

CROOK COUNTY WORK SESSION

Administration Conference Room
203 NE Court Street, Prineville, OR

Tuesday **April 20, 2021** at 9a.m.

Members of the public and media are welcome to attend in person with social distancing
or via WebEx 1-408-418-9388; Access Code: 623 057 025
Meeting Password: zRNvGMYM286

Discussion Items

	<i>Requester's Name</i>	<i>Matter</i>	<i>Docs in Packet?</i>
1	Katie Plumb	COVID-19 Update (if any)	
2	Ann Beier	Using a Hearings Officer for Code Compliance Cases	✓
3	John Eisler	Millican Laydown Yard Status	✓

Executive Discussion Items

	<i>Requester's Name</i>	<i>Matter</i>	<i>Docs in Packet?</i>
Exec #1			

Items placed on the Work Session agenda are intended for discussion only, without making decisions or finalizing documents unless an emergency exists.

**The Court may add additional items arising too late to be part of this Agenda. Agenda items may be rearranged to make the best use of time.*

**The meeting location is accessible to persons with disabilities. If additional accommodations are required, please submit your request 48 hours prior to the meeting by contacting County Administration at 541-447-6555.*

*Requests to be placed on the Work Session agenda are
due at 5 p.m. on Thursday before the Work Session*

April 20, 2021 Work Session Agenda Items

Crook County Counsel's Office

267 NE 2nd St., Ste 200 • Prineville, Oregon 97754 • (541) 416-3919 • FAX (541) 447-6705

MEMO

**For Work Session
April 20, 2021**

TO: Crook County Court

FROM: John Eisler, Crook County Legal Counsel's Office

DATE: April 12, 2021

RE: *Using a Hearings Officer for Code Compliance Cases*
Our File No.: Code 92

I was approached by Louis Seals and Ann Beier to evaluate the wisdom and feasibility of amending our Code to permit a hearings officer to adjudicate code violations under chapters 8 (Health and Safety), 15 (Buildings and Construction), and 18 (Zoning). Attached to this memo is an overview from Louis Seals. The primary goal of the proposed amendment would be to facilitate a quicker, more streamlined process to bring offenders into compliance.

Our current enforcement procedure is primarily found in CCC 1.12 and covers land use, environmental, construction, and sewage treatment and disposal ordinances. The sequence includes pursuit of voluntary compliance, mediated settlement, a notice of violation, and then prosecution in circuit court.

CCC 1.12.090(3) states that community development and the building department have their own policies and procedures. The building department procedures are listed in CCC 15.04.070 – 090. CCC 15.04.80(8) mentions that a party aggrieved by the issuance of a notice of civil penalty may appeal that penalty to the Crook County hearings officer, but I do not believe such a hearings officer currently exists or has been utilized. For zoning, I believe the only enforcement section is 18.172.100, which allows the revocation of a permit.

There are several issues with our current process, as detailed in the attachment. Two very important issues are the timeline and the cost in terms of county resources. The circuit court process, especially in light of COVID, takes four to six months or more to reach resolution. Second, the expenditure of County resources, particularly County Counsel, to file and prosecute the case in circuit court is burdensome.

Should the County want to address this problem, it would need to amend the County Code and procure a hearings officer. The County has various other enforcement code provisions scattered about and a robust procedure for administrative hearings with a hearings officer in CCC Chapter 8.16 for food establishment non-compliance. One option to amend the code would be to move the administrative hearing provisions

from CCC 8.16 to 1.12, and to have those provisions applicable for all code compliance cases. This is how it is structured in other counties like Deschutes. I believe we could leave the circuit court track mostly untouched and provide the administrative track as an alternative, preferred option.

As for the hearings officer procurement, the County currently has a hearings officer under contract for food establishment compliance hearings. I do not believe that she has been utilized often, but her main area of expertise is actually land use. County Counsel could evaluate the propriety and feasibility of expanding that contract to include these other types of hearings or submit an RFP to see what the market can offer. The market rate for such services seems to be in the \$150-250/hr range. These expenses would be offset by fees and penalties received from the hearings.

Streamlined administrative hearings appear to be a preferable option to our current circuit court process to timely remedy dangers to human health and safety. I recommend revisions to our County Code and a procurement to achieve that. Please let me know if you have any questions.

Administrative Compliance Hearings

- Administered by an appointed hearings officer (Administrative law judge)
- Scheduled Monthly / Decision within 14 days
- Venue: County Facilities (County Court Room or Administration Annex)
- Open to the public
- Burden of Proof (Preponderance of the Evidence)
- Plea options:
 - ✓ Guilty by written appearance,
 - ✓ Personally appear (Guilty or Not Guilty)
 - ✓ Guilty by written statement in lieu of appearance.
- Ability to impose required action and civil penalties.
- Reduced need for use of County Counsel
- Cost recovery (Administrative Fee and Civil Penalties)

Hearings Officer / Findings and Orders

- Repairs
- Permits
- Civil Penalties (Currently \$500 per violation)
- Administrative Compliance Fee (\$250)
- Eviction
- Change Use
- Abatement (to include recovery of cost)

Benefits of Administrative Hearings Process:

- Proven / Working Model (Deschutes/Jefferson)
- Quick / Deadline Oriented
- Efficient Use of Time / Resources
- Successful Collection of Fines / Enforcement Fees

Current Process

- Circuit Court
- 4 to 6 months
- Citations served by Sheriff's Office
- Extensive use of legal counsel
- Follow up progress hearings
- No cost recovery
- No abatement recovery

**AMENDMENT 1
To Lease Agreement**

This Amendment 1 modifies that certain lease agreement (hereinafter "the Lease") effective December 18, 2019, by and between Crook County, a political subdivision of the State of Oregon ("County") and Cupertino Electric Inc., a Delaware corporation ("Cupertino.")

RECITALS

WHEREAS, Cupertino leases from County approximately 10 acres of real property located near Baldwin Road in Prineville, Oregon, for the purposes described in paragraph 2 of the Lease, which generally includes staging, storage, and parking facilities; and

WHEREAS, the original term of the Lease was for one (1) year, with an optional extension term of an additional (1) year; and

WHEREAS, County and Cupertino wish to modify the provisions of the Lease as described in this Amendment 1.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, County and Cupertino agree as follows.

1. Effective Date: This Amendment 1 is effective on December 18, 2020.
2. Adoption of Recitals: The above Recitals are incorporated into this Amendment 1, as terms of contract and not mere recitals.
3. Modification of Lease Term: Upon the Effective Date of this Amendment 1, paragraphs 3, 3(A), 3(B), and 3(C) of the Lease is deleted, and replaced with the following:
 3. Term. The duration of the lease will be month-to-month, with each month's term beginning on the first day of each calendar month.
 - (A) The renewal terms shall commence on the day following expiration of the preceding term.
 - (B) [RESERVED]
 - (C) Either party may terminate the Lease upon providing the other with written notice prior to the first day of any month, with the termination becoming effective upon the last day of the month following the date of written notice.
4. Modification of Rent Term: Upon the Effective Date of this Amendment 1, paragraph 9 of the Lease is deleted, and replaced with the following:
 9. Rent. Cupertino shall pay to the County as rent for the 10 acres the sum of \$250.00 per acre (\$2,500.00 total) per month. Rent for each month is due and payable on the first day thereof. In the event that Cupertino vacates the property prior to the last day of any month, it will not be entitled to any partial refund.

5. Except as modified by this Amendment 1, the provisions of the Lease continue in full force and effect.

CUPERTINO ELECTRIC, INC.

Business

Name: Cupertino Electric, Inc

By: William R. Slakey

William R. Slakey
Print Name

Its: Chief Financial Officer

Date: October 19, 2020

Contractor's CCB #: 77582

Phone: (408) 808-8000

1132 North Seventh Street

Address

San Jose,

CA

95112

City

State

Zip

CROOK COUNTY COURT

Seth Crawford
Seth Crawford, County Judge

Jerry Brummer
Jerry Brummer, County Commissioner

Brian Barney
Brian Barney, County Commissioner

Date: 11-4-2020

**LEASE AGREEMENT
Staging Area**

18th This Lease Agreement for a temporary Staging Area ("Agreement") is entered into this day of DECEMBER, 2019, by and between Crook County, a political subdivision of the State of Oregon ("County"), and Cupertino Electric Inc., an Oregon corporation ("Cupertino").

RECITALS

WHEREAS, County is the owner of real property adjoining or in close proximity to the Millican Solar and Prineville Solar (collectively, "Solar Companies") located in Crook County, Oregon; and

WHEREAS, Cupertino has been engaged by Solar Companies to assist in the construction of new facilities located on the Solar Companies site; and

WHEREAS, County agrees to provide Cupertino access to and temporary use of County property for the purposes described below and subject to the terms of this Lease Agreement.

AGREEMENT

NOW, THEREFORE, County leases to Cupertino the following described real property on the following conditions:

1. Premises Leased. County leases to Cupertino approximately 10 acres of land (the "Leased Premises"), as more particularly described on the map and description attached hereto and made a part of this Lease as "**Exhibit A**."

2. Use of Premises. County shall provide Cupertino access to and temporary use of County property for the following uses:

- a. Placement of aggregate to use as a base;
- b. Staging of construction equipment;
- c. Delivery and storage of construction materials;
- d. Vehicle parking;
- e. Placement of construction job trailers;

Cupertino shall not use or permit the Leased Premises or any part of the Leased Premises to be used for any purpose or purposes other than the purpose for which the Leased Premises are leased under this Lease Agreement.

3. Term. The initial term of this Lease shall be for one (1) year, commencing on the date of the last signature hereto. County grants to Cupertino, subject to the terms set forth herein, the right and option to renew this Lease Agreement for one (1) successive term of one (1) year as follows:

- (A) The renewal terms shall commence on the day following expiration of the preceding term.

- (B) The option may be exercised by written notice to County given not less than 60 days before the last day of the expiring term. Giving such notice shall be sufficient to make the Lease binding for the renewal term without further act of the parties.
- (C) The terms and conditions of the Lease for each renewal term shall be identical with the original term.
- (D) At the expiration or earlier termination of this Lease Agreement, Cupertino shall peaceably and quietly quit and surrender to County the Leased Premises in good order and condition. Returning the property to good order and condition includes leveling the surface, scarify, reasonable weed abatement, and hydroseeding the Leased Premises. Cupertino shall also remove any temporary electric service.
- (E) Notwithstanding subsection (D), the County, in its sole discretion, may elect to have Cupertino leave some or all of the improvements it makes to the Leased Premises, including the aggregate base.

4. Termination. Notwithstanding anything herein to the contrary, if either party is in material breach and has not timely cured such breach, this Lease Agreement may be terminated by either party upon sixty (60) days prior written notice to the other party. Both parties will cooperate in good faith during the sixty (60) day period. Cupertino may terminate this Lease Agreement without cause at any time upon 30 days prior written notice.

5. Temporary Fencing. Cupertino shall be responsible for the cost and installation of temporary fencing and security gate.

6. Road Maintenance. Cupertino shall maintain Baldwin Road from where it turns to gravel (at the north end) and where it intersects with Hunter Road (at the south end), as shown on Exhibit A. The road shall be maintained in the same condition it is as of the effective date of this Agreement and shall be maintained throughout the term of the Agreement so as to not interfere with ordinary vehicle use.

7. Compliance with Laws. Cupertino shall not commit or allow to be committed, by act or omission, any waste or nuisance in or upon the Leased Premises. Cupertino represents and warrants to County that all activities performed by Cupertino and agents on the premises shall comply with all applicable laws, statutes, ordinances, rules, and regulations of any governmental authority. Cupertino shall be responsible for obtaining all necessary land use and building permits (including, but not limited to electrical).

8. Representation By County. County represents that, to the best of its knowledge, it is the owner of the property, that it is unaware of any contamination of the property, and that no third party has or will be given rights or interests in the property that would hinder Cupertino's use and rights under this Lease Agreement. The County makes no other representations with respect to the property or its condition, and Cupertino is not relying on any other representations of County or County's agents with respect to the use or condition of the property. This Lease grants Cupertino the privilege and permission for the exclusive use of the property depicted on Exhibit A in its present condition "as is" without any other warranties and subject to the conditions set forth herein. This Lease shall be subject to all easements, liens, and encumbrances of record granted by the County before or after the date of this Lease Agreement.

9. Rent. Cupertino shall pay to the County as rent for the 10 acres to be used for staging, the sum of **\$3,000 per acre (\$30,000)** per year.

The first annual payment shall be due within sixty (60) days of full execution of this Lease Agreement, with like payments due on the first day of the renewal term until the expiration or earlier termination as set forth herein.

In the event that Cupertino terminates this Lease Agreement before the next annual payment is due, any prepaid rent shall be retained by County and shall not be reimbursable to Cupertino.

10. **Insurance.** Cupertino shall procure and maintain in full force and effect for the duration of this Lease liability and property damage insurance with a minimum of **TWO MILLION DOLLARS (\$2,000,000)** bodily injury, and **TWO MILLION DOLLARS (\$2,000,000)** property damage for each occurrence and **TWO MILLION DOLLARS (\$2,000,000)** comprehensive general liability insurance. Cupertino shall provide a current copy of its policy or policies of insurance, or a certificate of insurance to County prior to exercising its rights and duties under this Lease. County shall be named as an additional insured on all policies required by this Lease.

11. **Indemnification.** Cupertino shall save and hold harmless, protect and indemnify County, its elected officials, employees, and agents, from and against any and all liabilities, obligations, damages, penalties, claims of any kind, causes of action, costs, charges and expenses, including attorney fees and expenses, which may be imposed upon or incurred or served against County, by reason of any occurrence or accident arising out of Cupertino's, or Cupertino agents' or employees' use of the Leased Premises. Notwithstanding anything to the contrary in this Lease Agreement, Cupertino shall not be liable to County or its agents, employees and invitees for any damage to person or property caused by an act, omission or neglect of County, and County agrees to defend and indemnify Cupertino from all claims for said damages.

12. **Default and Termination.** If Cupertino defaults under this Lease, County may assume control and possession of the Leased Premises and Cupertino and agents shall vacate the premises immediately and commence any necessary restoration. County reserves the right to immediately terminate this Lease in the event of an emergency, or when necessary, in County's sole discretion, to protect the health, welfare, or safety of the public. In the event of any breach of this Lease Agreement by Cupertino, County, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises.

13. **Notice of Default.** Cupertino shall not be deemed to be in default under this Lease Agreement in the payment of rent or in the furnishing of any insurance policy when required in this Lease Agreement, unless County first gives Cupertino thirty (30) days' written notice of the default, and Cupertino fails to cure the default within thirty (30) days.

14. **Assignment** Cupertino shall not assign this Lease to any party without the prior written consent of County.

15. **Entire Agreement** This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, representations, and negotiations between the parties regarding the subject matter are hereby superseded.

This Lease shall not be altered or amended except by the agreement in writing executed by both parties hereto.

16. Survival Termination of this Lease shall not relieve either party of any obligation that by its nature should survive termination, including but not limited to all guarantees and promises of indemnity.

17. Governing Law This Lease has been executed and delivered and shall be interpreted and enforced in accordance with the laws of the State of Oregon.

18. Venue for Resolution The venue for resolution of any dispute arising under the terms of this Lease shall be in the courts of Crook County, Oregon.

19. Severability If the final judgment of a court of competent jurisdiction invalidates any part of this Lease, then the remaining parts of this Lease shall remain in full effect.

20. Waiver If at any time County, its successors, or assigns fail to enforce this Lease Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

21. No Partnership Created This Lease shall not be construed as creating a relationship of principal and agent or of a joint venture, partnership, or other business association between County and Cupertino, it being understood and agreed that no provisions contained in this Lease, nor any acts of the parties hereto, shall be deemed to create any relationship other than that of the owner (County) and the lessee (Cupertino).

22. Hazardous Materials Cupertino shall not place, allow to be placed, transport, or allow to be transported to, on, into, or upon the Leased Premises any hazardous materials. If any hazardous materials are placed, allowed to be placed, transported, or allowed to be transported to, on, into, upon, or allowed to run onto the Leased Premises by Cupertino, its agents, or employees during the term of this Lease, regardless of fault or cause, then Cupertino shall be responsible for the costs of removal and remediation of such wastes or substances in accordance with all federal and state statutes, rules, and regulations. As used herein, "Hazardous Materials" means any hazardous or toxic substances, materials, or wastes as defined by any state, federal, or local law or regulation, and specifically includes oil and petroleum products and/or by-products.

Prior to expiration or termination of this Lease Agreement, Cupertino will provide County, at Cupertino's expense, a Level 1 Environmental Survey to be prepared by PBS Environmental (or such other company mutually agreed upon by the parties hereto), and complete any necessary cleanup identified by the assessment by the Level 1 survey. The Parties further agree that prior to taking possession of the Leased Premises, Cupertino shall obtain a Preliminary Environmental Review of the Leased Premises. Cupertino shall not be responsible for the costs of removal and remediation of Hazardous Materials or any other Recognized Environmental Condition (REC) or Controlled Recognized Environmental Condition (CREC) existent prior to taking possession of the Leased Premises. Thereafter, at the conclusion of the lease, Cupertino shall obtain a final environmental survey and complete any remediation identified before expiration or termination of this Lease.

23. Liens Cupertino shall pay as due all claims for work done on and for services rendered or material furnished to Cupertino for the Leased Premises, and shall at all times keep the Leased Premises free from any liens.

24. Counterparts This Lease Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

25. Subordination and Non-Disturbance Excluding uses allowed by this Lease Agreement, Cupertino will not use the Leased Premises in a manner that obstructs, annoys, or interferes with County's use of its adjoining property, including but not limited to the County's solid waste disposal (Landfill) operations. The County will provide written notice of any disturbance and allow Cupertino 30 days to cure. Further, Cupertino shall have exclusive use of the Leased Premises but will at all times be subject and subordinate to any agreements, whether in the form of a license, lease, easement, deed, or contract of sale between the County and any third party that pre-dates this Lease.

CUPERTINO ELECTRIC, INC.


William Slakey, CFO

Date: 12/11/19


Contractor's CCB #: 77582

Expiration Date: 07/12/2021

Phone: 408-808-8000

Address: 1132 N. 7th Street
San Jose, CA 95112

CROOK COUNTY


Seth Crawford, County Judge


Jerry Brunner, County Commissioner


Brian Barney, County Commissioner

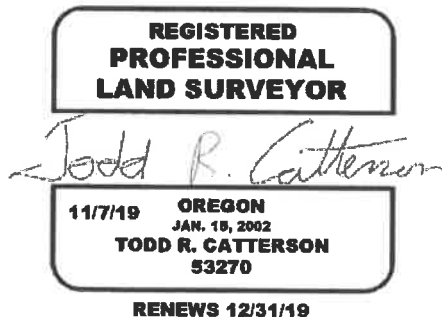
Date: 12-18-19

EXHIBIT A
Page 1 of 2

LEGAL DESCRIPTION OF A TRACT OF LAND LOCATED IN THE SW1/4 OF SECTION 12, TOWNSHIP 15 SOUTH, RANGE 15 EAST, W.M., CROOK COUNTY, OREGON

LEGAL DESCRIPTION

Legal description of a tract of land located in the Southwest one-quarter (SW1/4) Section 12, Township 15 South, Range 15 East, W.M., Crook County, Oregon, more particularly described as follows: Beginning at the South one-quarter corner of said Section 12, thence North 89°34'45" West along the South line of said Section 12 a distance of 120.00 feet to the True Point of Beginning of this legal description, thence North 89°34'45" West along the South line of said Section 12 a distance of 666.07 feet; thence North 00°17'30" East a distance of 493.41 feet; thence North 56°00'46" East a distance of 96.81 feet; thence North 00°17'04" East a distance of 124.72 feet; thence South 89°34'55" East a distance of 585.19 feet; thence South 00°12'55" West a distance of 672.87 feet to the True Point of Beginning. Containing 10.00 acres, more or less.



*LEGAL DESCRIPTION OF A TRACT OF LAND
LOCATED IN THE SW1/4 SECTION 12 OF
TOWNSHIP 15 SOUTH, RANGE 15 EAST, W.M.,
CROOK COUNTY, OREGON
W.O. 19-5283*

PREPARED FOR PREPARED BY

CUPERTINO ELECTRIC INC.
1132 N. 7TH STREET
SAN JOSE, CA 95112

ARMSTRONG SURVEYING, INC.
267 NE SECOND ST. STE. 100
PRINEVILLE, OR 97754
(541) 447-7791

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Todd R. Catterton

11/7/19 OREGON
JAN. 18, 2002
TODD R. CATTERTON
53270

RENEWES 12/31/19

