

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: Depot Transfer Line of Credit

<p>Background:</p> <p>The documents of the transfer of the former Umatilla Army Depot to the Columbia Development Authority are in the process of being finalized. One element of the transfer is for the CDA to pay \$1,000,000 to the Army. The payment is being made through a one year promissory note to the Army, secured by a letter of credit. The bank is requiring as part of the letter of credit to have each of the five entities comprising the CDA to guarantee payment of the letter of credit. The transfer agreement allows the CDA to utilize proceeds from the sale of property to repay the promissory note. The matter is before the Board for approval.</p>	<p>Requested Action:</p> <p>Adopt Order No. BCC2022-063</p>
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ATTACHMENTS: Draft Order

*****For Internal Use Only*****

Checkoffs:

- () Dept. Heard (copy)
- () Human Resources (copy)
- () Fiscal
- (X) Legal (copy)
- () (Other - List:)

To be notified of Meeting:

Needed at Meeting:

Scheduled for meeting on: December 14, 2022

Action taken:

Follow-up:

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Authorizing)
Letter of Credit for Purchase) Order No. BCC2022-063
of Umatilla Army Depot)

WHEREAS, an Intergovernmental Agreement between the Counties of Umatilla and Morrow and the Port Districts of Umatilla and Morrow concerning creation of the Umatilla Army Depot Reuse Authority was concluded on May 15, 1995, and

WHEREAS, the Intergovernmental Agreement was amended and restated on by the Counties of Umatilla and Morrow and the Port Districts of Umatilla and Morrow and the Confederated Tribes of the Umatilla Indian Reservation, for the renamed Columbia Development Authority, with Umatilla County signing on July 9, 2014, and

WHEREAS the purposes of the Authority include the administration of the transition of the Umatilla Army Depot from military to civilian use, and

WHEREAS the authority has concluded negotiations with the United States Department of the Army for the economic development conveyance of the former Umatilla Chemical Depot and the transfer documents are pending signatures and the closing of the deed transfer, and

WHEREAS as part of the transfer of the property, the Columbia Development Authority will agree to pay one million dollars, and

WHEREAS a portion of the consideration will be paid at closing, with payment of the balance of \$960,000 through a Promissory Note, secured by an Irrevocable Letter of Credit issued by the Bank of Eastern Oregon, and

WHEREAS for the issuance of the Letter of Credit, the Bank of Eastern Oregon requires that each of the entities of the Columbia Development Authority guarantee the payment of the Letter of Credit.

NOW THEREFORE, IT IS ORDERED THAT:

1. Umatilla County approves the form for an Irrevocable Letter of Credit from Bank of Eastern Oregon, for the Columbia Development Authority as borrower and the U. S. Army as beneficiary, for an amount of credit of \$960,000. The form is attached to this order and incorporated by this reference.

2. Umatilla County authorizes the Irrevocable Letter of Credit in the amount of \$960,000 and guarantees payment to the Bank of Eastern Oregon up to \$960,000 in the event the beneficiary receives payment from the bank under the terms of the letter of credit.

3. Commissioner John M. Shafer is authorized to sign any necessary documents on behalf of Umatilla County, regarding the letter of credit and closing of the transaction from the U.S. Department of the Army.

DATED this 14th day of December, 2022.

UMATILLA COUNTY BOARD OF COMMISSIONERS

John M. Shafer, Chair

Daniel N. Dorran, Commissioner

George L. Murdock, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS

Records Officer



HLP0355

IRREVOCABLE LETTER OF CREDIT

Borrower: Columbia Development Authority

Lender: BANK OF EASTERN OREGON
HEPPNER BRANCH
279 N. Main
PO Box 39
Heppner, OR 97836
(541) 676-9125

Beneficiary: U.S. Army

NO.: 1234

EXPIRATION DATE. This letter of credit shall expire upon the close of business on 12-05-2023 and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Nine Hundred Sixty Thousand & 00/100 Dollars (\$960,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER BANK OF EASTERN OREGON IRREVOCABLE LETTER OF CREDIT NO. 1234 DATED 12-05-2022," and the amount of each draft shall be marked on the draft. Only Beneficiary or Beneficiary's transferee may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. This Letter of Credit may be transferred by Beneficiary upon prior written notice to Lender of the transfer. The transferee shall be deemed the new Beneficiary of this Letter of Credit and the documents of the transferee, including drafts required under this Letter of Credit, will be processed by Lender (or any intermediary) without the original Beneficiary's intervention and without any further obligation of Lender to the original Beneficiary.

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee under the "Permitted Transferees" paragraph above (the "Permitted Transferee"), the documents required for a draw shall include all documents required elsewhere in this Letter of Credit, except that such documents may be in the name of and executed by either the original Beneficiary or the presenter permitted by the "Permitted Transferees" paragraph above.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Oregon without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Oregon.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: December 5, 2022

LENDER:

BANK OF EASTERN OREGON

By: _____
Authorized Officer

**IRREVOCABLE LETTER OF CREDIT
(Continued)**

ENDORSEMENT OF DRAFTS DRAWN:

<u>Date</u>	<u>Negotiated By</u>	<u>Amount In Words</u>	<u>Amount In Figures</u>
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