

ORDINANCE NO. NS -2339

AN ORDINANCE ANNEXING APPROXIMATELY 245 ACRES OF LAND IN THE WEST UGB EXPANSION MASTER PLAN AREA 1, FOR THE DISCOVERY WEST MASTER PLANNED DEVELOPMENT, ALONG WITH THE ADJACENT SKYLINERS ROAD, AND REQUESTING JURISDICTIONAL TRANSFER OF THE RIGHT OF WAY PER ORS 393.270.

Findings:

- A. Bend Development Code Section 4.9.400A.1 provides for annexation of real property to cities when 100 percent of the property owners and a majority of electors, if any, registered in the territory proposed to be annexed consent to the annexation.
- B. The City received an application for annexation of the territory shown on Exhibit A and described in Exhibit B (the "Area").
- C. One hundred percent of property owners within the Area have filed a statement of consent to this annexation.
- D. There are no registered electors within the Area.
- E. Public notice for the City Council hearing was provided in accordance with the requirements of BDC 4.9.300.A.3, and BDC 4.1.423-4.1.425. On April 25, 2019, notice was mailed by the Planning Division to surrounding owners of record of property within 250 feet of the subject properties, and to the Summit West and Century West Neighborhood Association representatives. Notice was also posted in four public places on April 25, 2019, and posted in The Bulletin on April 27 and May 4, 2019. On April 26, 2019, *Notice of Proposed Development* signs were posted by the applicant along the property frontages at three locations, visible from adjacent rights of way.
- F. Council held a public hearing on May 15, 2019 to enable the public to appear and be heard on the question of annexation.
- G. The Area is contiguous to the City limits of the City of Bend along the east boundary of the properties and the adjacent Skyliners Road right of way is part of the annexation area.
- H. The applicant has entered into an Annexation Agreement with the City, attached as Exhibit C.
- I. The City of Bend deems it necessary and expedient for the City to acquire jurisdiction from Deschutes County over the portion of Skyliners Road, a County road, within the annexed area.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The territory containing approximately 245 acres of land and the adjacent Skyliners Road, as depicted in Exhibit A and described in Exhibit B, is annexed to the City of Bend, subject to the provisions of the Annexation Agreement attached as Exhibit C.

Section 2. In addition to the findings set forth above, the City Council adopts and incorporates the findings in Exhibit D.


Section 3. On the date the annexation becomes effective, the UA District will cease to apply and the zoning map will be automatically updated with the zoning district that implements the underlying Comprehensive Plan map designation, in accordance with the Discovery West Master Planned Development and BDC 4.9.700 *Zoning of Annexed Areas*.

First Reading: May 15, 2019

Second reading and adoption by roll call vote: June 5, 2019

YES: Sally Russell, Mayor
Bruce Abernethy
Barb Campbell
Chris Piper
Gena Goodman-Campbell

NO: none



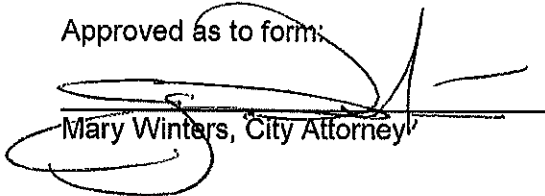
Sally Russell, Mayor

ATTEST:

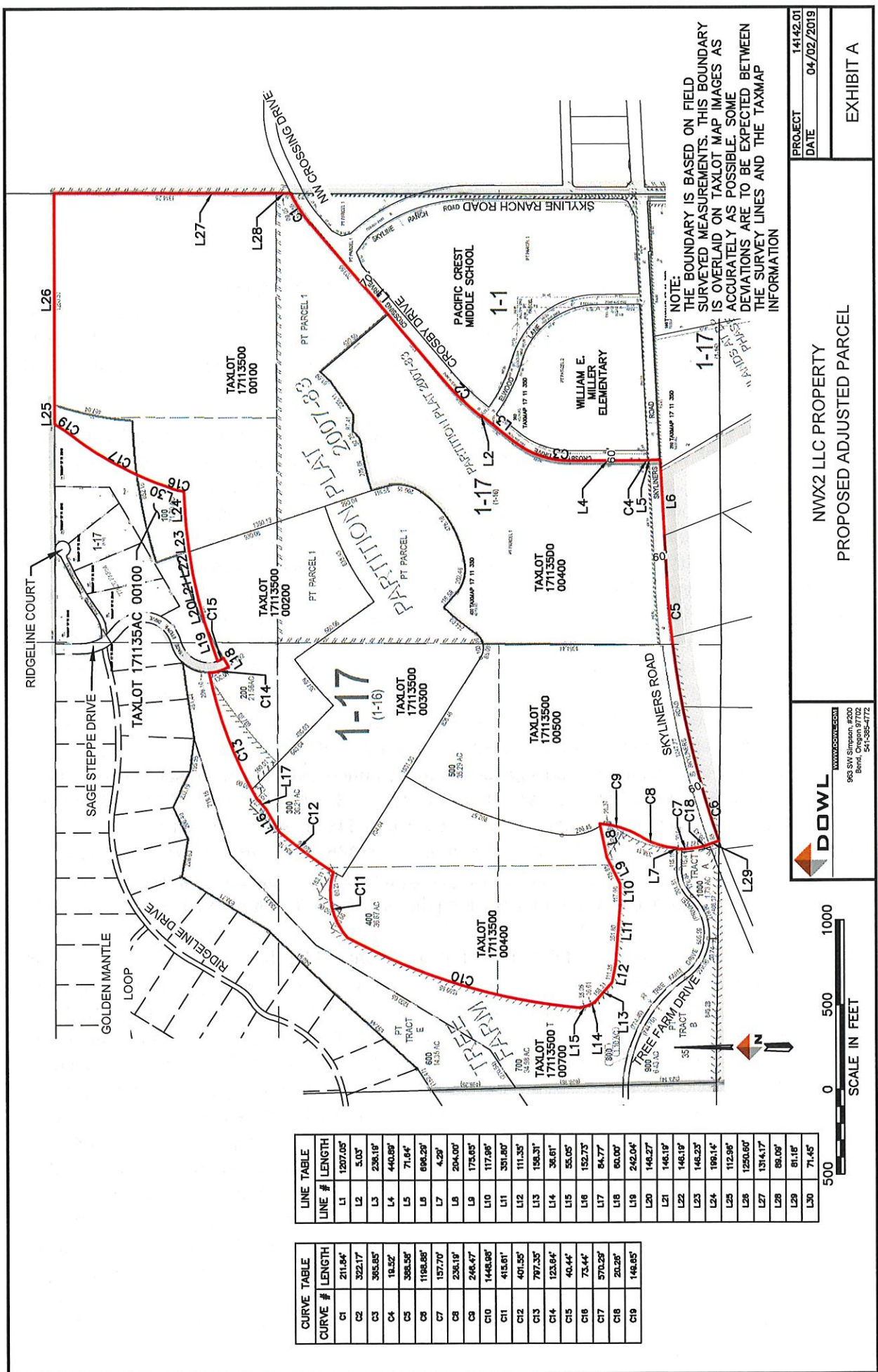


Robyn Christie, City Recorder

Approved as to form:



Mary Winters, City Attorney



NOTE:
THE BOUNDARY IS BASED ON FIELD SURVEYED MEASUREMENTS. THIS BOUNDARY IS OVERLAID ON TAXLOT MAP IMAGES AS ACCURATELY AS POSSIBLE. SOME DEVIATIONS ARE TO BE EXPECTED BETWEEN THE SURVEY LINES AND THE TAXMAP INFORMATION

PROJECT 14142.01
DATE 04/02/2019

NWX2 LLC PROPERTY
PROPOSED ADJUSTED PARCEL



EXHIBIT A

LINE #	LENGTH
L1	1207.05'
L2	5.03'
L3	236.18'
L4	440.89'
L5	71.64'
L6	698.29'
L7	4.29'
L8	204.00'
L9	175.05'
L10	117.95'
L11	351.80'
L12	111.35'
L13	158.31'
L14	36.61'
L15	55.05'
L16	152.73'
L17	54.77'
L18	50.00'
L19	242.04'
L20	148.27'
L21	146.19'
L22	146.19'
L23	146.23'
L24	199.14'
L25	112.98'
L26	1250.60'
L27	1314.17'
L28	89.09'
L29	81.18'
L30	71.45'

CURVE #	LENGTH
C1	211.84'
C2	322.17'
C3	395.85'
C4	19.52'
C5	395.58'
C6	1198.88'
C7	157.70'
C8	236.18'
C9	246.47'
C10	1448.98'
C11	415.81'
C12	401.55'
C13	797.35'
C14	36.61'
C15	40.44'
C16	73.44'
C17	570.29'
C18	20.26'
C19	148.85'





EXHIBIT B
NWX2 Property
Legal Description

A parcel of land located in the South one-half of the Northeast one-quarter (S1/2 NE1/4), the Southeast one-quarter (SE1/4), the Southwest one-quarter (SW1/4), and the South one-half of the Northwest one-quarter (S1/2 NW1/4) of Section 35, Township 17 South, Range 11 East of the Willamette Meridian, Deschutes County, State of Oregon, being more particularly described as follows:

Beginning at the East One-quarter corner of said Section 35; thence along the east line of said Section 35, S 00° 13' 54" W a distance of 89.09 feet to a point on the northerly right of way of NW Crossing Drive, as defined by Dedication Deed recorded as Instrument Number 2014-29653 in the Deschutes County Official Records, said point being a point of non-tangent curvature; thence leaving said east line of Section 35 and along said northerly right of way line for the following four courses; thence along the arc of a 836.00 foot radius curve to the left, through a central angle of 14° 31' 07", an arc distance of 211.84 feet (the chord of which bears S 56° 55' 07" W, 211.27 feet) to a point of tangency; thence S 49° 39' 33" W a distance of 1207.05 feet to a point of curvature; thence along the arc of a 1650.00 foot radius curve to the left, through a central angle of 11° 11' 14", an arc distance of 322.17 feet (the chord of which bears S 44° 03' 56" W, 321.66 feet) to a point of non-tangency; thence S 49° 38' 10" E a distance of 5.03 feet to a point on the westerly right of way of NW Crosby Drive, as defined by Dedication Warranty Deed recorded as Instrument Number 2008-14744 in the Deschutes County Official Records; thence leaving said northerly right of way and along said westerly right of way line for the following five courses; thence S 38° 27' 35" W a distance of 236.19 feet to a point of non-tangent curvature; thence along the arc of a 545.00 foot radius curve to the left, through a central angle of 38° 27' 44", an arc distance of 365.85 feet (the chord of which bears S 19° 14' 34" W, 359.02) to a point of non-tangency; thence S 00° 00' 56" W a distance of 440.89 feet to a point of curvature; thence along the arc of a 368.03 foot radius curve to the left, through a central angle of 03° 02' 22", an arc distance of 19.52 feet (the chord of which bears S 01° 30' 15" E, 19.52 feet) to a point of non-tangency; thence S 02° 51' 14" E a distance of 11.64 feet to a point on the northerly right of way of Skyliners Road; thence leaving said westerly right of way and along said northerly right of way line for the following three courses; thence S 86° 58' 51" W a distance of 696.29 feet to a point of non-tangent curvature; thence along the arc of a 5596.39 foot radius curve to the left, through a central angle of 04° 01' 17", an arc distance of 392.80 feet (the chord of which bears S 84° 58' 48" W, 392.72 feet) to a point of non-tangent compound curvature, said point being at the intersection of said north right of way and the north-south center section line; thence continuing along said north right of way along the arc of a 5673.80 foot radius curve to the left, through a central angle of 12° 13' 58", an arc distance of 1211.37 feet (the chord of which bears S 76° 50' 09" W, 1209.07 feet) to a point of non-tangency; thence leaving said northerly right of way line of Skyliners Road, N 18° 58' 33" W a distance of 21.17 feet to a point of curvature; thence along the arc of a 211.53 foot radius curve to the right, through a central angle of 05° 29' 17", an arc distance of 20.26 feet (the chord of which bears N 16° 13' 55" W, 20.25 feet) to a point of non-tangent compound curvature; thence along the arc of a 619.98 foot radius curve to the right, through a central angle of 14° 34' 27", an

arc distance of 157.70 feet (the chord of which bears N 05° 46' 42" W, 157.28 feet) to a point of non-tangency; thence S 89° 21' 50" E a distance of 4.29 feet to a point of non-tangent curvature; thence along the arc of a 482.17 foot radius curve to the right, through a central angle of 28° 03' 57", an arc distance of 236.19 feet (the chord of which bears N 18° 44' 34" E, 233.84 feet) to a point of non-tangent reverse curvature; thence along the arc of a 524.82 foot radius curve to the left, through a central angle of 26° 54' 28", an arc distance of 246.47 feet (the chord of which bears N 16° 54' 10" E, 244.21 feet) to a point of non-tangency; thence S 78° 33' 23" W, a distance of 204.00 feet to a point on the easterly boundary of the plat of Tree Farm, recorded in Plat Cabinet I, Pages 260 through 278, and as Instrument Number 2016-44585 of the Deschutes County Official Records; thence along said easterly boundary for the following eight courses; thence S 63° 19' 11" W a distance of 175.65 feet; thence N 89° 47' 06" W a distance of 117.96 feet; thence N 85° 21' 59" W a distance of 351.80 feet; thence N 79° 44' 20" W a distance of 111.35 feet; thence N 48° 08' 56" W a distance of 158.31 feet; thence N 29° 30' 12" W a distance of 36.61 feet; thence N 14° 48' 33" W a distance of 55.05 feet to a point of non-tangent curvature; thence along the arc of a 3556.55 foot radius curve to the right, through a central angle of 23° 20' 34", an arc distance of 1448.98 feet (the chord of which bears N 16° 47' 22" E, 1438.98 feet) to a point of non-tangent curvature; thence leaving said easterly boundary, along the arc of a 400.00 foot radius curve to the right, through a central angle of 59° 31' 52", an arc distance of 415.61 feet (the chord of which bears N 77° 43' 52" E, 397.16 feet) to a point on the easterly boundary of said plat of Tree Farm and a point of non-tangent curvature; thence along said easterly boundary, along the arc of a 3256.41 foot radius curve to the right, through a central angle of 07° 03' 54", an arc distance of 401.55 feet (the chord of which bears N 36° 36' 40" E, 401.29 feet) to a point of non-tangency; thence leaving said easterly boundary, N 59° 27' 16" E a distance of 152.73 feet; thence N 49° 03' 46" E a distance of 84.77 feet to a point of non-tangent curvature; thence along the arc of a 2548.38 foot radius curve to the right, through a central angle of 17° 55' 37", an arc distance of 797.35 feet (the chord of which bears N 69° 14' 47" E, 794.10 feet) to a point on the westerly right of way of Sage Steppe Drive, as defined by said plat of Tree Farm, and a point of non-tangent curvature; thence along said westerly right of way, along the arc of a 230.00 foot radius curve to the left, through a central angle of 30° 48' 03", an arc distance of 123.64 feet (the chord of which bears S 16° 17' 47" E, 122.16 feet) to a point on the easterly boundary of said plat of Tree Farm and a point of non-tangency; thence along said easterly boundary, N 58° 16' 15" E a distance of 60.00 feet to a point on the easterly right of way of said Sage Steppe Drive and a point of non-tangent curvature; thence leaving said easterly boundary and along said easterly right of way, along the arc of a 170.00 foot radius curve to the right, through a central angle of 13° 37' 43", an arc distance of 40.44 feet (the chord of which bears N 24° 52' 16" W, 40.34 feet) to a point of non-tangency; thence leaving said easterly right of way, N 71° 34' 07" E a distance of 242.04 feet; thence N 75° 12' 26" E a distance of 146.27 feet; thence N 77° 56' 29" E a distance of 146.19 feet; thence N 80° 40' 32" E a distance of 146.19 feet; thence N 83° 24' 36" E a distance of 146.23 feet; thence N 86° 32' 47" E a distance of 199.14 feet to a point of non-tangent curvature; thence along the arc of an 285.00 foot radius curve to the right, through a central angle of 14° 45' 53", an arc distance of 73.44 feet (the chord of which bears N 12° 41' 04" E, 73.24 feet) to a point of tangency; thence N 20° 04' 00" E, 71.45 feet to a point of curvature; thence along the arc of a 1885.00 foot radius curve to the right, through a central angle of 17° 20' 04", an arc distance of 570.29 feet (the

chord of which bears N 28° 44' 02" E, 568.12 feet) to a point of reverse curvature; thence along the arc of a 1465.00 foot radius curve to the left, through a central angle of 05° 51' 09", an arc distance of 149.65 feet (the chord of which bears N 34° 28' 29" E, 149.58 feet) to a point on the north line of said plat of Tree Farm, being a point on the north line of the South one-half of the Northeast one-quarter (S 1/2 NE 1/4) of said Section 35 and a point of non-tangency; thence along said north line, S 89° 57' 40" E a distance of 112.96 feet to the northeast corner of said plat; thence leaving said plat and continuing along said north line of the South one-half of the Northeast one-quarter, S 89° 57' 40" E a distance of 1250.60 feet to the North 1/16th corner common to said Section 35 and Section 36, Township 17 South, Range 11 East of the Willamette Meridian; thence along said east line of Section 35, S 00° 14' 07" W a distance of 1314.17 feet to said East One-quarter corner of said Section 35 and the Point of Beginning. Said parcel contains 246 acres, more or less.

Together With a tract of land being that portion of Skyliners Road's 60 foot right-of-way lying immediately adjacent to the parcel described above. Said tract contains 3.1 acres more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Lynn J Bruno

OREGON
JULY 25, 1988
LYNN J BRUNO
02335

RENEWAL DATE: 12-31-79



\$143.00

D-ANXCON Cnt=1 Stn=2 AS
\$65.00 \$11.00 \$61.00 \$10.00 \$6.00

06/04/2019 12:34 PM

After recording, return to:
Colin Stephens
City of Bend
Community Development Department
710 NW Wall St.
Bend, OR 97701

DISCOVERY WEST ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement") is made this 30th day of May, 2019 between the City of Bend ("City") and NWX2 LLC ("Owner"), the owner of record of the property described in Exhibit A and shown on Exhibit B ("Property").

The purposes of this Agreement is to set forth how public facility and services impacts arising from the development of the Property will be adequately mitigated either through this agreement or another funding mechanism approved by the City Council.

RECITALS

A. The Owner intends to develop the Property pursuant to the Bend Comprehensive Plan (BCP). The Property is within the City's urban growth boundary and is contiguous to the city limits at Skyliners Road and NW Crossing Drive. The Property is eligible for annexation subject to Bend Development Code ("BDC") Chapter 4.9.

B. The Property consists of approximately 245 acres located in the West Expansion Area that is subject to the requirements and limitations of the BCP Specific Expansion Area Policies 11-100 through 11-108, including the requirement that development is subject to a major community master plan approval under BDC Chapter 4.5.

C. The Property is currently zoned Urbanizable Area ("UA") and is designated Residential Urban Low Density ("RL") (224 Acres), Mixed Employment ("ME") (14 acres), and Commercial Limited ("CL") (7 acres) by the BCP Map.

DISCOVERY WEST ANNEXATION AGREEMENT
PZ 19-0222
Brooks Resources Corporation
Dale Van Valkenburg
409 NW Franklin Avenue
Bend, OR 97703

D. The Owner and the owners of all of the land in the West Expansion Area, the Shevlin Expansion Area, and areas in Deschutes County adjacent to these areas, entered into a statutory development agreement (ORS 94.504 to 94.528) with the City ("Development Agreement"). The Development Agreement provides for the construction, financing, sequencing, and mitigation payments for all off-site impacts to the transportation, sewer, and water systems arising from urbanization or development of the properties subject to the Development Agreement. The Development Agreement was approved by the City Council by Ordinance NS-2316, and became effective on November 16, 2018. The Development Agreement did not cover impacts to State transportation facilities under the Transportation Planning Rule (OAR Chapter 660, Division 12). It also did not cover on-site improvements or off-site improvements other than off-site sewer, water, and transportation improvements, but provided that those impacts would be addressed through subsequent master plan approval. The City and the other signatories are bound by Development Agreement for fifteen years. The Development Agreement qualifies as a funding agreement approved by the City Council for purposes of the BDC annexation criteria.

E. On December 17, 2018, the Owner submitted a request to the City for approval of a Major Community Master Plan (City File No. PZ 18-1015) ("Discovery West Project").

F. On March 26, 2019, the Owner submitted a request to annex the Property to the City (City File No. PZ 19-0222).

G. Annexation of the Property requires a showing under BDC 4.9.600 that the annexation is consistent with the BCP policies and designations; that the Property complies or is exempt from having an approved master or area plan; that the area is capable of being served by public facilities and services; that impacts to public facilities and services are adequately mitigated; and that the Owner has agreed to transfer irrigation district water rights, if any, from the Property or that the City Council agrees to allow irrigation water to continue to be used after annexation.

H. In order to meet the preceding criteria and to satisfy the City's conditions for an affirmative decision to annex the Property, and in exchange for the obligations of the City set forth below in Section 2, the Owner agrees to comply with all requirements imposed in this Agreement and all other City codes and standards applicable to the development of the Property under Paragraph 3 of this Agreement. This Agreement is consistent with and intended to implement Policies 11-100 to 11-108 and other applicable policies of the BCP.

AGREEMENT

Based upon the Recitals, which are incorporated as part of this Agreement, the parties agree as follows:

1. Obligations of the Owner. Consistent with the above Recitals, Owner agrees to perform the obligations of this Agreement and comply with and meet all City codes, standards, and regulations. All exhibits attached are conceptual and nothing in this Agreement prohibits refinements to meet City standards as part of the required development applications.

1.1 Master Plan Approval. Owner shall obtain approval of a Major Community Master Plan under BDC Chapter 4.5 for Discovery West ("Discovery West Master Plan") concurrent with approval of this Annexation Agreement. The City will not execute this Agreement until the Discovery West Master Plan is approved by the City Council.

1.2 Water. Owner shall complete or mitigate the off-site water improvements as required in the Development Agreement and shall complete the onsite water improvements as required by the Discovery West Master Plan approval.

1.3 Sewer. Owner shall complete or mitigate the off-site sewer improvements as required in the Development Agreement and shall complete the onsite sewer improvements as required by the Discovery West Master Plan approval.

1.4 Transportation.

1.4.1 Owner shall complete or mitigate the off-site vehicular transportation improvements as required in the Development Agreement and shall complete the onsite transportation improvements or off-site non-vehicular transportation improvements as required by the Discovery West Master Plan approval.

1.4.2 Owner will mitigate the impacts of the Discovery West Project on state transportation facilities by payment of \$219,280 to the Oregon Department of Transportation ("ODOT Payment"). The basis for the ODOT Payment is explained in the application narrative attached to Owner's application for annexation incorporated by reference into this Agreement. The ODOT Payment will be apportioned among the phases of the Discovery West Project set forth in the Discovery West Master Plan based upon the number of PM peak hour trips generated by the particular phase in relation to the total PM peak hour trips generated by the Discovery West Project at buildout (959 total trips = \$229 per trip). The number of trips generated by each phase will be determined based upon the formula set forth in Section 4.1.3 of the Development Agreement ("Tracking and Accounting for Trips"). Owner will pay the proportionate

share of the ODOT payment for each phase prior to or on the date of final plat approval for that phase. Notwithstanding the foregoing, Owner may prepay all or any remaining portion of the ODOT Payment at any time prior to the date that payment is otherwise due under this Agreement. The Owner will make payment to the City on behalf of ODOT or directly to ODOT as the City and ODOT may determine.

1.5 Stormwater.

1.5.1 Owner will hold all stormwater on site. The Owner shall complete all on-site stormwater requirements as required by the Discovery West Master Plan approval.

2. Obligations of the City. Consistent with the above recitals, the City agrees to:

2.1 Process the application for annexing the Property into the City Limits.

2.2 Conduct a timely review of and issue a decision on the Discover West Master Plan applications.

2.3 Acknowledge ODOT's acceptance of the mitigation payment provided in Section 1.4.2 of this Agreement as demonstrating compliance with the Transportation Planning Rule (OAR Chapter 660, Division 12).

3. Covenants Running with the Land. It is the intention of the parties that the terms and obligations of this Agreement are necessary for the annexation and development of the Property and as such will run with the Property and will be binding upon the heirs, executors, assigns, administrators, and successors of the parties and are construed to be a benefit and burden upon the Property. This Agreement must be recorded with the Deschutes County Recorder upon execution. Execution and recording of this agreement are preconditions to the annexation of the Property into the City. These covenants will expire for each portion of the Property upon recording of a final plat for that portion of the Property under the Master Plan. The parties will execute and record any document necessary to release such covenants at the time of recording of the final plat.

4. Limitations on Development. No portion of the Property may be developed prior to the City's final approval of a Major Community Master Plan. Development of the Property under the Major Community Master Plan will be subject to additional land use and permit approval as provided in the Bend Development Code.

5. Mutual Cooperation. The City and Owner will endeavor to cooperate with each other in implementing the terms of this Agreement.

6. Modification of Agreement. This Agreement may be modified only in writing upon mutual agreement of all parties. This Agreement may not be modified such that urban facilities and services are not provided in a timely manner to the Property.

7. Land Use Approval. Nothing in this Agreement is to be construed as waiving any requirements of the Bend Code, Bend Development Code or BCP which may be applicable to the use and development of the Property. Nothing in this Agreement is to be construed as the City providing or agreeing to provide approval of any building, land use, or other development application or grading permit application.

8. Exactions. The Owner knows and understands its rights under *Dolan v. City of Tigard* and its progeny. By entering into this Agreement Owners waives any requirement that the City demonstrate that the public improvements and other obligations imposed on the Owner in the Development Agreement or Major Community Master Plan are roughly proportional to the burden and demands placed upon the urban facilities and services by the development of the Property. The Owner acknowledges that the requirements and obligations of the Owner, including but not limited to the required public improvements, are roughly proportional to the burden and demands on urban facilities and services that will result from development of the Property.

9. Invalidity. If any provision of this Agreement is deemed unenforceable or invalid, such enforceability or invalidity will not affect the enforceability or validity of any other provision of this Agreement.

10. State Law. The validity, meaning, enforceability and effect of this Agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the State of Oregon.

11. Effective Date. This Agreement takes effect upon signature by all parties.

[signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NWX2 LLC

By: Brooks Resources Corporation
Its: Managing Member

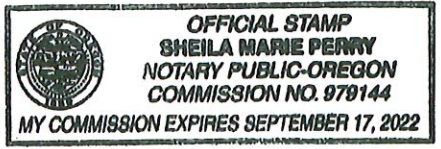
By: [Signature]
Its: President

State of OREGON
County of Deschutes

This record was acknowledged before me on May 28, 2019 by Kirk E. Schueler as President and Chief Executive Officer of Brooks Resources Corporation, Managing Member of NWX2 LLC.

Signature of notarial officer: [Signature]

Stamp:



Title of office: Notary Public for Oregon
My commission expires: 9.17.22

CITY OF BEND

By: [Signature]
Its: CITY MANAGER

State of OREGON

County of Deschutes

This record was acknowledged before me on May 30, 2019 by
Eric King as City Manager of the City
of Bend

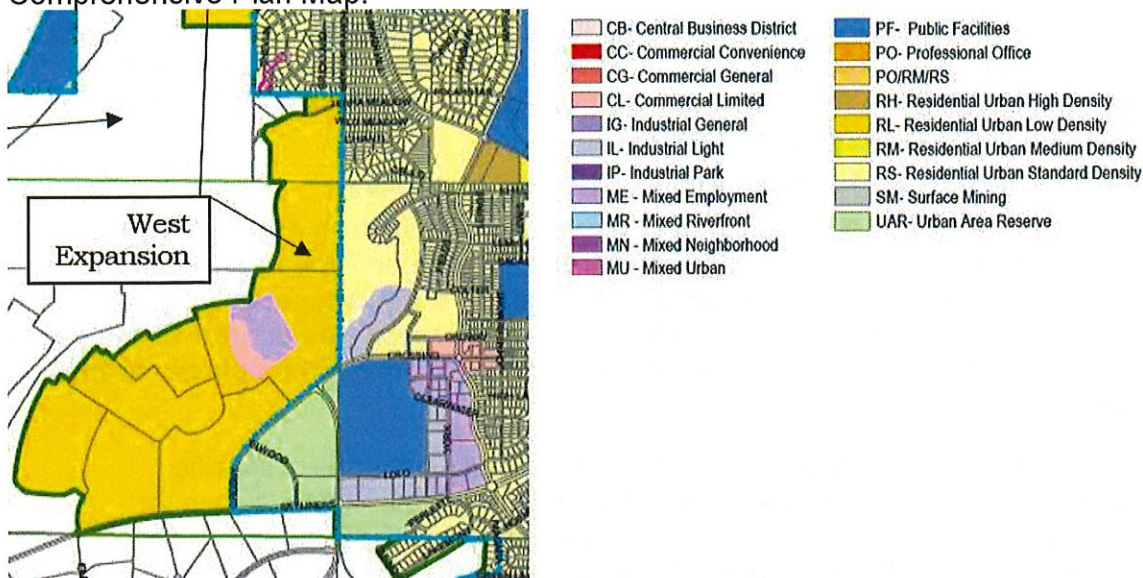
Signature of notarial officer: [Signature]

Stamp:



Title of office: City Manager Office
My commission expires: 1/2/21

2. **ZONING:** The properties are within the recently expanded UGB and are currently zoned Urbanizable Area (UA). The properties in West Expansion Master Plan Area 1 are designated Residential Urban Low Density, Mixed Employment, and Commercial Limited by the Bend Comprehensive Plan Map.



3. **PROPOSAL:** A Type III Quasi-judicial request for Annexation of the UGB West Expansion Master Plan Area 1 for the Discovery West Master Planned Development, including the adjacent Skyliners Road right of way.
4. **PUBLIC NOTICE AND COMMENTS:** Prior to submittal of this application and related applications, the applicants hosted a public meeting on November 12, 2018, in accordance with BDC 4.1.215. Public notice for the City Council hearing was provided in accordance with the requirements of BDC 4.9.300.A.3, and BDC 4.1.423-4.1.425. On April 26, 2019, Notice of Proposed Development signs were posted by the applicant along the property frontages at three locations, visible from adjacent rights of way. On April 25, 2019, notice was mailed by the Planning Division to surrounding owners of record of property within 250 feet of the subject properties, and to the Summit West and Century West Neighborhood Association representatives. Notice was also posted in four public places on April 25, 2019, and posted in The Bulletin on April 27 and May 4, 2019.
5. **APPLICATION ACCEPTANCE DATE:** This Type III Quasi-judicial Annexation petition was submitted on March 26, 2019. The application was deemed complete on April 25, 2019.

APPLICATION OF THE CRITERIA:

Bend Development Code

Chapter 4.9, Annexations

4.9.200 Applicability.

Land to be annexed must be contiguous to the existing City limits.

FINDING: The land to be annexed is contiguous to the existing City limits along the entire eastern boundary.

4.9.300 Review Processes.

A. Annexation. The following general processes apply to all annexation proposals:

- 1. Annexations are reviewed using the Type III or Type IV process as determined by the City, based on a consideration of the factors for treating an application as quasi-judicial or legislative. Since annexations are a jurisdictional transfer, the City Council is the sole review authority.**
- 2. City Council approval of annexations will be by ordinance.**
- 3. Notice of the City Council hearing to consider the annexation proposal must follow the notification process required for the Type III or Type IV application, except a notice of the hearing must be published in a newspaper of general circulation in the City once each week for two successive weeks prior to the day of hearing, and notices of the hearing must be posted in four public places in the City for a like period.**

FINDING: The proposed annexation is initiated by the property owner for a specific group of properties, and is therefore considered a quasi-judicial application. Notice for the City Council Hearing followed the notification process required for Type III applications, as well the requirements for publishing notice in the newspaper and in four public places as required under BDC4.9.300.A.3.

On April 26, 2019, Notice of Proposed Development signs were posted by the applicant along the property frontages at three locations, visible from adjacent rights of way. On April 25, 2019, notice was mailed by the Planning Division to surrounding owners of record of property within 250 feet of the subject properties, and to the Summit West and Century West Neighborhood Association representatives. Notice was also posted in four public places on April 25, 2019, and posted in The Bulletin on April 27 and May 4, 2019.

B. Area and Master Planning. Unless exempted in subsection (B)(1) of this section, expansion areas as shown in Figure 4.9.300 will require area and/or master plan approval prior to or concurrently with annexation. The exemptions to master planning in BDC Chapter 4.5, Master Planning and Development Alternatives, are not applicable to properties in the Urbanizable Area (UA) District. Development in expansion areas must comply with the applicable Bend Comprehensive Plan Specific Expansion Area Policies in Table 4.9.300.

Table 4.9.300 - Specific Expansion Area Policies

Expansion Area	Bend Comprehensive Plan Specific Expansion Area Policies
West Area	11-100 through 11-108

FINDING: The subject property is located in the West expansion area. A major community master plan in accordance with BDC Chapter 4.5 was submitted on December 17, 2018, under PZ 18-1015. On March 11, 2019, the Planning Commission made a recommendation to the City Council for approval of the Discovery West MPD. The Discovery West MPD is scheduled to be heard by the City Council concurrently with this annexation request. As addressed in the Planning Commission findings for PZ 18-1015, the Discovery West MPD complies with Bend Comprehensive Plan Policies 11-100 through 11-108.

4.9.400 Initiation Procedures.

- A. An annexation proposal for the contiguous territory proposed to be annexed may be initiated by petition in compliance with one of the following initiation procedures:**
- 1. All of the owners of land in the contiguous territory proposed to be annexed and not less than 50 percent of the electors, if any, residing in the territory, consent in writing to the annexation of their land in the territory and file a statement of their consent with the City;**

FINDING: The Discovery West property is owned by NWX 2, LLC, who has initiated this application and consented in writing to annexation in compliance with the procedures in A.1. In addition, the 4.2-acre area which was added to the UGB and West Area 1 through PAPA file PZ 18-1007 is owned by Tree Farm LLC. Brooks Resources Corporation is the managing member of both LLCs, and the authorized owner representative, Kirk Schueler, signed the application and annexation consent forms. There are no structures or residents within the territory proposed to be annexed.

4.9.500 Submittal Requirements.

- A. The application must include:**

- 1. A completed and signed annexation application packet on forms provided by the City.**
- 2. A petition including the statement of consent, on City forms, completed by property owners and/or electors residing in the territory that meets the requirements of BDC 4.9.400, Initiation Procedures.**
- 3. Legal description of the territory including abutting right-of-way to be annexed and a boundary survey certified by a registered engineer or surveyor.**
- 4. A map showing the territory including abutting right-of-way to be annexed and properties within 300 feet of the territory.**
- 5. A narrative which addresses the approval criteria in BDC 4.9.600 and the requirements of BDC 4.9.300(B).**

FINDING: The application materials uploaded to ePlans for PZ 19-0222 contain all of the above requirements.

- 6. A letter or other written documentation from the Bend Park and Recreation District which indicates that the applicant has met with the District to discuss the proposed annexation, and provided the District an opportunity to review the annexation area for options to enhance existing parks and trails, and develop new parks and trails.**

FINDING: The applicant states that they met with Park District Staff numerous times over the last year regarding park planning within Discovery West. The applicant provided a letter from the BPRD outlining the relevant points of a tentative agreement between the District and Discovery West for a new comprehensive park and trail plan for the property included in the Discovery West MPD. The park property will primarily be retained as open space with a comprehensive trail network with exception of a planned developed park feature in Phase 14 adjacent to the central street park crossing

7. **A completed and signed Bend Park and Recreation District annexation agreement, unless the property(s) to be annexed is already located within the Bend Park and Recreation District.**

FINDING: The subject property is already located within the boundaries of the Bend Park and Recreation District.

8. **A letter or other written documentation from the Bend-La Pine School District which indicates that the applicant has met with the District to discuss the proposed annexation and provided the District an opportunity to review and comment on the proposed annexation.**

FINDING: The applicant submitted a letter from the Bend-La Pine School District confirming that they discussed the master plan and annexation with the applicant. The letter confirmed that the District does not have a need at this time for additional school facilities in the vicinity of the subject site, and that the District is supportive of the proposed Discovery West MPD.

9. **Territories with irrigation district water rights or other irrigation district facilities must include the following:**

FINDING: The subject property does not include any irrigation district water rights or other irrigation facilities. No comments were received from any of the irrigation districts in response to the notice provided.

10. **If the City has not yet amended its public facilities and transportation plans for the affected expansion area, inclusion of an applicant initiated amendment to the relevant plan(s) or other evidence that the necessary infrastructure planning under Statewide Planning Goals 11 and 12 will take place prior to or concurrently with annexation.**

FINDING: The Westside Infrastructure Group Development Agreement (WIG DA) provides for the timing, construction and funding of infrastructure necessary to support urban development in the West and Shevlin UGB Expansion Areas in accordance with the relevant Comprehensive Plan policies for these areas. This DA was adopted by the City Council in October 2018 and satisfies the necessary infrastructure planning under Statewide Planning Goals 11 and 12. Further, the applicant recently applied for and received approval from the Bend City Council and Deschutes County Board to amend the Bend Transportation System Plan to realign Skyline Ranch Road to a proper topographical location to allow all expansion areas located between Shevlin Park Road and Skyliners Road to be able to construct and access the roadway as it passes between the properties.

4.9.600 Approval Criteria.

A. The City Council may approve, or approve with conditions, the proposed annexation application if all of the following criteria are met:

1. **The annexation proposal is consistent with the Bend Comprehensive Plan policies and plan designations applicable to the territory as determined by the Planning Director or designee.**

FINDING: The proposed annexation is based on the Discovery West Major Community Master Plan, which addresses and implements BCP Policies 11-100 to 11-108 pertaining to the West Expansion Area.

2. The annexation proposal is consistent with an approved area plan and/or master plan, unless exempted in BDC 4.9.300(B)(1).

FINDING: The Bend Planning Commission held a public hearing on the master plan on March 11, 2019, and moved to recommend approval of the master plan to the Bend City Council. The Planning Commission findings are attached as an exhibit to the Ordinance for City Council consideration under PZ 18-1015, which is under review concurrent with this annexation request.

3. The proposal demonstrates how the annexed territory is capable of being served by public facilities and services with adequate capacity as determined by the City, including sanitary sewer collection, domestic water, transportation, schools, and parks, consistent with the City's adopted public facility plans, transportation system plan, and applicable district plans, either as provided in an applicable area or master plan or by demonstrating how such public facilities and services will be provided in an orderly, efficient and timely manner.

FINDING: The Westside Infrastructure Group Development Agreement (WIG DA) approved under city file PZ 18-0696 (Ordinance NS-2316, effective November 16, 2018) specifies the timing and extent of sewer, water, and transportation facility improvements necessary to support the uses contemplated in the Bend Comprehensive Plan for the entire West and Shevlin UGB expansion. The WIG DA includes a Transportation Analysis prepared by Kittelson & Associates and findings demonstrating compliance with BDC Chapter 4.7. The findings in support of PZ 18-0696 also conclude that existing sewer and water facilities are currently adequate or will be made adequate with the installation of certain improvements specified in the WIG DA. The provisions of the WIG DA are binding on both the applicant and the City of Bend for a period of 15 years from enactment, to November 16, 2033. Those findings and conclusions adopted in support of Ordinance NS-2316 are incorporated by reference and will be relied upon by both the applicant and the City of Bend to ensure compliance with this criterion.

The annexation agreement attached as Exhibit C includes additional proportionate share mitigation requirements for transportation system improvements needed for the Reed Market/US 97 interchange and the Revere Avenue/US 97 interchange, as identified in the applicants TPR analysis and the response letters from the City of Bend and ODOT.

Comments from the Bend-La Pine School District indicate that no additional school facilities are needed in the vicinity of this master plan area that is being annexed. The Discovery West MPD includes approximately 40 acres of park and open space land that the applicant intends to transfer to the Bend Park and Recreation District (BPRD). The applicant will continue to work with BPRD on the development of these park and open space facilities as proposed with the MPD.

4. The proposal demonstrates how public facility and service impacts, including as applicable: on- and off-site improvements, construction and modernization of existing infrastructure (water, sewer, stormwater, transportation) to City standards and specifications, and impacts to existing infrastructure inside the City's current city limits, will be adequately mitigated through an annexation agreement or other funding mechanism approved by the City Council prior to annexation. The City will use the standards and criteria of BDC Chapter 4.7, Transportation Analysis, for analysis and mitigation of transportation impacts.

FINDING: Chapter 4.7 was addressed in PZ 18-0696, the WIG DA. Transportation system deficiencies were identified through the combined TIA prepared for all West and Shevlin UGB expansion area properties based on the maximum development potential identified for each property in the Bend Comprehensive Plan. Specific transportation improvements and mitigation payments were identified and imposed through the terms of the WIG DA. Those findings of compliance with BDC Chapter 4.7 in support of NS-2316 are also incorporated by reference.

5. **Owner(s) have committed to transfer all irrigation district water rights from the property, unless exempted in subsection (A)(5)(a)(i) of this section.**

FINDING: The properties are not in an irrigation district boundary and do not have any irrigation district water rights or irrigation district conveyance facilities.

6. **Sufficient evidence acceptable to the City has been provided demonstrating that the irrigation district had an opportunity to review the layout and design for any impacts on irrigation district conveyance facilities and to recommend reasonable protections for such facilities consistent with the irrigation district's adopted rules and regulations, system improvement plans and/or development policies.**

FINDING: Notice of the Discovery West MPD and this annexation request were provided to all irrigation districts serving the City of Bend. No comments were received in response to the notices.

7. **The proposal demonstrates that approval of the annexation and zoning districts that implement the underlying Bend Comprehensive Plan map designations is consistent with the provisions of BDC 4.6.600, Transportation Planning Rule Compliance.**

4.6.600 Transportation Planning Rule Compliance.

When a development application includes a proposed Comprehensive Plan amendment or annexation, the proposal must be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

660-012-0060 - Plan and Land Use Regulations Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***
- (b) Change standards implementing a functional classification system; or***
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably***

limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule.

(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.

(4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

FINDING: OAR 660-012 implements Oregon Statewide Planning Goal 12. Goal 12 imposes a requirement on local governments to develop, maintain and update transportation plans consistent with the planning and implementation guidelines of Goal 12. The City's Comprehensive Plan dictates the number of units to be developed on the subject property, and the master plan does not propose to exceed those limits. However, compliance with the TPR was not addressed at the time of UGB acknowledgement for the expansion areas, instead being deferred to individual master plan/annexation applications.

This section requires a local government to put in place certain measures if an amendment would significantly effect a transportation facility. As documented in the WIG Infrastructure Agreement (Ordinance NS-2316), the WIG applicants made a monetary contribution to the City's off-site 14th Street Corridor Project, and will construct two new roundabouts and extend Skyline Ranch Road in phases to serve the Westside developments, providing new

transportation facilities in the City of Bend that will serve vehicular, pedestrian, and bicycle transportation needs, all consistent with the requirements of Goal 12. In the findings in support of the WIG Development Agreement, and in the Agreement itself (Section 5.2), the City Council concluded that these improvements mitigated the impacts of the proposed development and satisfied the TPR as it relates to city managed facilities.

With respect to Oregon Department of Transportation (ODOT) managed facilities, the applicant's Transportation Engineer (Kittelson & Associates) identified and quantified motor vehicle trips that impact ODOT-managed facilities. The Transportation Memo identified that future demand at both the Reed Market/US 97 and the Revere Avenue/US 97 interchanges will exceed capacity around 2040, and these intersections are forecast to experience failing operating conditions. Furthermore, the Reed Market/97 interchange is flagged as a safety focus location under existing conditions due to a high observed crash rate.

As noted in Kittelson's transportation analyses for Discovery West, both the City and State are undergoing long-term analyses of system-wide transportation needs but neither have adopted projects and associated funding yet for these efforts. Given that the Discovery West Master Plan is under review now, Kittelson, City staff, and ODOT staff engaged in an effort to identify potential solutions to address the impacts of rezoning the Discovery West Master Plan property on the state transportation system and agreed upon a suite of potential projects which would mitigate for these impacts as follows:

- Widening the northbound off-ramp at the Reed Market Interchange: \$3,320,000
- Intersection improvements at US 97 northbound ramps at Reed Market: \$60,000
- Ramp metering at Reed Market Interchange: \$500,000
- Ramp metering at Revere Avenue Interchange: \$500,000
- Revere Avenue lane re-channelization: \$2,000,000

Further discussion of the identified mitigation projects narrowed the list down to two projects with the highest benefit to the system:

- Revere Avenue Lane Reduction: \$2,000,000
- Traffic signal at US 97 northbound ramps & Reed Market Road: \$660,000

The proportionate share of growth trips for Discovery west at the Revere Avenue/US 97 interchange is estimated to be 7.4%, and at the Reed Market/US 97 interchange is estimated to be 10.8%. Therefore, the Annexation Agreement (Exhibit C – section 1.4) stipulates that the applicant (Owner) will mitigate the impacts of the Discovery West Project on state transportation facilities by payment of \$219,280 to ODOT (7.4% of \$2,000,000 and 10.8% of \$660,000). The ODOT Payment will be apportioned among the phases of the Discovery West MPD based upon the number of PM peak hour trips generated by the particular phase in relation to the total PM peak hour trips generated by the Discovery West Project at buildout (959 total trips = \$229 per trip). The number of trips generated by each phase will be determined based upon the formula set forth in Section 4.1.3 of the WIG Development Agreement ("Tracking and Accounting for Trips"). The applicant will pay the proportionate share of the ODOT payment for each phase prior to or on the date of final plat approval for that phase.

TPR subsection OAR 660-012-0060(4)(b)(D) allows transportation providers (City/ODOT) to determine if improvements are reasonably likely to be addressed by the end of the planning period to avoid further degradation of the transportation facilities. Further, both ODOT and the

City believe that the system-wide benefits of the proposed mitigation projects are sufficient to balance the significant affects generated by Discovery West (OAR 660-012-0060(2)(e).

The City will continue to work with ODOT to pursue funding to ensure the completion of the Reed Market and Revere Avenue mitigation projects by the planning horizon year of 2040. While legislative action by the City Council will be needed to commit to any future funding, the City intends to adopt transportation policies committing to identify sources of funding for joint City/ODOT projects, and consider adding these projects to the City's Transportation System Development Charges (SDC) methodology. ODOT also commits to pursue funding to supplement these projects, and believes it is reasonably likely that the listed projects will be fully funded by the 2040 planning horizon year, consistent with TPR subsection OAR 660-012-0060(4)(b)(D). The April 25, 2019 letter from ODOT further notes that both ODOT and City commitments to fund the listed mitigation projects are contingent upon the projects being included in the US 97 Parkway Plan and the Bend TSP update that is in progress.

The proposed mitigation as specified above is captured in the Annexation Agreement, which will ensure consistency with the provisions of BDC 4.6.600, *Transportation Planning Rule Compliance*, and satisfies the requirements of OAR 660-012-0060.

BDC 4.9.600.A. Approval Criteria (*Continued*)

- 8. The proposal demonstrates how rights-of-way will be improved to urban standards as determined by the City, including rights-of-way in cherry stem annexations.**

FINDING: The Discovery West MPD (PZ 18-1015) includes specific right-of-way improvements for all existing public rights-of-way adjoining the project and all future public rights-of-way within the project. The Private Development Engineering (PDE) Division reviewed the proposed street layout and street improvement cross sections and found them to be generally acceptable as proposed. Final alignment and design of streets will be further refined through subsequent land division applications.

4.9.700 Zoning of Annexed Areas.

The Bend Comprehensive Plan map provides for the future City zoning classifications of all property within the City's Urbanizable Area (UA) District. On the date the annexation becomes effective, the UA District will cease to apply and the zoning map will be automatically updated with the zoning district that implements the underlying Comprehensive Plan map designation.

FINDING: The Discovery West Major Community Master Plan accommodates 14 acres of Mixed Employment and 7 acres of Commercial Limited Comprehensive Plan designations, with the remainder of the area designated Residential Low Density. However, the location of these designations will be moved from where they are shown on the current Bend Comprehensive Plan (BCP) Map, as allowed under BDC 4.5.200.D.3.a. The final acreage will be within one percent of the total acreage designated on the BCP Map, and thus will not require a concurrent Comprehensive Plan Amendment. As stated above, on the date the annexation becomes effective, the UA District will cease to apply and the zoning map will be automatically updated with the zoning district that implements the underlying Comprehensive Plan map designation, with the layout approved for the Discovery West MPD.