

1  
2  
3  
4  
5  
6 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
7 **FOR THE COUNTY OF DESCHUTES**

8 IN THE MATTER OF THE PETITION of the  
9 Panoramic Access Special Road District,

10 Petitioner,

11 For a Judicial Examination and Judgment of the  
12 Court as to the Regularity and Legality of  
13 Resolution 2021-1.

Case No.

**PETITION FOR JUDICIAL  
VALIDATION**

**(Pursuant to ORS 33.710 to 33.720)**

**(NOT SUBJECT TO MANDATORY  
ARBITRATION)**

14  
15 1.

16 Panoramic Access Special Road District (“PASRD or District”), hereby petitions for  
17 judicial examination and judgment of the Court determining the regularity and legality of  
18 Resolutions 2021-1 and 2021-2, which authorizes the construction of certain road improvements  
19 within the District, the assessment of property within the District to pay for the road  
20 improvements, and the issuance of an assessment bond anticipation note and assessment bonds to  
21 finance the road improvements.

22 **OREGON VALIDATION STATUTE**

23 2.

24 The Oregon Validation Statute at ORS 33.710 to ORS 33.720 provides for an *in rem*  
25 proceeding brought by a governing body, as defined in ORS 33.710(2), for the purpose of having  
26 judicial examination and judgment of the court as to the “regularity and legality” of, among other  
things, the “proceedings of the governing body and of the municipal corporation providing for

1 and authorizing the issue and sale of bonds of the municipal corporation”; the “authorization of  
2 any contract and as to the validity of the contract, whether or not it has been executed”; or the  
3 “authority of the governing body to enact any ordinance, resolution or regulation.”

4 3.

5 The Court obtains jurisdiction through publication of notice to the municipal corporation  
6 and all electors, freeholders, taxpayers, and other interested persons. ORS 33.720(2). The  
7 validation statute directs the “proceeding be tried forthwith and judgment rendered as  
8 expeditiously as possible declaring the matter so contested to be either valid or invalid,”  
9 ORS 33.720(3), following practices and procedures of an action not triable by right to a jury,  
10 ORS 33.720(1).

11 **JURISDICTION**

12 4.

13 This Petition is filed pursuant to ORS 33.710 to ORS 33.720 in the nature of a proceeding  
14 *in rem*. Jurisdiction and venue in this Court are appropriate for the following reasons:

15 a) In the 1980s, the Deschutes County Board of Commissioners (“Deschutes County”)  
16 formed the District is organized under ORS chapters 198 and 371. The District is a “municipal  
17 corporation” as defined by ORS 33.710(1)(b).

18 b) Petitioner is the governing body of the District as defined by ORS 33.710(1)(a).

19 c) Petitioner is authorized to initiate an action for judicial validation in the circuit court  
20 of the county where the municipal corporation or the greater part thereof is located. ORS 33.710(2).  
21 The District has its principal office in Deschutes County, and the District’s boundaries are within  
22 Deschutes County.

23 d) Jurisdiction is established 10 days after publication of the notice as provided in  
24 ORS 33.720(2) is completed. Under ORS 33.720(2), jurisdiction over both the municipal corporation  
25 and the electors of the municipal corporation is obtained by publication of notice directed at the  
26 municipal corporation and all electors, freeholders, taxpayers, and other interested persons, without

1 naming them individually, for three consecutive weeks in a newspaper of general circulation  
2 published in the county where the proceeding is pending. The notification of this Petition will be  
3 published in Deschutes County as required by ORS 33.720(2) to establish jurisdiction.

#### 4 **BACKGROUND**

5 5.

6 Deschutes County formed the District to provide for the “improvement and maintenance  
7 of roads” within the District. Currently, the District maintains roads serving 143 lots within the  
8 District’s boundaries. A map of the District is attached hereto as **Exhibit 1**, and incorporated by  
9 this reference.

10 6.

11 The District is a “Special Road District” pursuant to ORS 371.305 to ORS 371.385. The  
12 statutory purpose of a Special Road District is “improving roads within the district.”  
13 ORS 371.336. Pursuant to ORS 371.336, the District has the power to 1) “make contracts”;  
14 2) “to assess, levy and collect taxes on all taxable real property within the District”; and 3) “to do  
15 any other act necessary to carry out the purposes of ORS 371.305 to 371.360.” The three  
16 member “district board of commissioners” is vested with the powers of the District.  
17 ORS 371.349.

18 7.

19 Pursuant to ORS 174.116(1)(a) and ORS 174.116(2)(L), the District is a “local service  
20 district” and “local government” as those terms are used in the Oregon Revised Statutes. The  
21 governing body of a local government may “prescribe by ordinance or resolution the procedure  
22 to be followed in making estimated assessments and final assessments for benefits from a local  
23 improvement upon the lots that have been benefited by all or part of the local improvement.”  
24 ORS 223.389(1).

8.

The District is comprised primarily of gravel roads. The gravel roads within the District require yearly grading and additional gravel to accommodate traffic and reduce potholes and washboarding. Over time, vehicle traffic and grading cause the roads to spread, the crown of the roads to dissipate, both of which negatively impact drainage. The estimated annual cost of maintaining the gravel roads within the District is \$30,000. In addition to yearly maintenance, travel on the gravel roads causes significant dust to be kicked up negatively impacting the residents of the District and their vehicles. To reduce the need for expensive maintenance and the negative impacts of gravel roads, the Board identified a paving technique known as Otta Seal. Based on estimates received by the District, the cost to pave all of the roads within the District using the Otta Seal process, including the roadbed preparation, would be \$795,000 (the “Improvements”). Yearly maintenance of the Otta Sealed roads would be minimal.

9.

Petitioner determined a per-lot assessment would be used to pay for the Improvements, and, because all lots were equally benefitted by the Improvements, each lot would be assessed an equal amount. The estimated per lot assessment to complete the Improvements was \$5,656.73.

10.

After satisfying public notice requirements, Petitioner held a public hearing on May 11, 2021, to consider the Board’s proposal to improve the roads within the District, and to pay for the Improvements by assessing each lot within the District equally. At the public hearing, Petitioner adopted Resolution 2021-1, attached hereto as **Exhibit 2** and incorporated herein by this reference. In Resolution 2021-1, Petitioner resolved the following:

“2. The Board determines that all of the properties located within the District are benefitted by the proposed Improvements and are show on the map in the Report.

1 “3. The Board has heard any objections or remonstrances at the public hearing  
2 referenced above and declares its intent to assess all property within the District to  
3 pay for the total cost of the Improvements in the estimated amount of \$795,000.00  
4 and to make the Improvements.

5 “4. The assessment methodology shall be on a per lot basis.

6 “5. The estimated assessment for each lot within the District shall be  
7 \$5,656.73.

8 “\* \* \* \* \*

9 “7. The Board shall arrange for the construction of the Improvements.”

10 11.

11 Resolution 2021-1 created a process to deliver notice of the assessment to each lot owner,  
12 and the required contents of each notice. Resolution 2021-1 also created the process for each lot  
13 owner to object to the notice of assessment.

14 12.

15 Resolution 2021-1 authorizes the District to proceed with Local Improvements, as that  
16 term is defined in ORS 310.140(1)(j), to the roads within the District with an estimated cost of  
17 \$795,000, and to assess each lot in the District an estimated \$5,656.73 on a per lot basis. The  
18 Resolution authorizes Petitioner to enter into contracts for the construction of the Improvements.

19 13.

20 To provide interim financing for the Improvements, Petitioner determined the District  
21 would issue an assessment bond anticipation note secured by the pledge of (a) the estimated and  
22 final assessments on the benefited properties and (b) the proceeds of assessment bonds to be sold  
23 to provide permanent financing for the Improvements. The issuance of an assessment bond  
24 anticipation note by the District is authorized and regulated by ORS 223.205 to 223.295 and  
25 287A.180.  
26

14.

To provide permanent financing for the Improvements, the District authorized the issuance of assessment bonds equal to (a) the amount equal to the principal amount of applications to pay the assessment in installments, plus (b) the amount necessary to fund a debt service reserve account, if necessary, and plus (c) the amount necessary to pay the cost of issuance of the assessment bonds. The assessment bonds shall be a special obligation of the District payable solely from the installment payments of the final assessments related to the Project. The assessment bonds shall have a lien on the installments of the final assessment related to the Project. The issuance of assessment bonds by the District is authorized and regulated by ORS 223.205 to 223.295.

15.

After satisfying public notice requirements, Petitioner held a public hearing on October 5, 2021, to consider the Board's proposal for the financing the Improvements. At the public hearing, Petitioner adopted Resolution 2021-2, attached hereto as **Exhibit 3** and incorporated herein by this reference. In Resolution 2021-2, Petitioner resolved: (1) that Petitioner would issue and sell "an assessment bond anticipation note (the "Note") in a principal amount not to exceed the estimated cost of the Improvements and the cost of issuance of the Note; (2) the Petitioner would issue "assessment bonds (the "Bonds")" equal to the to the principal amount of applications to pay the assessment in installments, plus (b) the amount necessary to fund a debt service reserve account, if necessary, and plus (c) the amount necessary to pay the cost of issuance of the Bonds.; (3) that the Bonds would be "a special obligation of the District payable solely from the installment payments of the final assessments"; (4) that the Note and Bonds would be sold at a public or negotiated sale; and (5) that the President and Treasurer are appointed to act as "Authorized Representative of the District for purposes of the Note and Bond transactions."

16.

The remaining provision of Resolution 2021-2 approves the process for the issuance and sale of the Note and Bonds in the best interests of the District, and provide for compliance with the Oregon Revised Statutes.

17.

Resolution 2021-2 authorizes the District to finance the Improvements using the sale of the Note and Bonds. The Resolution authorizes Petitioner to the issue and sell bonds.

WHEREFORE, Petitioner prays that:

1. The Court judicially examine the legality of the District's Resolution No. 2021-1, and enter a judgment declaring Resolution 2021-1 is valid.

2. The Court judicially examine the District's authority to authorize the expenditure of approximately \$795,000 for construction of improvements in the District, and enter judgment declaring Petitioner is authorized to make the expenditure.

3. The Court judicially examine the District's authority to assess each lot for the expenditure necessary to complete the improvements, approximately \$5,656.73, and for a judgment declaring Petitioner is authorized to make and enforce such assessment.

4. The Court judicially examine the legality of the District's Resolution No. 2021-2, and enter a judgment declaring Resolution 2021-2 is valid.

5. The Court judicially examine the District's authority to provide for and authorize the issuance of Note and Bonds of the District for the purpose of financing the road improvements, and for a judgment declaring Petitioner is authorized to issue and sell the Note and Bonds.

6. For a judgment determining and declaring that the Petitioner has the authority to enter into contracts to complete the road improvements.

7. These proceedings be tried forthwith and judgment rendered as expeditiously as possible.

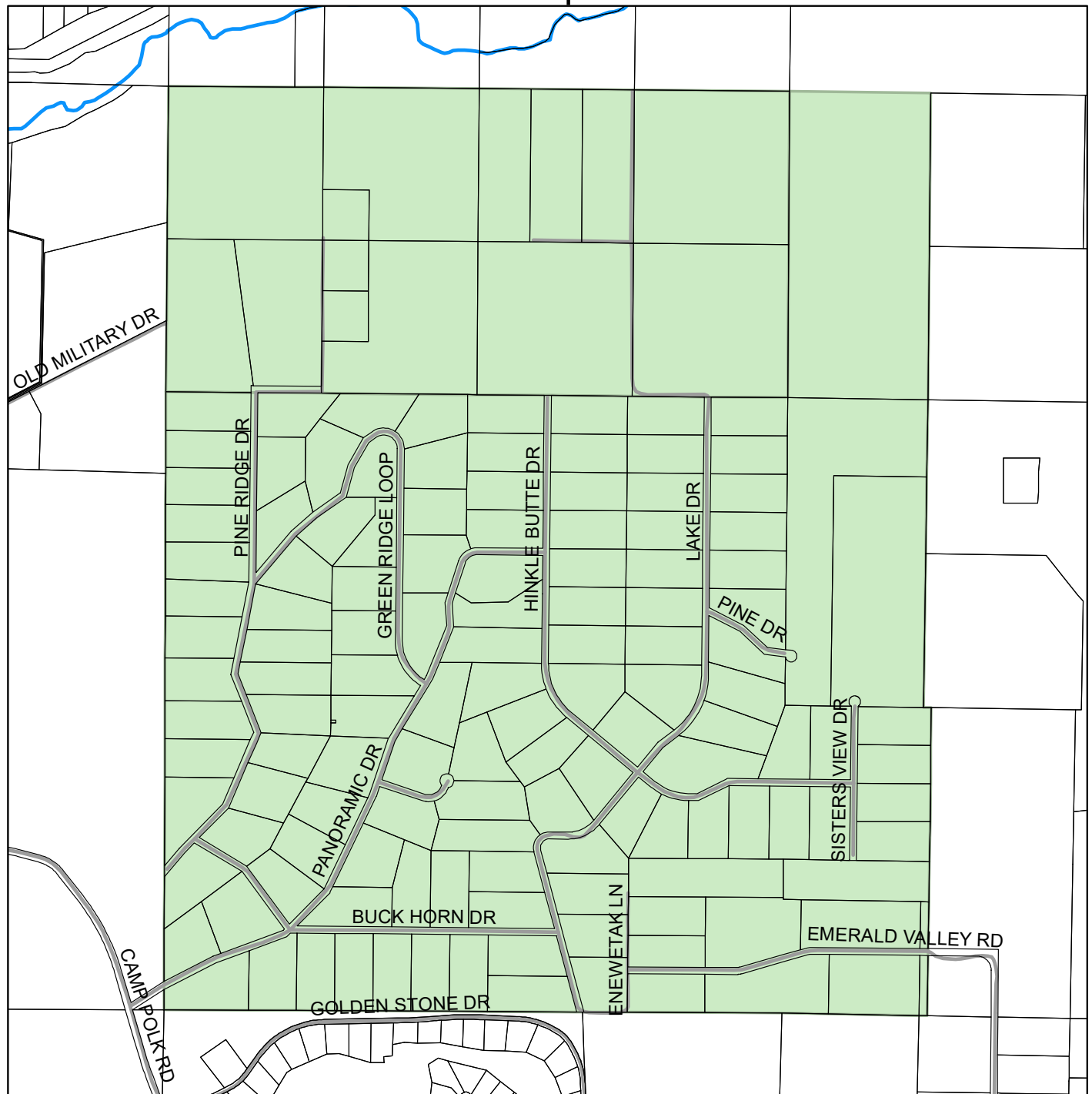
DATED: October 27, 2021.

KARNOPP PETERSEN LLP

Josh Newton, OSB No. 983087  
jn@karnopp.com  
Tyler J. Moore, OSB NO. 172544  
tjm@karnopp.com  
Of Attorneys for Petitioner



# Panoramic Access Special Road District



0 0.25 0.5 0.75 1 Miles

Printed: 1/22/2021

## Legend

- Panoramic Access Special Road District
- Taxlots
- Other roads
- County Roads
- Streams



**John Anderson, GIS Analyst**  
 Phone: (541) 322-7102  
 Email: john.anderson@deschutes.org  
 Address: 61150 SE 27th St  
 Bend, OR 97702

---

Road Department

The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

Z:\ArcGIS\_Products\Special Road Districts\Panoramic\Panoramic 2015\_4 8x11.mxd

## RESOLUTION NO. 2021-1

### **A RESOLUTION OF PANORAMIC ACCESS SPECIAL ROAD DISTRICT, DESCHUTES COUNTY, OREGON DECLARING THE DISTRICT'S INTENT TO AUTHORIZE AN ASSESSMENT FOR ROAD IMPROVEMENTS.**

**WHEREAS**, Panoramic Access Special Road District, Deschutes County, Oregon (the "District") is an Oregon special road district formed under Oregon Revised Statutes 371.305 through 371.385; and

**WHEREAS**, ORS 371.336 provides that special road districts have the power to assess for the purpose of improving roads within the District; and

**WHEREAS**, ORS 223.389 sets forth the procedure for a local government to make assessments; and

**WHEREAS**, the Board of Commissioners (the "Board") of the District has prepared, or caused to be prepared, a report (the "Report"), a copy of which is attached hereto and made a part hereof, which includes in the assessable cost the cost of administration, survey, preliminary engineering, mapping, funding a reserve account and any other action necessary and reasonable as set forth below:

- (a) The general nature, location and extent of the proposed local improvements (the "Improvements") and the land to be assessed for the payment of any part of the cost thereof;
- (b) Plans, specifications and estimates of the work to be done;
- (c) An estimate of the probable cost of the Improvements, including any legal, administrative and engineering costs attributable thereto;
- (d) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the cost of the Improvements to the properties specially benefited; and
- (f) The description and assessed value of each lot, parcel of land or portion thereof, to be specially benefited by the Improvements, with the names of the record owners thereof and, if applicable, the names of the contract purchasers thereof.

**WHEREAS**, a public hearing was held on May 11, 2021 after not less than 10 days' notice, either by posting, newspaper publication or by mail, or any combination of such methods, to the owners of property within the area in which the Improvements are contemplated, specifying the time and place where the Board will hear and consider objections or remonstrances to the proposed Improvements by any parties aggrieved thereby; and

**WHEREAS**, following the public hearing, the Board has determined to assess all the property within the District for the Improvements to the roads within the District.

**NOW, THEREFORE, IT IS RESOLVED BY THE BOARD OF COMMISSIONERS OF PANORAMIC ACCESS SPECIAL ROAD DISTRICT, DECHUTES COUNTY, OREGON AS FOLLOWS:**

1. The Board hereby approves of the Report.
2. The Board determines that all of the properties located within the District are benefited by the proposed Improvements and are shown on the map in the Report.
3. The Board has heard any objections or remonstrances at the public hearing referenced above and declares its intent to assess all the property within the District to pay for the total cost of the Improvements in the estimated amount of \$795,000.00 and to make the Improvements.
4. The assessment methodology shall be on a per lot basis.
5. The estimated assessment for each lot within the District shall be \$5,656.73.
6. Notice of the estimated assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed. The notice shall state the amount of the estimated assessment proposed on that property and shall fix a date by which time objections shall be filed with the Secretary. Any objection shall state the grounds for the objection. The Board shall consider the objections and grounds and may adopt, correct, modify or revise the estimated assessments.
7. The Board shall arrange for the construction of the Improvements.
8. This resolution is effective upon adoption.

ADOPTED by the Board of Commissioners of Panoramic Access Special Road District, Deschutes County, Oregon at a regular meeting thereof this 11<sup>th</sup> day of May 2021.

PANORAMIC ACCESS SPECIAL ROAD  
DISTRICT



By: Nyle Head  
Title: President

ATTEST



By: Jim Becker  
Title: Treasurer

ATTEST



By: Leighann Wittenberg  
Title: Secretary

## **RESOLUTION NO. 2021-2**

### **A RESOLUTION AUTHORIZING THE ISSUANCE, SALE, EXECUTION AND DELIVERY OF AN ASSESSMENT BOND ANTICIPATION NOTE AND ASSESSMENT BONDS; AND RELATED MATTERS.**

**WHEREAS**, the Board of Commissioners of Panoramic Access Special Road District, Deschutes County, Oregon (the “District”) finds:

- A. The District is an Oregon special road district formed under Oregon Revised Statutes 371.305 through 371.385; and
- B. ORS 371.336 provides that special road districts have the power to assess for the purpose of improving roads within the District; and
- C. It is desirable to resurface roads within the District (the “Project”).
- D. The District has imposed estimated assessments against all the lots within the District.
- E. ORS 287A.180(1)(b) and (4) authorize the issuance of obligations to provide interim financing for capital projects to be undertaken by the District.
- F. The interim financing provided pursuant to this authority (1) may not exceed the estimated cost of the Project, (2) the maturity date of the interim financing may not be later than five years after issuance, and (3) the debt limitations imposed by law of the District do not apply to interim financing authorized by ORS 287A.180.
- G. The District desires the authority to issue an assessment bond anticipation note as interim financing to finance the Project and the costs of issuing the assessment bond anticipation note, such assessment bond anticipation note to be retired with the proceeds of assessment bonds to be sold upon completion of the Project.
- H. The District is authorized under ORS 371.336 and ORS 223.387 to 223.401 to assess property for local improvements and ORS 223.205 to 223.295 authorizes the financing of local improvements (collectively, the “Assessment Act”); and
- I. **WHEREAS**, the District previously adopted Resolution No. 2021-1 assessing benefitted properties for the costs of the Project.

**NOW, THEREFORE, IT IS RESOLVED BY THE BOARD OF COMMISSIONERS OF PANORAMIC ACCESS SPECIAL ROAD DISTRICT, DESCHUTES COUNTY, OREGON AS FOLLOWS:**

### **Section 1. Issuance of Assessment Bond Anticipation Note.**

The Board of Commissioners of the District (the “Board”) authorizes the issuance and sale of an assessment bond anticipation note (the “Note”) in a principal amount not to exceed the estimated cost of construction of the Project and costs of issuance of the Note pursuant to ORS 287A.180(1)(b) and (4) to provide interim financing for the Project and pay the costs of issuance of the Note. The District authorizes the President or the Treasurer (the “Authorized Representative”) to determine the provisions as are deemed necessary and desirable for the sale and issuance of the Note not inconsistent with the provisions of this Resolution. The Note shall be dated with the date specified by the Authorized Representative, shall mature not later than 12 months after the date of issuance and shall bear interest payable at the rate determined by the Authorized Representative. Assessment bonds shall be issued by the District to pay the Note at maturity or earlier redemption.

### **Section 2. Issuance of Assessment Bonds.**

2.1 The District hereby authorizes the issuance of assessment bonds (the “Bonds”) under the Assessment Act in accordance with this Resolution equal to (1) the amount equal to the principal amount of applications to pay assessments in installments, plus (b) the amount necessary to fund a debt service reserve account, if necessary, and plus (c) the amount necessary to pay the cost of issuance of the Bonds.

2.2 The Bonds shall be a special obligation of the District payable solely from the installment payments of the final assessments related to the Project. The Bonds shall have a lien on the installments of the final assessment related to the Project. Pursuant to the Assessment Act, the lien is valid, binding and fully perfected from the date of issuance of the Bonds. The installments of the final assessment are immediately subject to the lien without the physical delivery thereof, the filing of any notice or any further act. The lien is valid, binding and fully perfected against all persons having claims of any kind against the District or the property assessed whether in tort, contract or otherwise, and irrespective of whether the persons have notice of the lien.

2.3 Neither this authorization nor the issuance of the Bonds shall authorize the District to levy any additional taxes. The Bonds are payable solely from the installment payments of the final assessment with respect to the Project.

### **Section 3. Security and Pledge of Assessments.**

3.1 The proceeds of assessment bonds to be sold to provide permanent financing for the Project are pledged to the owner of the Note for the payment of the principal and interest on the Note when due. In addition, the District pledges the estimated and final assessments on the benefited properties for the Project for the payment of principal of and interest on the Note.

3.2 The District pledges the estimated and final assessments on the benefited properties for the Project for the payment of principal of and interest on the Bonds.

**Section 4. Sale of Note and Bonds.**

The Note and Bonds shall be sold at a public or negotiated sale pursuant to ORS 287A.300. The Authorized Representative is authorized to (1) determine all terms for the Note and Bonds, consistent with the provisions of this Resolution, (2) act on behalf of the District under this Resolution and (3) execute on behalf of the District all documents required in order to issue, sell and deliver the Note and Bonds.

**Section 5. Payment of Note and Bonds.**

5.1 The principal of the Note shall be payable upon presentation of the Note at the earlier of (1) the District's receipt of the proceeds of the Bonds or (2) maturity. The Note shall be subject to optional prepayment prior to maturity as determined by the Authorized Representative.

5.2 The principal of, interest on, and optionable prepayment of the Bonds shall be payable as determined by the Authorized Representative.

**Section 6. Form and Denominations.**

The Note and Bonds shall be issued in form approved by the Authorized Representative and Note and Bond Counsel. The Note and Bonds shall be executed on behalf of the District with the manual or facsimile signature of the President and Secretary.

**Section 7. Contract with Owners of Note and Bonds.**

In consideration of the purchase and acceptance of the Note and Bonds by the owners thereof, the provisions of this Resolution and the Note and the Bonds shall be deemed to be and shall constitute a contract between the District and the owners. The pledges, covenants and agreements contained herein, in any note or bond purchase agreement or placement agreement and in the closing documents for the Bonds shall be for the equal benefit, protection and security of the owners.

**Section 8. Covenant as to Arbitrage.**

The proceeds of the Note and Bonds shall be used and invested in such manner that the Note and Bonds shall not become an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, (the "Code") and the regulations issued thereunder. The District covenants that, within its lawful powers, it will not do, and will refrain from doing, anything in the issuance of the Note and Bonds, and in the investment and expenditures of the

proceeds thereof, which would result in the interest on the Note or Bonds becoming taxable for federal income tax purposes.

**Section 9. Designation as Qualified Tax-Exempt Obligations.**

The Board hereby designates the Note and Bonds for purposes of paragraph (3) of Section 265(b) of the Code as a “qualified tax-exempt obligation” so long as the Note and Bonds do not constitute a private activity bond as defined in Section 141 of the Code, and that not more than the aggregate principal amount of obligations, the interest on which is excludable under Section 103(a) of the Code from gross income for federal income tax purposes (excluding, however, private activity bonds other than qualified 501(c)(3) bonds) including the Note and Bonds, have been or shall be issued by the District, including all subordinate entities of the District, if any, do not exceed the amount permitted under the Code for such designation during the calendar year in which the Note and Bonds are issued.

**Section 10. Exception for Small Governmental Units.**

The District finds and determines that the Note and Bonds complies with the statutory requirements of Section 148(f)(4)(C) of the Code in that the District is a governmental unit having general taxing powers, neither the Note nor the Bonds are being issued for a private activity purpose, more than 95% of the net proceeds of the Note and Bonds will be used for local governmental activities of the District, and the aggregate face amount of all tax-exempt obligations which will be issued by the District during the calendar year in which the Note and Bonds is issued is not reasonably expected to exceed \$5,000,000.

**Section 11. Appointment of Note and Bond Counsel.**

The District does appoint the law firm of Mersereau Shannon LLP of Portland, Oregon as Note and Bond Counsel to the District for the issuance of the Note and Bonds.

**Section 12. Appointment of Financial Advisor.**

The District does appoint SDAO Financial Services, Inc. as financial advisor to the District for the issuance of the Note and Bonds.

**Section 13. Closing of the Sale and Delivery of the Note and Bonds.**

The Authorized Representative is authorized to negotiate and execute a note purchase agreement and bond purchase agreement for and on behalf of the District and to execute such additional documents, including a tax certificate, and any and all other things or acts necessary for the sale and delivery of the Note and Bonds as herein authorized. Such acts of the Authorized Representative are for and on behalf of and are authorized by the Board of Commissioners of the District.

**Section 14. Effective Date.**

This Resolution shall take effect upon its adoption.

DATED this 5<sup>th</sup> day of October 2021.

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

---

By: Nyle Head  
Title: President

ATTEST

ATTEST

---

By: Jim Becker  
Title: Treasurer

---

By: Whitney Lowe  
Title: Secretary