

**RESOLUTION NO. 24.11.18.00  
OCHOCO IRRIGATION DISTRICT**

**A RESOLUTION APPROVING A RIGHT OF WAY AGREEMENT WITH CITY OF  
PRINEVILLE**

**Whereas**, Ochoco Irrigation District (“OID”) has planned to abandon certain canals within Prineville, Crook County, Oregon located near Combs Flat Road.

**Whereas**, City of Prineville (“City”) is creating a public right-of-way within Prineville, Crook County, Oregon, from Combs Flat Road to Peters Road, hereafter “Right of Way.”

**Whereas**, OID and City believe that an underground pipeline is in the best interest of each entity.

**Whereas**, OID and City have negotiated a Right of Way Agreement (“Agreement”), attached to this Resolution and incorporated herein.

**Whereas**, OID staff believes it is in the best interest of the OID to approve and execute the Agreement.

NOW, THEREFORE, the Ochoco Irrigation District resolves that the attached Agreement is hereby approved and that the Board Chairman and District Manager are authorized to sign such Agreement on behalf of OID.

Approved by the Ochoco Irrigation District this \_\_\_\_ day of November, 2024.

\_\_\_\_\_  
Wade Flegel, Chairman

ATTEST:

\_\_\_\_\_  
Bruce Scanlon, District Manager

After Recording Return to:  
Jered Reid  
35 SE C Street, Suite D  
Madras, Oregon 97741

## RIGHT OF WAY AGREEMENT

THIS RIGHT OF WAY AGREEMENT (“Agreement”) is made and entered into as of the date last written below (“Effective Date”), by and between the **City of Prineville**, 387 NE Third Street, Prineville, Oregon 97754 an Oregon municipal corporation (“City”), and **Ochoco Irrigation District**, 1001 NW Deer Street, Prineville, Oregon 97754, a public corporation under ORS chapter 545 (“District”). Both City and District shall be known as “Party” and collectively as “Parties.”

### RECITALS

- A. City owns real property in Crook County, Oregon, more particularly described as:
- Parcel One (1) of Partition Plat No. 2010-06, Recorded December 29, 2010 in Partitions Microfilm No. 2010-244547, Records of Crook County, Oregon, Located in the SW1/4 of Section 28, in SE1/4 of Section 29, E1/2 of Section 32, in Section 33, in NW1/4 of Section 34, Township 14 South, Range 16 East of the Willamette Meridian, and in the NE1/4 of Section 5, Township 15 South, Range 16 East of the Willamette Meridian, Crook County, Oregon.
- In Township 14 South, Range 16 East of the Willamette Meridian, Crook County, Oregon:  
Section 27: SW1/4 SW1/4; EXCEPT the NE1/4 NE1/4 SW1/4 SW1/4.  
Section 28: S1/2 NW1/4 1/4E1/4 SE1/4; SW1/4 NE1/4 NE1/4 SE1/4; S1/2 NE1/4 SE1/4
- B. City intends to construct a public right-of-way within Prineville, Crook County, Oregon from Combs Flat Road to Peters Road as depicted on Exhibit A, attached hereto and incorporated herein, and hereinafter “Right of Way.”
- C. District currently has an irrigation canal located near the proposed Right-of-Way. District desires to abandon the canal and construct an underground pipeline for purposes of conveying irrigation water.
- D. City and District believe that an underground pipeline is in the best interest of each entity.
- E. City has agreed that OID shall be allowed to use the Right-of-Way for the purpose of District locating, relocating, surveying a route, constructing, trenching, inspecting, protecting,

operating, maintaining, repairing, replacing, substituting, and removing a water transmission pipeline for the transportation of irrigation and agricultural water as described in this Agreement.

F. The water transmission pipeline is to be located on a route to be mutually selected by the Parties, on, in, over and through the Right-of-Way as generally depicted on Exhibit A.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, City and District, hereto agree as follows:

1. **Grant of Right of Way Easement.** City hereby agrees to grant District an easement within the Right-of-Way, hereinafter "Easement," to locate, relocate survey a route, construct, entrench, inspect, protect, operate, maintain, repair, replace, substitute, and remove a single underground water transmission pipeline with appurtenances including but not limited to valves, metering equipment, erosion control equipment, electrical cable, cathodic equipment, and communication cable (hereinafter referred to collectively as "Facilities") on, in, under and through the area generally depicted on Exhibit A.
2. **Grant of Temporary Construction Easement.** City hereby grants to District a temporary construction easement (hereinafter referred to as "Temporary Construction Easement") to locate, relocate, survey a route, construct, entrench, maintain, inspect, protect, operate, maintain, repair, replace, substitute, relocate, and remove a single underground water transmission pipeline with Facilities along the line generally described on Exhibit A, for a time period not to exceed three (3) years from the Effective Date of this Agreement or until the completion of the construction of the pipeline, whichever shall first occur.
3. **Term.** The rights granted in this Agreement shall be possessed and enjoyed by District, its successors and assigns, so long as the water pipeline and appurtenances constructed pursuant to this Agreement shall be maintained and operated by District, its successors or assigns.
4. **Right of Access.** The permanent Easement and Temporary Construction Easement shall carry with them the right of District and its employees and agents at all times to have free and unimpaired ingress, egress, regress and access over, across and through said Right-of-Way, using reasonable routes as City may designate or approve for the purpose of locating, relocating, surveying a route, constructing, entrenching, inspecting, protecting, operating, maintaining, repairing, replacing, substituting, relocating, and removing the Facilities.
  - a. **Work.** District, except in case of an Emergency, shall, prior to commencing new construction or reconstruction within the Right-of-Way, apply for a permit from the City, which permit shall not be unreasonably withheld, or delayed. If an Emergency occurs, District will be able to commence construction and reconstruction within the Right-of-Way but shall notify City of the Emergency within 24 hours of learning of the Emergency. District and City agree to work together to ensure that any work done within the Right-of-Way minimizes disruption of any transportation network.

5. **Exclusivity.** District's use of the Easement hereunder shall be exclusive, subject to the City's rights contained herein. City shall not grant other easements and rights-of-way across the land covered by the Easement. City shall not build, construct, or permit to be built or constructed, any structure or obstruction, or impound water or any substance or change the grade on or over the Easement, except that with written consent from District, City shall be permitted to construct fences, roads, trails, sidewalks, power transmission lines, and communication lines across the Easement and do landscaping within the Easement. Any landscaping shall not interfere with District's use of the Easement and any deep-rooted tress shall require prior written approval by District before installed. District shall not interfere with the other activities of City, its agents, designees, permittees, or assignees on the Easement. Notwithstanding the above, the Parties agree that the area depicted on Exhibit B or other areas of crossing shall be non-exclusive, and City, its agents, designees, permittees, and assignees shall have the right to use and enjoy the land covered by the Easement at any time during the term of this Agreement for any purpose and the right to grant other easements and rights-of-way across the land covered by the Easement, so long as such use or other easements and rights-of-way do not materially interfere with District's use and enjoyment of the rights granted herein. City, upon the consent of the District, which shall not be unreasonably withheld, may grant other Utilities access within the Right-of-Way. Utilities and Franchisees currently within the Right-of-Way shall be allowed to have access within the Right-of-Way and the Parties shall work cooperatively to provide a reasonable effort to provide utilities and Franchisee's with alternate locations for facilities within the Right-of-Way. The City agrees to not consent to any utility or facility to be above the District's facilities without the District's written approval. The Parties shall share the costs related to any relocation of utilities or facilities within the Right-of-Way.

6. **Responsibilities of District.**

a. **Assignment.** District shall not have the right to assign all, or any portion of the rights herein granted without City's written permission.

b. **Burial of Water Pipeline.** District shall bury the water pipeline installed by District to the depth required by federal, state, and local regulations.

c. **Restoration of Surface.** District shall affect a minimum of vegetative or soil disturbance consistent with practical operations and will smooth and maintain all disturbed areas to conform as reasonably practical to the adjacent terrain. After the initial construction of the pipeline covered by this Agreement is completed, or upon completion of any subsequent maintenance or replacement of Facilities causing vegetative or soil disturbance, District shall restore without unreasonable delay and return the area, as much as reasonably practical, to the condition and use which existed prior to such disturbance. The restoration will be in accordance with the specifications established by the City. City shall be responsible for the costs of the restoration of any City facilities and District shall be responsible for the costs of the repair, maintenance, or replacement of District's Facilities.

d. **Abandonment.** It is expressly made a condition of the Easement that if District, its successors or assigns, shall abandon the Easement or any portion of said Easement for the stated purposes of the Easement, then and in that event, all the rights herein granted shall cease

and terminate with respect to the Easement or portion of the Easement so abandoned, and the title to said Easement or the said portion of the Easement shall be freed from the burden of said Easement or portion of the Easement; and it is further agreed that nonuse of the Easement or any portion thereof for the purposes of said Easement for the period of four (4) consecutive years along with an intent to abandon shall constitute an abandonment unless such nonuse is caused by market conditions or circumstances beyond the reasonable control of District. In the event of an abandonment of the Easement or portion of the Easement, District shall deliver to City a recordable instrument evidencing that the title to the Easement or portion of the Easement so abandoned is free and clear of the burden of said Easement and free and clear of liens, encumbrances, clouds upon or defects in the title to said Easement or said portion of the Easement created or permitted to be created by District.

**e. Damages.**

i. All operations hereunder shall be conducted by District in a fair and reasonable manner, and all necessary precautions shall be taken to avoid damage to City facilities. All damage to the above-named facilities shall be reported to City within twenty-four (24) hours and shall be repaired by District immediately, to the original condition or better than existing prior to such operations. Any public hazard, such as a damaged bridge or culvert, caused by District's use of the Easement, shall be marked or barricaded and proper steps taken for the repair thereof by District.

ii. District shall give City prompt notice of any of the following occurrences arising with regard to the Easement or District's activities thereon:

iii. Any spill, release, or other occurrence that constitutes a violation of the provisions of any applicable laws, rules or regulations; and

iv. Any notices, claims or allegations of environmental violations or contamination received from any federal, state or local governmental agency or authority or the filing or commencement of any judicial or administrative proceeding by any such agency.

**7. Indemnification.**

a. To the extent permitted by the Oregon Tort Claims Act (ORS 30.260-30.300), the District shall indemnify, save harmless, and defend the City, its officers, employees, and agents from and against any and all claims, suits, actions, damages, costs, losses, and expenses asserted by any person, arising from, or connected with any injury or death to persons, or damages to property caused by the acts, omissions or negligence of the District's officers, agents or employees.

b. To the extent permitted by the Oregon Tort Claims Act (ORS 30.260-30.300), the City shall indemnify, save harmless, and defend the District, its officers, employees, and agents from and against any and all claims, suits, actions, damages, costs, losses, and expenses, asserted by any person, arising from, or connected with any injury or death to persons, or damages to property caused by the acts, omissions or negligence of the City's officers, agents or employees.

8. **General Provisions.**

a. **Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the Parties to this Agreement shall be incorporated by written instrument, executed and signed by both Parties to this Agreement.

b. **Cooperation.** The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation or consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operations when a dispute occurs.

c. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Oregon. The Courts of the State of Oregon shall have jurisdiction over this Agreement and the Parties, and the venue shall be in the Circuit Court of Crook County.

d. **Compliance with Law.** District shall comply with all present and future federal, state, and local laws, rules, regulations, orders, and other requirements applicable to District's operations under this Agreement, including without limitation, laws, rules, regulations, orders and other requirements relating to the public or employee health and safety, pollution or protection of the environment, and any permits, approvals or judicial or administrative orders issued thereunder. Consistent with Paragraph 8(a) above, the terms of this Agreement may be modified from time to time to comply with future modification to federal, state, and local laws, rules, regulations, orders or other requirements.

e. **Entirety of Agreement.** This Agreement represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, either written or oral.

f. **Force Majeure.** Neither Party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming Party. Such causes may include but are not limited to acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the Party failing to perform immediately notifies the other Party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming Party.

g. **Attorney Fees.** With respect to any lawsuit, arbitration or other legal proceeding to interpret or enforce the provisions of this Agreement, each Party will be responsible for its own attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith; provided, however, this Paragraph will not prevent a Party from recovering its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred regarding any indemnification clause within this Agreement; nor prevent a

Party from recovering its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in the event a Party is found by a Court to have no objectively reasonable basis for asserting a claim or defense.

h. **Notice.** Any notice to be given to City or District hereunder shall be writing and shall be delivered personally, sent by overnight courier, sent by facsimile, or mailed in the United States Mail, certified mail, return receipt requested, to the addresses of the City and District above set forth in the first paragraph of this Agreement.

i. **No Representation or Warranties.** City makes no warranty, express, implied or statutory with respect to the lands described above, the Easement or the ownership thereof.

j. **Assumption of Risk/Indemnification.** Each Party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither Party agrees to insure the other including but not limited to any personal injury to individual or any damage to property; however, either Party may do so.

k. **Third Party Beneficiary Rights.** The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement and shall inure solely to the benefit of the Parties of this Agreement. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement. The Parties to this Agreement intend and expressly agree that only the Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement or to bring an action for the breach of this Agreement.

l. **Binding on Successors.** Subject to the requirements of Paragraph 6(a) above, the terms, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

m. **Time is of the Essence.** Time is of the essence in all provisions of the Agreement.

n. **Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.

o. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.

p. **Attorneys.** City and District both acknowledge that the Law Office of Jered Reid, LLC has drafted this Agreement as the attorney for both City and District, and each City and District, hereby acknowledge that they have consented to joint representation, waived the conflict of interest, been advised of potential limitations, and been advised to seek separate counsel to determine if they wished to consent to joint representation.

IN WITNESS HEREOF, City and District have caused this Agreement to be signed and executed this Agreement, as of the date set out below.

CITY OF PRINEVILLE

By: \_\_\_\_\_  
Rodney J. Beebe, Mayor

By: \_\_\_\_\_  
Steve Forrester, City Manager

STATE OF OREGON        )  
  ) ss.  
County of Crook         )

Personally appeared the above named Rodney J. Beebe, Mayor of Prineville, and acknowledged the foregoing instrument to be his voluntary act and deed, before me this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires:

STATE OF OREGON        )  
  ) ss.  
County of Crook         )

Personally appeared the above named Steve Forrester, City Manager for the City of Prineville and acknowledged the foregoing instrument to be his voluntary act and deed, before me this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires:



OCHOCO IRRIGATION DISTRICT

By: \_\_\_\_\_  
Wade Flegel, Board Chairman

By: \_\_\_\_\_  
Bruce Scanlon, Manager

STATE OF OREGON        )  
                                  ) ss.  
County of Crook         )

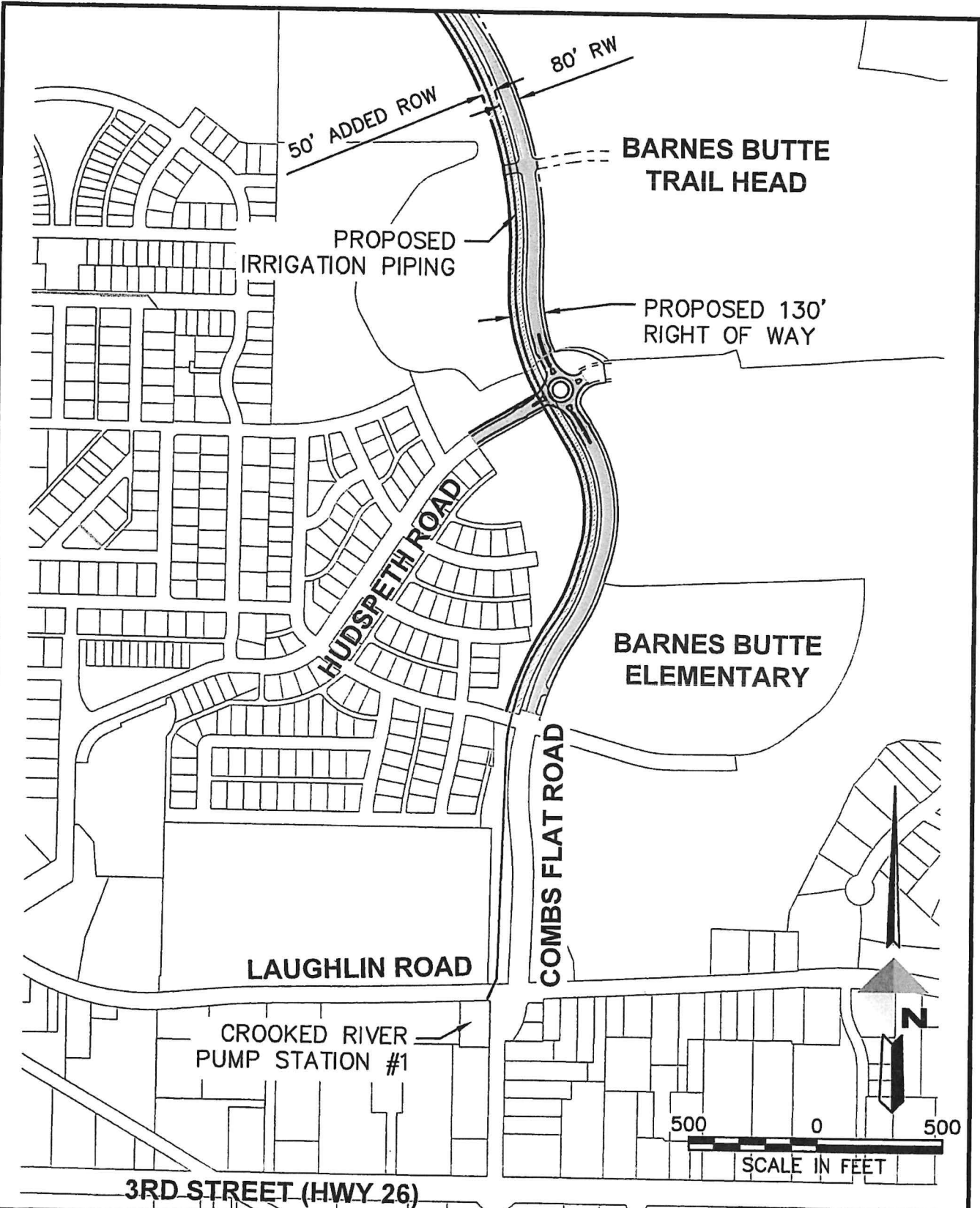
Personally appeared the above named Wade Flegel, Board Chairman for the Ochoco Irrigation District, and acknowledged the foregoing instrument to be his voluntary act and deed, before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires:

STATE OF OREGON        )  
                                  ) ss.  
County of Crook         )

Personally appeared the above named Bruce Scanlon, Manager for Ochoco Irrigation District, and acknowledged the foregoing instrument to be his voluntary act and deed, before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires:



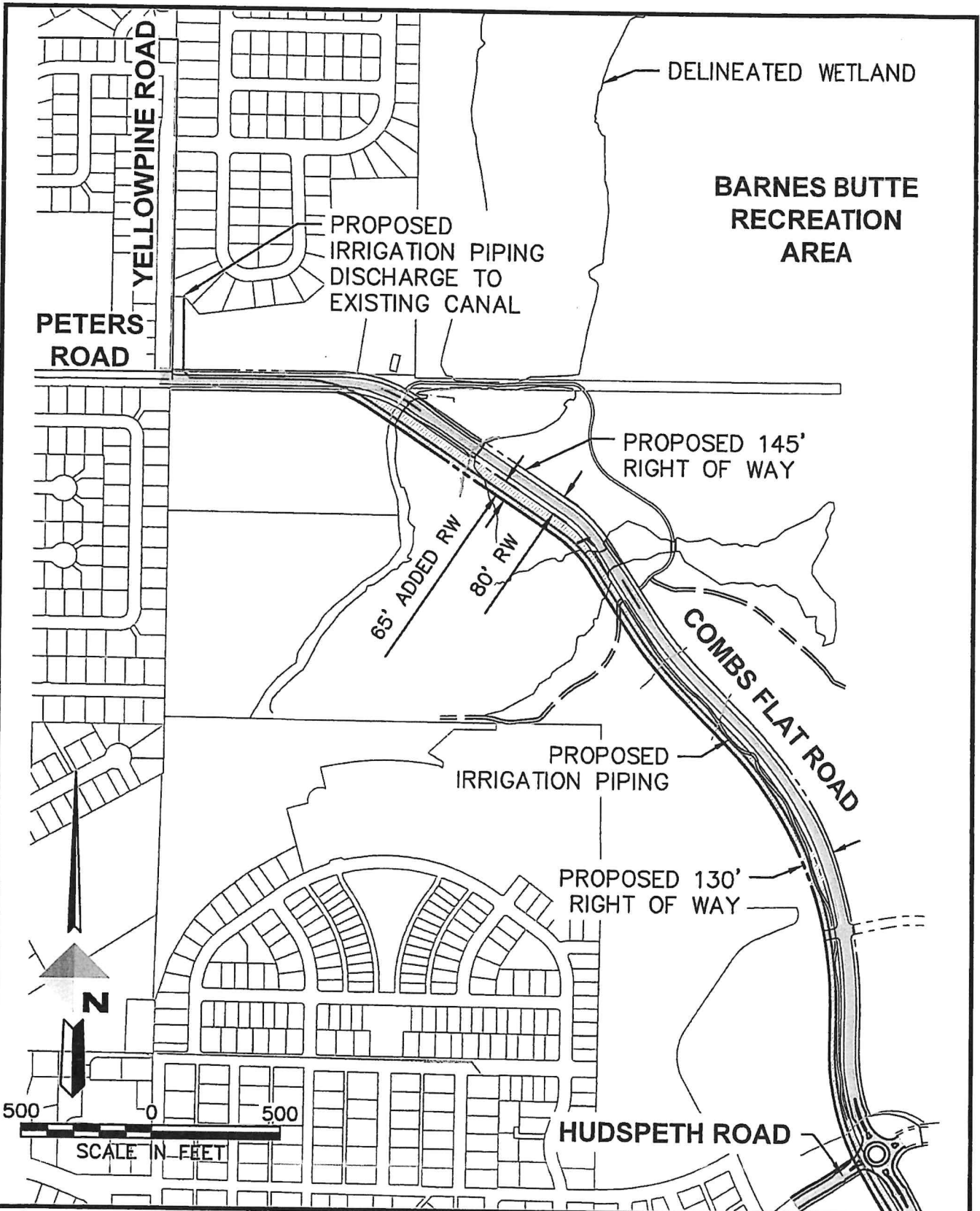
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**DOWL**  
[www.dowl.com](http://www.dowl.com)  
 963 SW Simpson Avenue, #200  
 Bend, Oregon 97702  
 541-385-4772

**OCHOCO IRRIGATION DISTRICT  
 CITY OF PRINEVILLE  
 IRRIGATION PIPING PROJECT**

PROJECT	14617.03
DATE	05/11/2023
<b>EXHIBIT 1 OF 2</b>	

EXHIBIT  
 PAGE 1 OF 2



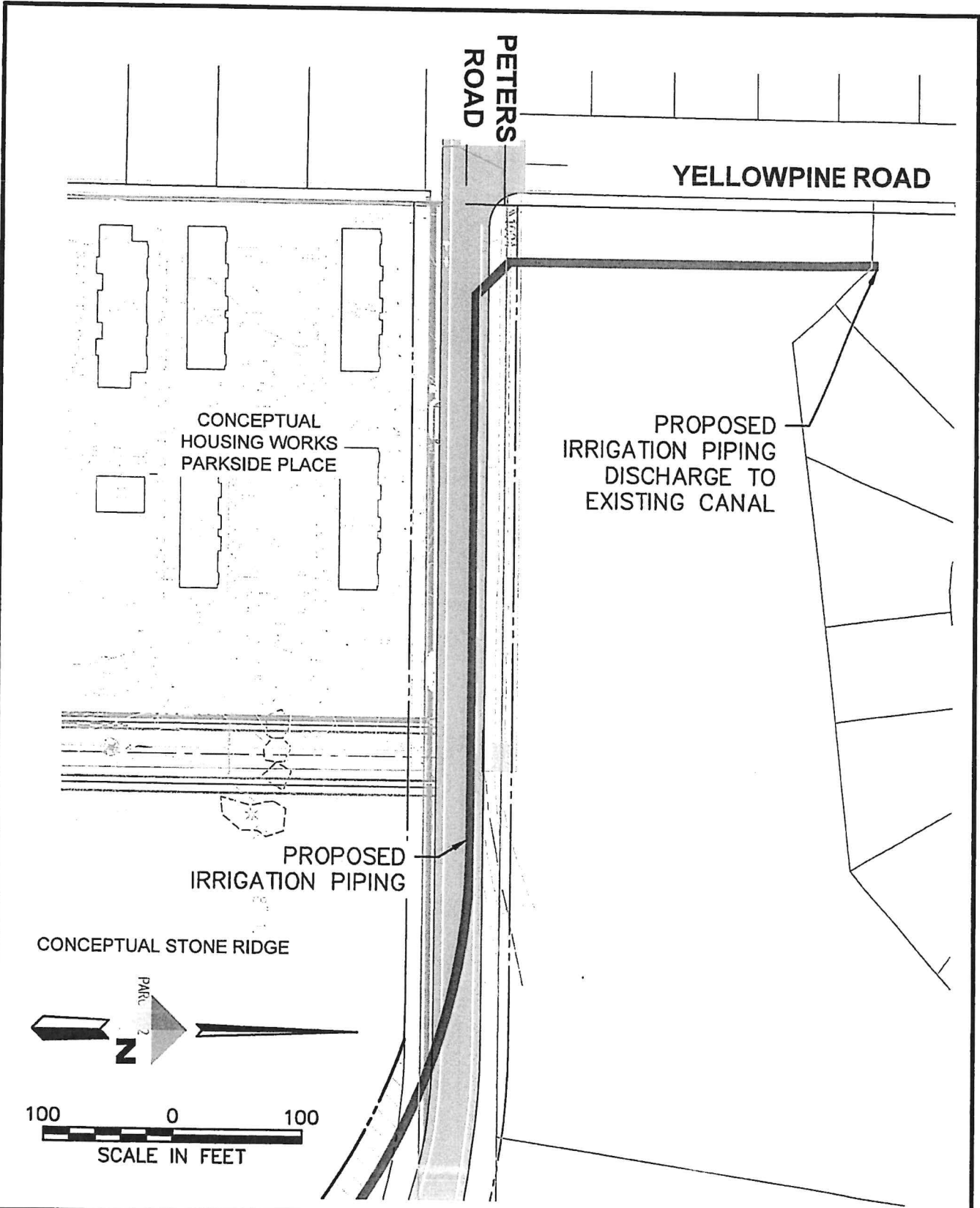
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OCHOCO IRRIGATION DISTRICT  
 CITY OF PRINEVILLE  
 IRRIGATION PIPING PROJECT

PROJECT	14617.03
DATE	05/11/2023
EXHIBIT 2 OF 2	

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OCHOCO IRRIGATION DISTRICT  
 CITY OF PRINEVILLE  
 PETERS ROAD

PROJECT	14617.03
DATE	05/11/2023
EXHIBIT 3 <i>B</i>	
EXHIBIT	