

**MEMORANDUM OF UNDERSTANDING ("MOU")
Mirror Pond Siltation Project**

PARTIES :

City of Bend	("City")
Bend Metro Park and Recreation District	("District")
Pacific Power	(" Pacific Power")
William Smith Properties, Inc.	("William Smith Properties")
Bend 2030	("Bend 2030")

(collectively "**Steering Committee**")

RECITALS:

- A. This project is called the Mirror Pond Siltation Project ("Project"). The Project's goal is to develop and implement a long term strategy to address the accumulated silt deposits in Mirror Pond. This MOU will remain in effect through the scoping phase, referred to as Phase IA.
- B. The Project is identified by Bend 2030 and the Bend City Council as a top priority in the community. Mirror Pond and Drake Park are the crown jewels of the Bend landscape. The accumulation of silt in Mirror Pond has raised concerns that this community treasure is fundamentally changing. The City of Bend partnered with the Upper Deschutes Watershed Council to develop a planning process aimed at addressing the siltation issue. The two organizations also created a scope of services to guide an alternatives analysis study to help the community determine a preferred solution.
- C. In September 2009, the City established the Mirror Pond Management Board ("**Board**") to provide policy direction and review of alternative solutions to the Project. The Board is hosted by the City. The Board has representation from a wide range of community stakeholders and agencies that have an interest in Mirror Pond.
- D. In October 2009, the City invited the District, Pacific Power, Upper Deschutes Watershed Council, and Deschutes River Conservancy to discuss the process for managing the Project, and which agency is best suited to be the fiscal agent. This group decided that the best approach would be a partnership resulting in the "Steering Committee". The fiscal agent would be Bend 2030. The Steering Committee will oversee the hiring of a "Project Manager" and the assigning of appropriate duties.
- E. The Bend 2030 Vision reflects the broadest survey of community values and priorities. Adopted in 2006 by various stakeholders in the community, including the City, the Bend 2030 Action Plan identifies over 250 separate initiatives that support and further this vision of Bend. The Bend 2030 Vision

is administered by an 18 member board of directors, and exists as a 501 c(3) organization.

- F. Through an RFP process, a Project Manager was selected by Bend 2030 and the Steering Committee to work with interested agencies to refine the scope of services for a potential future alternatives analysis.
- G. The Bend 2030 Vision identifies two separate action items within the Quality Environment focus area:
 - *QE 3.7: Mirror Pond Vision.* Establish a City Council-appointed Community Task Force to facilitate a near-term community vision for Mirror Pond, using technical Mirror Pond Management Board findings.
 - *QE 3.8: Mirror Pond Sedimentation Solution.* Develop and adopt a long-term solution to address sedimentation in Mirror Pond.

AGREEMENT:

1. Phasing: There are two general phases for the Project; a planning phase (Phase I) and a construction phase (Phase II). Phase I is further broken down into two sub-phases: Phase IA will be a refined scoping analysis conducted by affected agencies and the Project Manager. The goals of Phase IA will be to: (1) collaborate with agencies; (2) refine the scope of services for an alternatives analysis; (3) develop a fundraising strategy and (4) determine whether to proceed with an alternatives analysis. Upon completion of Phase IA, the Steering Committee will determine whether to proceed or opt out of Phase IB, which would include oversight and implementation of an alternatives analysis by the Project Manager. Bend 2030 shall be the fiscal agent through Phase IA. If the Steering Committee determines that the project shall continue to Phase IB, a new memorandum of understanding will be necessary at that time. At the conclusion of Phase I, the Steering Committee shall determine if a fiscal agent, other than the governmental partners, is required for Phase II. If it is determined that a fiscal agent is needed, Bend 2030's role may be extended through Phase II. A new memorandum of understanding will be necessary at that time.

2. Purpose: This MOU establishes an understanding of how the Steering Committee will implement Phase IA and describes each party's role and responsibilities, including how to manage and resolve any issues that may arise during Phase IA.

3. The City agrees to:

- a) Assist in the planning, design and construction management process.
- b) Serve as the "lead" organization, responsible for coordinating and hosting Steering Committee meetings as well as hosting Board meetings.
- c) Provide assistance to the consultant with logistics for the Board meetings when seeking stakeholder consensus, as well as for seeking approval from the City Council and the District Board of Directors.

- d) Contribute \$25,000 toward the cost of Phase 1A of the project.
- e) Support the efforts to fund from other sources, including grants, foundations, private corporate donations, state agencies, and congressional earmarks.

4. The District agrees to:

- a) Assist in the planning, design and construction management process.
- b) Oversee the recreational and landscape benefits of the Project to assure that Drake Park and its recreational assets are maintained and/or enhanced.
- c) Contribute \$20,000 toward the cost of Phase 1A of the project,
- d) Support the efforts to fund from other sources, including grants, foundations, private corporate donations, state agencies, and congressional earmarks.

5. Pacific Power agrees to:

- a) Assist in the planning, design and construction management process.
- b) Oversee Pacific Power's dam and power generating facilities in a manner to assist Phase 1A of the Project.
- c) Contribute \$20,000 toward the cost of Phase 1A of the project,
- d) Support the efforts to fund from other sources, including grants, foundations, private corporate donations, state agencies, and congressional earmarks.

6. William Smith Properties agrees to:

- a) Assist in the planning, design and construction management process.
- b) Contribute \$16,000 toward the cost of Phase 1A of the project.
- c) Support the efforts to fund from other sources, including grants, foundations, private corporate donations, state agencies, and congressional earmarks.

7. Bend 2030 agrees to:

- a) Provide a representative of Bend 2030 to sit on the Steering Committee, attend all meetings, and participate on the Board.

- b)** Administer the Request for Proposal (RFP) process and, participating with, and at the approval and at the direction of the Steering Committee coordinate the hiring and the scope of work of the Project Manager for Phase IA.
- c)** Perform the following financial tasks:

 - i)** Establish appropriate banking accounts to hold and disburse all funds collected through direct support, grants, donations and other funding resources for the purposes of Phase 1A of the Project.
 - ii)** Retain in a separate account 5% of all funds generated to support Phase I. This separate account shall be used to cover the cost of the operational overhead, including, but not limited to, Project Manager fees, organizational expenses associated with Phase 1, insurance liability coverage, banking fees, attorney fees, accounting and auditing needs, and other fees associated with providing fiscal management services to Phase IA. If any part of the 5% is not spent at the conclusion of Phase IA, the excess will be retained by Bend 2030 to offset any overhead not otherwise directly billed for. Disbursements from this separate funds shall be as approved by the Steering Committee.
 - iii)** Disburse funds to further Phase IA as directed by the Steering Committee, including project consultants as directed by the Steering Committee.
 - iv)** Maintain accurate records and receipts for funds received and disbursed.
 - v)** By the first week of each month for the duration of Phase IA, provide the Steering Committee with a monthly accounting provided by the Project Manager and other professionals. To the greatest extent possible, the accounting must be approved by the Steering Committee prior to payment.
 - vi)** Present a quarterly financial review to the Steering Committee, and upon completion of Phase IA, make a final report to the Steering Committee.
 - vii)** At the completion of Phase IA, retain for expenditure on Phase IB all remaining funds, excluding the 5% described in 6.3.2 which is to be retained by Bend 2030.
- d)** Promote the Project through normal promotional material, social media channels, Bend 2030 website, and community meetings.

8. The Steering Committee agrees to:

- a) Work in good faith to accomplish the intent of the MOU.
- b) Coordinate the work of the Project Manager and administer the Project Manager's contract.
- c) Refrain from taking a position on potential alternatives for the Project until the alternatives analysis is complete.
- d) Support, through seeking a resolution by the City, the District, Pacific Power and Bend 2030, the selected alternative.
- e) Support a public process for coordinating public input about the Project and present reports when appropriate.

9. Staff Representatives of Each Party agree to:

- a) Refrain from taking a position on the potential outcomes of the Project until the alternatives analysis study is final.
- b) Present a resolution (or a Memo of Support in the case with Pacific Power) to their respective governing bodies (Or to the company decision-maker in the case with Pacific Power) in support of the preferred alternative.
- c) Provide a staff member to represent their organization at all Steering Committee and Board meetings.
- d) Participate in the decisions of the Steering Committee to assure the Project best represents the best alternative for the community and respects the positions of the scientific outcomes identified in the alternatives analysis.
- e) Support the public process by coordinating public input, providing support to the Project Manager and consultant team, and present findings to the city council.

10. Financial Contributions: In the event that financial contributions identified in this MOU are not fully encumbered for Phase 1A, all parties agree that the remaining funds will be carried forward to the next phase of the project.

11. Contacts: The principal/primary contacts for this project are:

Eric King, City Manager, City of Bend

Don Horton, Executive Director, Bend Metro Park and Recreation District

Angela Jacobson, Regional Community Manager, Pacific Power

Bill Smith, President, William Smith Properties, Inc.

Stephanie Hicks, Board Member, Bend 2030

12. This MOU may be amended by the unanimous consent of all parties. All disputes will be resolved by the Steering Committee and binding on all parties.
13. This MOU may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, a party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.
14. Execution of the MOU is not to be construed as an indication of acceptance or liability for sediment issues.

In cooperation with all parties acting in the interests of the community, the undersigned agree to work in partnership for the completion of the Mirror Pond Siltation Project.

SIGNATURE:

REVIEWED


LEGAL COUNSEL

City of Bend


Eric King, City Manager

Date: 10-27-10

Bend Metro Park and Recreation District


Don Horton, Executive Director

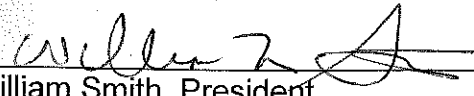
Date: 11-4-10

Pacific Power


Angela Jacobson, Regional Community Manager

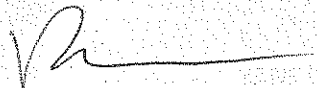
Date: 10-31-10

William Smith Properties, Inc.


William Smith, President

Date: 11/8/10

Bend 2030



Ruth Williamson, Chair

Date: 11.16.10