.2.1.2 Tenant shall have the right to and shall be entitled to receive directly from the condemning authority that portion of the award referred to as the “Leasehold Award.” The term Leasehold Award shall mean that portion of the award in condemnation proceedings that represents the fair market value of Tenant’s interest in the Improvements and the fair market value of Tenant’s leasehold estate as so taken and, provided this Lease is not terminated as a result of such condemnation or taking, the consequential damages to any part of the Improvements. Landlord shall be entitled to a proration of the Leasehold Award based on the amount of time left on the Lease Term.

18.2.1.3 It is the intent of the parties that the Land Award and Leasehold Award will equal the total amount of the awards respecting a total taking.

18.3 If, during the Lease Term, there is a taking or condemnation of the Premises or the Improvements that is not a total taking and not a temporary taking of the kind described below, this Lease and the Lease Term shall not cease or terminate, but shall remain in full force and effect with respect to the portion of the Premises and of the Improvements not taken or condemned (any taking or condemnation of the kind described in this section being referred to as a “Partial Taking”), and in such event,

18.3.1 The total award or awards for the taking shall be apportioned and paid in the following order of priority:

18.3.1.1 Landlord shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award; and

18.3.1.2 Tenant shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Leasehold Award.

Section 19. Assignment and Subletting

19.1 Tenant shall not, without the prior written consent of Landlord: (i) assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, by operation of law or otherwise, (ii) sublet the Premises, Improvements, or any part thereof, (all of the foregoing are hereinafter sometimes referred to collectively as “Transfers” and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a “Transferee”), or (iii) advertise the Premises and/or Improvements for lease or other Transfer. (Approved third-party uses of the Premises pursuant to Section 6 shall not be considered a Transfer.) If Tenant shall desire Landlord’s consent to any Transfer, Tenant shall notify Landlord in writing, which notice shall include: (a) the proposed effective date (which shall not be less than thirty (30) nor more than one hundred eighty (180) days after Tenant’s notice), (b) a description of the portion of the Premises and/or Improvements to be Transferred (herein called the “Subject Space”), (c) the terms of the proposed Transfer and the consideration therefor, the name, address and background information concerning the proposed Transferee, and a true and complete copy of all proposed Transfer documentation, and (d) financial statements of the proposed Transferee, and any other information to enable
Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee’s business and proposed use of the Subject Space, and such other information as Landlord may reasonably require. Any Transfer made without complying with this Section 19.1 shall at Landlord’s option be null, void and of no effect, or shall constitute a default under this Lease.

19.2 Landlord may give or withhold its consent to a proposed Transfer in its sole discretion.

19.3 Notwithstanding anything in this Lease to the contrary, Landlord may condition its consent to any proposed sublease for a purpose other than those described in Section 6.1, above, e.g., installation of a cell phone or other communication antenna, on a satisfactory agreement, in Landlord’s sole discretion, regarding the sharing of any sublease rent between Landlord and Tenant.

Section 20. Default; Remedies

20.1 The occurrence of any one or more of the following events of default constitutes a breach of this Lease by Tenant:

20.1.1 If Tenant defaults in the payment of Rent due and payable by Tenant, and such default continues for thirty (30) days after Landlord has given Tenant a notice specifying the same; or

20.1.2 If Tenant, whether by action or inaction, is in default of any of its obligations under this Lease (other than a default in the payment of Rent by Tenant) and such default continues and is not remedied within sixty (60) days after Landlord has given Tenant a notice specifying the same, or, in the case of a default that can be cured but not within a period of sixty (60) days, if Tenant has not (1) commenced curing such default within such sixty (60) day period, (2) notified Landlord of Tenant’s intention to cure the default, or (3) continuously and diligently completed the cure of the default.

20.2 On the occurrence of an event of default, the Lease may be terminated at the option of Landlord by notice in writing to Tenant. If the Lease is terminated, Tenant’s liability to Landlord for damages to the Premises and Improvements and rent shall survive such termination, and Landlord may reenter, take possession of the Premises and Improvements and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

20.3 No failure by Landlord to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent on a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Tenant, and no breach by Tenant, shall be waived, altered, or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.
20.4 Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 21. Landlord’s Right to Encumber

Landlord, during the Lease Term, may encumber, mortgage, pledge, or otherwise hypothecate its fee simple interest in the Premises.

Section 22. Quiet Enjoyment

Tenant, on paying the Rent and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Lease Term without hindrance or molestation by anyone claiming by, through, or under Landlord as such, subject, however, to the exceptions, reservations, and conditions of this Lease. Notwithstanding the foregoing, Tenant acknowledges and agrees that the Premises are part of a public park, and that the Landlord has no obligation to exclude persons from, nor provide security services for, the Premises. However, Tenant shall have the right to restrict access to the Premises as provided in Section 6.

Section 23. Surrender

23.1 Except as otherwise provided in this Lease, Tenant, upon expiration or earlier termination of the Lease Term, shall surrender and deliver up the Premises and all Improvements to the possession and use of Landlord without fraud or delay, free and clear of all lettings and occupancies other than subleases to which Landlord shall have specifically consented, and free and clear of all liens and encumbrances other than those, if any, presently existing or created or suffered by Landlord, without any payment or allowance whatever by Landlord on account of any Improvements on the Premises.

23.2 Tenant may remove its furniture, trade fixtures, and equipment at or before this Lease terminates, provided, however, that the removal will not injure the Premises or the Improvements or necessitate changes in or repairs to the same. Tenant shall pay or cause to be paid to Landlord the cost of repairing any damage arising from such removal and restoration of the Premises and/or the Improvements to their condition before such removal. Tenant shall not remove the Improvements (excluding those that do not attach to the Premises) without Landlord’s prior written consent, which consent may be withheld in Landlord’s sole discretion.

23.3 Any personal property of Tenant that shall remain on the Premises after the termination of this Lease may, at the option of Landlord, be deemed to have been abandoned by Tenant and may either be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, or if Landlord gives written notice to Tenant to such effect, such property shall be removed by Tenant at Tenant’s sole cost and
expense. If this Lease terminates early for any reason other than the default of Tenant then, anything to the contrary notwithstanding, Tenant shall have a reasonable time thereafter to remove its personal property.

23.4 Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or its invitees.

23.5 The provisions of this section shall survive any termination of this Lease.

Section 24. Invalidity of Particular Provisions

If any term or provision of this Lease is, to any extent, invalid or unenforceable, the remainder of this Lease shall not be affected, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

Section 25. No Representations

Tenant acknowledges that it has examined the Premises and that no representations as to the condition of the Premises have been made by Landlord or any agent or person acting for Landlord (except as expressly provided in this Lease). Before any construction commences on the Premises, Tenant shall conduct tests of the subsurface and soil conditions to ascertain the suitability of the Premises for the contemplated Project and shall furnish such fill and take such other steps as may be required to allow for construction of the Project. Landlord shall have no liability because of, or as a result of, the existence of any subsurface or soil condition, either on the Premises or on adjacent land, that might affect Tenant’s construction.

Section 26. Force Majeure

If the performance by either of the parties of their respective obligations under this Lease is delayed or prevented in whole or in part by any Legal Requirement or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party’s control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation is so limited or prevented by such occurrence without liability of any kind.

Section 27. Notices

27.1 Any notice required or permitted by the terms of this Lease shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:

If to Landlord:
Bend Metro Park and Recreation District
799 SW Columbia Street
Bend, OR 97702
or such other addresses as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request, or other communication shall be deemed to have been given or served on actual receipt.

27.2 Notwithstanding anything in this section to the contrary, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this section shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

Section 28. Arbitration

Any controversy or claim arising out of this Lease will be settled by arbitration before a single arbitrator in Bend, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. The arbitration will be conducted in accordance with the then-current rules of the Arbitration Service of Portland, Inc. The resolution of any controversy or claim as determine by the arbitrator will be binding on the parties. Any party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies pending an arbitrator’s resolution of any controversy or claim. Any such action or proceeding – or any action or proceeding to confirm, vacate, modify or correct the award of the arbitrator – will be litigated in courts located in Deschutes County, Oregon. Each party consents and submits to the jurisdiction of any court located in Deschutes County, Oregon.

Section 29. Costs and Attorney Fees

If an Event of Default occurs under this Lease, Tenant shall pay to Landlord, immediately upon Landlord’s demand, any and all attorney fees incurred by Landlord in attempting to interpret, enforce the terms of this Lease and/or collect any amounts owed under this Lease, regardless of whether any suit or other action is filed. If any arbitration or litigation is instituted
to interpret, enforce, or rescind this Lease, including, but not limited to, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim shall be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party’s reasonable attorney fees and other fees, costs, and expenses of every kind, including, but not limited to, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

Section 30. Entire Agreement

This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Tenant and Landlord that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease.

Section 31. Applicable Law

This Lease shall be governed by, and construed in accordance with, the laws of the state of Oregon.

Section 32. Covenants to Bind and Benefit Parties

Subject to the limitations set forth in Section 19, the covenants and agreements contained in this Lease shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns.

Section 33. Captions

The captions of this Lease are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

Section 34. Recordation of Lease

If required as a condition of obtaining financing for the Project, Tenant may cause a copy of this Lease or a memorandum, executed and acknowledged by both parties, be recorded in the public records of Deschutes County, Oregon. Tenant shall pay the recording costs.

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease to be executed by their duly authorized officers.

Landlord: Tenant:

Bend Park & Recreation District Deschutes Academy and Futbol Club

By: ___________________________ By: ___________________________
MEMORANDUM OF UNDERSTANDING

Dated: _____________, 2012

Parties:

BEND METRO PARK AND RECREATION DISTRICT, an Oregon Special District (hereinafter referred to as “District”)
799 SW Columbia Street
Bend, OR 97702

DESCHUTES ACADEMY FUTBAL CLUB (d/b/a Oregon Rush), an Oregon non-profit corporation (hereinafter referred to as “Rush”)
PO Box 8340
Bend, OR 97701

(Collectively “the Parties”)

WHEREAS Rush desires a home facility with dedicated field space for its competitive soccer club and related programs and events

WHEREAS District does not have the capacity within its current field inventory to allocate consistent field space to meet the needs of Rush

WHEREAS District has four soccer/multi-purpose fields planned for the Phase 2 development at Pine Nursery Community Park but does not currently have the need or funding to develop these fields

WHEREAS Rush desires to fund the development and operation of the Phase 2 fields at the Pine Nursery in order to serve as their future home

WHEREAS Rush wishes to coordinate and share the use of these fields to provide space for the needs of other competitive sport organizations needing multi-purpose field space

WHEREAS District and Rush agree that having dedicated field space for Rush and other competitive sport organizations results in more capacity and space for community and recreation program use
NOW, THEREFORE it is the desire of the Parties to engage in a collaborative relationship for purposes of developing and operating the Phase 2 Soccer/Multipurpose fields at the Pine Nursery.

This Memorandum of Understanding ("MOU") is non-binding but intended to set forth the proposed terms of a potential relationship between the parties for purposes of pursuing the Project. It is the intent of the Parties to enter into a binding Partnership Agreement ("Agreement") for the Project in the near future, which Agreement shall further define the Parties’ responsibilities for the development, operation and maintenance of the soccer/multi-purpose fields.

Project Description

1. The Project consists of four soccer/multi-purpose fields at the Pine Nursery Community Park identified in the Phase 2 Master Plan attached, and hereinafter referred to as "the Project".

2. The Pine Nursery Community Park Master Plan shows four multi-use fields. It is anticipated the Project would include constructing two natural turf and two artificial turf fields, irrigation, fencing, lighting and fixtures.

3. The Project may also include a field house to serve as offices, meeting space, changing rooms, and equipment storage for Rush.

4. The Project scope of work and budget will be agreed upon by District and Rush prior to entering into a formal Partnership Agreement.

District Obligations

1. District will provide the land identified for the Project.

2. District will provide the infrastructure improvements required to develop the Project, including access drives, parking lots, utilities, restrooms and offsite improvements pending an affirmative vote on a November 2012 District bond measure.

3. District will manage the land use and permit process required to develop the Project.
4. District will provide and/or approve all plans, specification and improvements for the Project.

5. Once built, District will maintain the infrastructure including access drives, parking lots, restrooms and offsite improvements for the benefit of the public as there are other community uses that he infrastructure improvements will support.

6. Once built, District may provide maintenance services for fields and related fixtures to Rush where requested or required at a cost to be determined.

Rush Obligations

1. Rush will fund the full development costs of the Project as agreed upon by both parties. In-kind materials donations and/or labor contributions are permissible provided that they meet or exceed project specifications and comply with applicable laws and contracts.

2. All funding and resources required for the Project must be secured prior to commencement of the construction unless otherwise agreed upon by District.

3. Once built, Rush will fund the maintenance and operation of the fields and related fixtures to District specifications. All or portions of this could be contracted to District in a future agreement.

4. Rush will abide by all District Rules and Regulations, and all other applicable laws and regulations in the development and operation of the Project.

Use of Fields

1. Rush shall have priority use of the four fields and manage the scheduling of the fields.

2. District shall have first priority for use of fields when not being use for Rush activities. There will be no charge for District use of the fields.

3. Rush will provide equitable distribution of field space to other competitive sport organizations when not used by Rush or District. Rush may charge and collect fees for these uses; however, fees schedules must be agreed upon by both Rush and District.
4. Rush will coordinate and approve large events with District to ensure there is no conflict with other events taking place at Pine Nursery Community Park and to ensure compliance with District policy.

5. Access and use of the infrastructure supporting the fields will be open to public access unless otherwise approved by District for special events.

6. The Project and subsequent Agreement is expected to meet the current needs of Rush and eliminate Rush requirements for other District field use with the exception of tournaments and special events.

**Ownership and Lease**

1. All Project assets will be owned by District unless otherwise agreed upon.

2. District will lease the four fields and related fixtures to Rush for 30-years at $1.00 per year.

3. The lease will be nontransferable. Should Deschutes Academy Futbol Club d/b/a Oregon Rush cease to exist, the lease will be terminated. Any future organization would be required to negotiate with District for use of facilities.

**Timeline**

1. The Project as described is dependent on an affirmative vote on a November 2012 District bond measure to fund the infrastructure improvements.

2. The Parties shall diligently and in good faith attempt to negotiate and execute a binding Partnership Agreement incorporating the terms set forth herein with the goal of executing the Agreement as soon as reasonably possible following the November 2012 District bond election.

3. Upon the Parties’ execution of a binding Agreement, the Parties will begin performing their respective obligations in a timely manner and without due delay.
4. The goal for completion of the Project pending an affirmative District bond measure and successful Rush fundraising efforts would be the spring of 2014.

District

________________________________________
By

________________________________________
Print

________________________________________
Its

RUSH

________________________________________
By

________________________________________
Print

________________________________________
Its
AGENDA DATE: December 17, 2013

SUBJECT: Resolution No. 360, clarifying classifications of SDC Fees

STAFF RESOURCE: Michelle Healy, Strategic Planning and Design Director
Lindsey Lombard, Finance Director
Don Horton, Executive Director

PREVIOUS BOARD ACTION: Adopted Ordinance 8 – System Development Charges and Resolution No. 311, adopting a Methodology for Calculating Park System Development Charges, effective March 3, 2009.

ACTION PROPOSED: Adopt BMPRD Resolution No. 360, clarifying classifications of the SDC fee.

STRATEGIC PLAN:
Theme: Financial Stewardship
Objective 1: Maintain financial stability
Initiative: Provide responsible financial planning and management to support the district’s existing and future levels of service.

BACKGROUND

The district’s Ordinance 8 – System Development Charges imposes System Development Charge (SDC) fees on all new residential dwelling units within the district to provide funds for the future public park needs of district residents. The district’s Methodology for Calculating Park System Development Charges outlines the district’s park SDC methodology and specifies allowable SDC fees the district can charge. It also established fee categories for Single-family, Multi-family and Guest Room (hotel/motel) residential dwelling units. Both of these documents were adopted by the district’s board of directors effective March 3, 2009.

Due to the recent and anticipated growth in Bend's higher education services, both Central Oregon Community College (COCC) and OSU-Cascades have plans to build new residence halls for student housing. To date, there have been no dormitories built in the district since it began imposing a park SDC fee, so it was necessary to analyze and determine the correct fee category to be applied to this type of development. Through this analysis, it became evident that the district’s methodology and ordinance do not clearly specify which SDC fee category shall apply to college and/or university student residential housing facilities (dormitories). However, the ordinance does define "hotel or motel" to mean a building, group of buildings, or portion thereof designed or used for occupancy of individuals who are lodged with or without meals. And, the
methodology outlines how the Guest Room (hotel/motel) fee should be applied to each room within this type of building.

**STAFF RECOMMENDATION**

Through analysis of the district's SDC methodology and related ordinance, staff and legal counsel determined that the Guest Room fee category aligns with the application of student residential housing facilities, and that the fee should be applied to each bedroom within a dormitory. Therefore, staff recommends that the board adopt Resolution No. 360 which specifically defines the appropriate fee classification category for dormitories.

**BUDGETARY IMPACT**

This resolution will not have a budgetary impact; it is only to provide a more clear direction on the appropriate SDC fee to be charged on residence halls/dormitories.

**MOTION**

*I move to adopt Resolution No. 360, Clarifying Classifications for System Development Charges, effective January 1, 2014.*

**ATTACHMENT**

Resolution No. 360, Clarifying Classifications for Systems Development Charges
BMPRD RESOLUTION NO. 360

A RESOLUTION OF THE BEND METRO PARK AND RECREATION DISTRICT
BOARD OF DIRECTORS CLARIFYING CLASSIFICATIONS FOR SYSTEM
DEVELOPMENT CHARGES

WHEREAS, pursuant to ORS 223.297 et seq., the district has adopted BMPRD Ordinance No. 8 System Development Charges and Resolution No. 311 A Methodology for Calculating Park System Development Charges; and

WHEREAS, BMPRD Ordinance No. 8 imposes system development charge ("SDC") fees on all new residential dwelling units within the district to provide funds for the future public park needs of the residents of the District; and

WHEREAS, the Methodology established fee categories for Single-family dwelling, Multi-family dwelling and Guest Room; and

WHEREAS, the Ordinance and Methodology do not clearly identify which SDC fee category shall apply to college and/or university student residential housing facilities (dormitories); and

WHEREAS, the Board of Directors finds the need to more clearly identify which SDC fee category shall apply to various dwelling unit types in order to allow for more consistent fee application by the District, the County and the City of Bend.

NOW, THEREFORE, the Board of Directors hereby resolves as follows:

1. The Single Family Dwelling Unit fee shall be applied to a building designed or used for residential purposes by not more than one family and containing one dwelling unit only, including duplexes, manufactured homes and townhomes.

2. The Multi-Family Dwelling Unit fee shall be applied to a building or portion thereof designed or used as a residence by three or more families and containing three or more dwelling units on a single parcel of land, including triplexes and apartment units.

3. The Guest Room fee shall be applied to each bedroom in a building, group of buildings, or portion thereof designed, intended or used for occupancy of transient individuals, and other transient lodging facilities.

4. The Guest Room fee shall also be applied to an accessory dwelling unit (ADU), which is a second dwelling unit created on a lot with a single-family dwelling unit, whether created at the same time as or subsequent to construction of the single-family dwelling. The second unit is created auxiliary to, and is always smaller than, the primary single-family dwelling unit.
5. The Guest Room fee shall also be applied to each bedroom in a college and/or university residential housing facility (dormitory) intended or used for occupancy of higher education students on a non-year-round basis.

6. This Resolution shall take effect January 1, 2014.

ADOPTED by the Board of Directors of the District on this 17th day of December 2013.

______________________________
Scott Wallace, Board Chair

Attest:

______________________________
Don P. Horton, Executive Director
Board Calendar
2013-14

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

January 7 - Board Workshop
◆ Financial Forecast
◆ SDC Fund Forecast
◆ CIP prioritization
◆ Strategic Plan/Annual Action Plan
◆ Business/Concessions in Parks Policy
◆ SDC Land Costs
◆ Comp & Class Study

January 21
Work Session
◆ Recreation Cost Recovery/Subsidy Allocation
◆ Easement Policy
◆ Sport field utilization report
◆ Pine Nursery project scope

Business Session
◆ Financial Statement Audit
◆ Receive Budget Committee member applications
◆ Approve First Street Rapids Park Master Plan
◆ Approve Discovery Park Master Plan
◆ Approve Reed Market/15th Street Agreement
◆ Senior Center Renovation A&E Contract Award
◆ Shevlin Park Resource Management Plan Contract
◆ Deschutes River Trail P&E Contract Award

February 4
Work Session
◆ CIP review
◆ Needs-based assistance program/scholarships
◆ Inclusion Services Report
◆ Business Activity in Parks Policy
◆ Riley Ranch Update

Business Session
◆ Appoint Budget Committee member(s)
◆ Approve Easement Policy*
◆ Approve Alpine Trailhead Plan
◆ Simpson Pavilion

February 18
Work Session
◆ Performance Management System
◆ Natural areas/open spaces/trails standards
◆ Enforcement of rules and regulations in parks system
◆ Recreation participation rates and demographic report
◆ Simpson Pavilion Update
Business Session
◆ Approve Canal Row Master Plan
◆ Skyline ADA improvements Construction Contract Award

March 4
Work Session
◆ CIP review/project update
◆ East side community-building
◆ Financial Policies*
◆ Website (current use, format and future)

Business Session
◆ Approve McKay Park Master Plan
◆ Approve Senior Center Phase 1 Final Concept Plan & Cost Estimate
◆ Award Alpine Construction Contract
◆ Approve CA Contract for Colorado Dam
◆ Miller’s Landing Boardwalk Construction Award

March 18
Work Session
◆ Role of volunteers in the organization
◆ Needs-Based Assistance Plan 2014-15
◆ Recreation Initiatives Progress Report
◆ Riley Ranch Update
◆ Natural Area Management discussion

Business Session
◆ Approve Simpson Pavilion Concept

April 1
Work Session
◆ Future of P&R Foundation

Business Session
◆ Approve ADA Transition Plan
◆ Recreation Plan Adoption

April 15
Work Session

Business Session
◆ Colorado Dam Safe Passage Construction Contract Award
◆ McKay Park A&E contract award

April 22 - Budget Committee Tour
May 6 – Election Day
Work Session
◆ New messaging campaign materials

Business Session
◆ Set SDC fee schedule – Resolution (discuss methodology review)

May 12, 14 & 20 – Budget Meetings

May 20
Work Session

Business Session
◆ Award Senior Center Construction Contract
◆ Approve Riley Ranch Nature Reserve Master Plan
◆ Award Simpson Pavilion Construction Contract

June 3
Work Session
◆ Facilities Maintenance Standards
◆ Annual Action Plan Year End Report

Business Session
◆ Adopt budget & impose taxes
◆ Adopt CIP
◆ Pine Nursery Construction Award – fields, playground, lighting, etc.
◆ Approve Simpson Site Master Plan

June 17
Work Session
◆ Recreation Report – School Year 2013-14

Business Session
◆ First Street Rapids Park Construction Contract Award
◆ Canal Row Park Construction Contract Award

TBD
Skate Park Master Plan
Approve Riley Ranch Construction Contract – July/August 2014