



**CROOK COUNTY COURT MEETING**  
**Crook County Annex | 320 NE Court St. | Prineville OR**  
**WEDNESDAY, February 2, 2022 at 9:00 A.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: 126 320 5412; Meeting Password: VFMr4z4PaM3**

**CONSENT AGENDA**

*(Routine matters which are not expected to generate discussion and are approved in a single vote. Any member of the Court may request removal of an item for separate discussion or vote.)*

1. Approve Minutes of January 18, 2022 and January 25, 2022 Work Session and January 19, 2022 Regular Meeting
2. Approve Order 2022- 02 Designation of Newspapers of Record
3. Approve Order 2022- 03 Building Code of Appeals
4. Approve Order 2022- 04 Planning Commission
5. Approve OYA IGA #14813 re Expunction of Juvenile Records
6. Approve 401K Amendment

**SCHEDULED APPEARANCES**

7. Ochoco Creek Spring and Fall Cleanup Requester: Carol Benkosky
8. Appointment of Jon Solis to the Crook County Foundation Requester: Jon Soliz

**DISCUSSION**

9. Current Petitioner re: Oregon/Idaho Border Movement Requester: Cheryl Seely
10. PUBLIC HEARING: Second Reading: Ordinance 327 – Noxious Weed List Requester: John Eisler
11. PUBLIC HEARING: First Reading: Ordinance 328 – Goal 5 PAPA Requester: John Eisler
12. PUBLIC HEARING: First Reading: Ordinance 329 – Destination Resort Overnight Lodging Unit Bonding Requester: Eric Blaine
13. PUBLIC HEARING and Opportunity of Comment, Order 2022-05, County Fee Schedule Requester: Eric Blaine
14. Architectural Contract with Steele for Belknap Exhibit Center Requester: John Eisler
15. Purchase of Property for Justice Center Requester: John Eisler

**EXECUTIVE SESSION – None Scheduled**

*\*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.*

## **NOTICE AND DISCLAIMER**

The Crook County Court is the governing body of Crook County and holds public meetings (generally on the first and third Wednesday of each month) to deliberate upon matters of County concern. As part of its efforts to keep the public apprised of its activities, the Crook County Court has published this PDF file. This file contains the material to be presented before the County Court for its next scheduled regular meeting.

Please note that while County staff members make a dedicated effort to keep this file up to date, documents and content maybe added, removed or changed between when this file is posted online and when the County Court meeting is held. The material contained herein maybe changed at any time, with or without notice.

**CROOK COUNTY MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING ANY WARRENTY OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE OR FOR ANY OTHER MATTER. THE COUNTY IS NOT RESPONSIBLE FOR POSSIBLE ERRORS, OMMISSIONS, MISUSE OR MISINTERPERTATION.**

Please also note that this file does not contain any materials scheduled to be discussed at an executive session or material the access to which maybe restricted under the terms of Oregon law.

If you are interested in obtaining additional coples of any of the documents contained herein, they maybe obtained by completing a Crook County Public Records Request form. Request forms are available on the County's website.

**CROOK COUNTY COURT MINUTES  
OF JANUARY 18, 2022 WORK SESSION  
Open Portion**

**Be It Remembered** that the Crook County Court met in a regularly scheduled Work Session on January 18, 2022, at 9:00 a.m. in the Administration Conference room located at 203 NE Court Street, Prineville, Oregon 97754.

Court Members Present: Judge Seth Crawford, Commissioner Jerry Brummer and Commissioner Brian Barney

Absentees: None

Others Present in Person or Via WebEx: Legal Counsels Eric Blaine and John Eisler; Administration Executive Assistant Amy Albert; Legal Assistant Lindsay Azevedo and Sheriff Gautney.

**WORK SESSION**

The meeting was **called to order at 9:00 a.m.**

At 9:00 a.m. the Court read into Executive Session under the following statute(s): ORS 192.660(2)(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations and ORS 192.660(2)(e) For the purpose of conducting deliberations with persons designated by the governing body to negotiate real property transactions.

**EXECUTIVE SESSION**

At the conclusion of the Executive Session, the County Court convened back into Open Session, inviting members of the public into the meeting room.

**MOTION** to direct staff to confer with counter party as discussed in executive session.

**MOTION** to direct staff to confer with counter party as discussed in executive session. Motion seconded. No further discussion. Motion carried 3-0. There being no further business before the Court, the meeting was **adjourned at 9:40 a.m.**

Respectfully submitted,

**Amy Albert**

**CROOK COUNTY COURT MINUTES  
OF JANUARY 25, 2022 WORK SESSION  
Open Portion**

**Be It Remembered** that the Crook County Court met in a regularly scheduled Work Session on January 25, 2022, at 9:00 a.m. in the Administration Conference room located at 203 NE Court Street, Prineville, Oregon 97754.

Court Members Present: Judge Seth Crawford, Commissioner Jerry Brummer and Commissioner Brian Barney

Absentees: None

Others Present in Person or Via WebEx: Legal Counsels Eric Blaine and John Eisler; Administration Executive Assistant Amy Albert; Legal Assistant Lindsay Azevedo; Clerk Cheryl Seely; Manager Tim Deboodt; Director Will VanVactor; Mike Erwin and Craig Kilpatrick.

**WORK SESSION**

The meeting was **called to order at 9:00 a.m.**

Agenda Item #1, Houston Lake Road Easement: Craig Kilpatrick requested an updated from the Court regarding their decision on the Houston Lake Road easement. The County has visited the easement site and will be holding an executive session February 1<sup>st</sup> to finalize their decision regarding the easement. Assistant County Counsel John Eisler will contact Mr. Kilpatrick with the County's decision.

At 9:05 a.m. the Court read into Executive Session under the following statute(s): ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection and ORS 192.660(2)(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

**EXECUTIVE SESSION**

At the conclusion of the Executive Session, the County Court convened back into Open Session, inviting members of the public into the meeting room.

**MOTION** to approve amendment #2 to collective bargaining agreement and to sign outside of Court. Motion seconded. No further discussion. Motion carried 3-0. There being no further business before the Court, the meeting was **adjourned at 9:32 a.m.**

Respectfully submitted,

**Amy Albert**

**CROOK COUNTY COURT MINUTES  
OF JANUARY 19, 2022 REGULAR MEETING  
Open Portion**

**Be It Remembered** that the Crook County Court met in a Regular Court meeting on January 19, 2022, at 9:00 a.m. in the County meeting room located at 320 NE Court Street, Prineville, Oregon 97754.

Court Members Present: Judge Seth Crawford, Commissioner Jerry Brummer and Commissioner Brian Barney

Absentees: None

Others Present in Person or Via WebEx: Legal Counsels Eric Blaine and John Eisler; Administration Executive Assistant Amy Albert; Manager Tim Deboodt; Director Kim Barber; Director Will VanVactor; Director Dodge Kerr; Manager Brent Bybee; Administration Executive Assistant Stephanie Wilson; Director Katie Plumb; Mike Erwin and Monty Kurtz.

**REGULAR SESSION**

The meeting was **called to order at 9:00 a.m.**

**MOTION** to approve the Consent Agenda as presented with these changes. Motion seconded. No discussion. Motion carried 3-0.

Discussion item #5.1: The Crook County Planning Commission had two applicants apply for their open position, Monty Kurtz and Les Williamson. After interviewing both applicants and reviewing their credentials it was recommended Mr. Williamson be appointed to the commission based upon his extensive experience.

**MOTION** to appoint Les Williamson to the Planning Commission for a four-year term. Motion seconded. No further discussion. Motion carried 3-0.

Discussion item #5: Judge Seth Crawford read Ordinance 327 but title only. A Public Hearing was opened. Receiving no comment from the public the Public Hearing was closed. This matter will be on the February 2<sup>nd</sup> Agenda.

**MOTION** to read by title only, Crook County Noxious Weeds List. Motion seconded. No further discussion. Motion carried 3-0.

Discussion item #6: This matter was pulled from the agenda.

Discussion item #7: County Court was presented with the GEL Oregon service agreement; this agreement is similar to past agreements the County has had with Andy Parks. Mr. Parks will help the County prepare their 2022-2023 budget.

**MOTION** to approve professional services agreement with GEL Oregon. Motion seconded. No further discussion. Motion carried 3-0.

Discussion item #8: The Health Department applied for and received a \$200,000 grant to implement a program to reduce the harms created by drug addiction. County Court authorized Katie Plumb to accept this grant on behalf of the County.

**MOTION** to approve the Comprehensive Opioid, Stimulant, and Substance Abuse Prevention Program grant award, and to delegate to the Public Health Director authority to accept it on behalf of Crook County. Motion seconded. No further discussion. Motion carried 3-0.

At the Court convened into Executive Session under the following statute(s): ORS 192.660(2)(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

### **EXECUTIVE SESSION**

At the conclusion of the Executive Session, the County Court convened back into Open Session, inviting members of the public into the meeting room.

**MOTION** to approve the labor contract between Ask Me 75 and the County. Motion seconded. No further discussion. Motion carried 3-0.

There being no further business before the Court, the meeting was **adjourned at 9:22 a.m.**

Respectfully submitted,

**Amy Albert**

**IN THE COUNTY COURT OF THE STATE OF OREGON**

**FOR THE COUNTY OF CROOK**

**IN THE MATTER OF DESIGNATION )  
OF NEWSPAPERS OF RECORD )**

**ORDER 2022-02**

**WHEREAS**, the Central Oregonian is published in Crook County, Oregon, and is a newspaper of general circulation in Crook County, Oregon; and

**WHEREAS**, the Bulletin is also a newspaper of general circulation in Crook County, Oregon; and

**NOW, THEREFORE**, the Crook County Court hereby **ORDERS** that the **Central Oregonian** and **The Bulletin** are designated as co-newspapers of record for publication of all legal notices required by Oregon State Statutes or regulations. Publication in either or both newspapers shall be legally sufficient.

DATED this 2<sup>nd</sup> day of February 2022.

CROOK COUNTY COURT

\_\_\_\_\_  
SETH CRAWFORD, County Judge

\_\_\_\_\_  
JERRY BRUMMER, County Commissioner

\_\_\_\_\_  
BRIAN BARNEY, County Commissioner

**IN THE COUNTY COURT OF THE STATE OF OREGON**  
**FOR THE COUNTY OF CROOK**

**IN THE MATTER OF THE  
APPOINTMENT TO BUILDING CODE  
OF APPEALS**

**ORDER 2022-03**

**WHEREAS**, volunteers are essential to the operation of the county government; and

**WHEREAS**, the Court has carefully considered the skills and talents of the applicants and the needs of the boards which has a vacancy requiring appointments, and based upon recommendation of Boards and Committees:

**NOW, THEREFORE**, it is hereby **ORDERED** that that the Crook County Court makes the following appointment to the Building Code of Appeals:

<b>Board</b>	<b>Appointee</b>	<b>Term</b>	<b>Oath required</b>
Building Code of Appeals Position # 3	Marshall Bex	3 – Year Term Expiring 12-31-2024	Yes

DATED this 2nd day of February 2022.

\_\_\_\_\_  
Seth Crawford  
County Judge

\_\_\_\_\_  
Jerry Brummer  
County Commissioner

\_\_\_\_\_  
Brian Barney  
County Commissioner



**IN THE COUNTY COURT OF THE STATE OF OREGON**  
**FOR THE COUNTY OF CROOK**

**IN THE MATTER OF THE  
APPOINTMENT TO THE PLANNING  
COMMISSION**

**ORDER 2022-04**

**WHEREAS**, volunteers are essential to the operation of the county government; and

**WHEREAS**, the Court has carefully considered the skills and talents of the applicants and the needs of the boards which has a vacancy requiring appointments, and based upon recommendation of Boards and Committees:

**NOW, THEREFORE**, it is hereby **ORDERED** that that the Crook County Court makes the following appointment to the Planning Commission:

<b>Board</b>	<b>Appointee</b>	<b>Term</b>	<b>Oath required</b>
Planning Commission Position # 7	Les Williamson	4 – Year Term Expiring 12-31-2025	Yes

DATED this 2nd day of February 2022.

\_\_\_\_\_  
Seth Crawford  
County Judge

\_\_\_\_\_  
Jerry Brummer  
County Commissioner

\_\_\_\_\_  
Brian Barney  
County Commissioner

# Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 301 NE 3<sup>rd</sup> St., Ste 200, Prineville, OR 97754

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## MEMO

TO: Crook County Court

FROM: County Counsel

DATE: 1/25/2022

RE: OYA IGA #14813 re Expunction of Juvenile Records  
Our File No.: JUVENILE 37

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IGA #14813 allows OYA to reimburse the County a flat rate of \$206.15 per Qualified Expunction of juvenile records. In order to receive the reimbursement, the County must complete the Qualified Expunction and submit a monthly billing report.

The IGA is not to exceed \$25,562.60, including any allowable expenses. The effective date is January 2, 2022, and terminates on January 1, 2024. Deb has reviewed the scope of work, and the other provisions are similar to what the County has agreed to in other contracts before.

Please let us know if you have any questions or concerns.

**Please place this memo and the attached document(s) on the Wednesday, February 2, 2022 County Court Agenda as a CONSENT ITEM, for approval and signatures.**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio tape, oral presentation, and computer disk. To request an alternate format call the State of Oregon, Oregon Youth Authority, Procurement Unit, at 503-373-7371.

## INTERGOVERNMENTAL AGREEMENT EXPUNCTION OF JUVENILE RECORDS

Agreement No. 14813



This Agreement is between the State of Oregon acting by and through its **Oregon Youth Authority** (“Agency”) and **Crook County**, (“Local Government”), each a “Party” and, together, the “Parties.”

### SECTION 1: AUTHORITY

This Agreement is issued pursuant to ORS 190.110 and ORS 420A.010(6), the parties have authority to enter into intergovernmental cooperative agreements, and therefore agree to enter into this agreement in order to allow Agency to provide County with compensation for costs associated with the expunction of juvenile records.

### SECTION 2: BACKGROUND AND PURPOSE

The mission of the Oregon Youth Authority (“OYA”) is to protect the public and reduce crime by holding youth accountable and providing opportunities for reformation in safe environments. Youth are committed to state custody as a result of criminal acts in one of Oregon’s 36 counties. Youth may remain in OYA custody until a maximum age of 25 years. OYA provides a continuum of services and sanctions including: parole and probation services, residential and foster care services, individualized treatment and support, juvenile crime prevention programs, and secure close-custody facilities for youth who represent an unacceptable risk to the public. OYA currently serves approximately 600 youth in state owned and operated close-custody facilities and an additional 900 youth on parole or probation.

### SECTION 3: EFFECTIVE DATE AND DURATION

Upon execution by all Parties and receipt of all required approvals, this Agreement is effective on **January 2, 2022** (“Effective Date”), and terminates on **January 1, 2024**, unless terminated earlier in accordance with Section 18.

### SECTION 4: AUTHORIZED REPRESENTATIVES

4.1. Agency’s Authorized Representative is:

Laura Ward, Community Services Program Analyst  
530 Center Street NE, Suite 500, Salem, OR 97301  
Phone: 971-301-1138  
Email: [Laura.Ward@oya.oregon.gov](mailto:Laura.Ward@oya.oregon.gov)

4.2. Local Government's Authorized Representative is:

Debra Patterson, Crook County Juvenile Department  
 305 NE 3rd St., Prineville, Oregon 97754  
 Phone: 541-447-5161  
 Email: [debra.patterson@co.crook.or.us](mailto:debra.patterson@co.crook.or.us)

4.3. A Party may designate a new Authorized Representative by written notice to the other Party without the need for formal amendment.

## SECTION 5: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence:

This Agreement less all exhibits;

Exhibit A – Statement of Work;  
 Exhibit B – Insurance; and  
 Exhibit C– Miscellaneous Provisions.

All exhibits by this reference are hereby made part of this Agreement.

## SECTION 6: RESERVED

## SECTION 7: RESPONSIBILITIES OF EACH PARTY

7.1. The Parties will follow the Statement of Work attached as Exhibit A, Statement of Work.

7.2. Agency shall pay Local Government as described in Section 8 titled "Compensation."

## SECTION 8: COMPENSATION

8.1. **Not to Exceed Compensation.** The maximum, not-to-exceed compensation payable to Local Government under this Agreement, which includes any allowable expenses, is **\$25,562.60**. Agency will pay Local Government according to the invoicing terms listed in Exhibit A- Statement of Work. Agency will not pay Local Government any amount in excess of the not-to-exceed compensation of this Agreement.

8.2. **Payments.** Payments, including interim payments, to Local Government will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in Exhibit A, Statement of Work.

## SECTION 9: REPRESENTATIONS AND WARRANTIES

Local Government represents and warrants to Agency that:

9.1. Local Government is a political subdivision of the State of Oregon duly organized and validly existing. Local Government has the power and authority to enter into and perform this Agreement;

- 9.2. The making and performance by Local Government of this Agreement (a) have been duly authorized by Local Government, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Local Government’s charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Local Government is party or by which Local Government may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Local Government of this Agreement, other than those that have already been obtained;
- 9.3. This Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms;
- 9.4 Local Government has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Local Government will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade, or profession; and
- 9.5. Local Government shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Local Government.

## **SECTION 10: GOVERNING LAW, CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between Agency or any other agency or department of the State of Oregon, or both, and Local Government that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. LOCAL GOVERNMENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **SECTION 11: OWNERSHIP OF WORK PRODUCT**

- 11.1. As used in this Section and elsewhere in this Agreement, the following terms have the meanings set forth below:

- 11.1.1. "**Local Government Intellectual Property**" means any intellectual property owned by Local Government and developed independently from the work under this Agreement.
- 11.1.2. "**Third Party Intellectual Property**" means any intellectual property owned by parties other than Local Government or Agency.
- 11.1.3. "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Local Government is required to deliver to Agency under this Agreement, and all intellectual property rights therein.
- 11.2. All Work Product created by Local Government under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Local Government agree that any Work Product that is an original work of authorship created by Local Government under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by Local Government under this Agreement is not "work made for hire," Local Government hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by Local Government under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Local Government shall execute such further documents and instruments necessary to fully vest such rights in Agency. Local Government forever waives any and all rights relating to Work Product created by Local Government under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by Local Government under this Agreement is a derivative work based on Local Government Intellectual Property, or is a compilation that includes Local Government Intellectual Property, Local Government hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Local Government Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If the Work Product created by Local Government under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Local Government shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing element of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

- 11.3. If Work Product is Local Government Intellectual Property, Local Government hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce,

prepare derivative works based upon, distribute copies of, perform and display the Local Government Intellectual Property, and to authorize others to do the same on Agency's behalf.

- 11.4. If Work Product is Third Party Intellectual Property, Local Government shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.
- 11.5. If state or federal law requires that Agency or Local Government grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Local Government shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

## **SECTION 12: CONTRIBUTION**

- 12.1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section with respect to the Third Party Claim.
- 12.2. With respect to a Third Party Claim for which Agency is jointly liable with Local Government (or would be if joined in the Third Party Claim ), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Local Government on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 12.3. With respect to a Third Party Claim for which Local Government is jointly liable with Agency (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in

settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

### **SECTION 13: LOCAL GOVERNMENT DEFAULT**

Local Government will be in default under this Agreement upon the occurrence of any of the following events:

- 13.1. Local Government fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 13.2. Any representation, warranty, or statement made by Local Government in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by Local Government is untrue in any material respect when made;
- 13.3. Local Government (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 13.4. A proceeding or case is commenced, without the application or consent of Local Government, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Local Government, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Local Government or of all or any substantial part of its assets, or (c) similar relief in respect to Local Government under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Local Government is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

### **SECTION 14: AGENCY DEFAULT**

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any



of its covenants, agreements, or obligations under this Agreement.

## **SECTION 15: REMEDIES**

15.1. In the event Local Government is in default under Section 13, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 18, (b) reducing or withholding payment for work or Work Product that Local Government has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Local Government to perform, at Local Government's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 16 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

15.2. In the event Agency is in default under Section 14 and whether or not Local Government elects to exercise its right to terminate this Agreement under Section 18.3.3, or in the event Agency terminates this Agreement under Sections 18.2.1, 18.2.2, 18.2.3, or 18.2.5, Local Government's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Agency, for work completed and accepted by Agency within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims Agency has against Local Government, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Agency, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that Agency has against Local Government. In no event will Agency be liable to Local Government for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Local Government exceed the amount due to Local Government under this Section 15.2, Local Government shall promptly pay any excess to Agency.

## **SECTION 16: RECOVERY OF OVERPAYMENTS**

If payments to Local Government under this Agreement, or any other agreement between Agency and Local Government, exceed the amount to which Local Government is entitled, Agency may, after notifying Local Government in writing, withhold from payments due Local Government under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

## **SECTION 17: LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 12, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

**SECTION 18: TERMINATION**

18.1. This Agreement may be terminated at any time by mutual written consent of the Parties.

18.2. Agency may terminate this Agreement as follows:

- 18.2.1. Upon 30 days advance written notice to Local Government;
- 18.2.2. Immediately upon written notice to Local Government, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;
- 18.2.3. Immediately upon written notice to Local Government, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;
- 18.2.4. Immediately upon written notice to Local Government, if Local Government is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Local Government; or
- 18.2.5. As otherwise expressly provided in this Agreement.

18.3. Local Government may terminate this Agreement as follows:

- 18.3.1. Upon 45 days advance written notice to Agency, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Local Government's reasonable administrative discretion, to perform its obligations under this Agreement;
- 18.3.2. Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned funding source;
- 18.3.3. Upon 30 days advance written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or
- 18.3.4. As otherwise expressly provided in this Agreement.

18.4. Upon receiving a notice of termination of this Agreement, Local Government will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Local Government will deliver to Agency all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Local Government will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by Local Government under this Agreement.

**SECTION 19: INSURANCE**

Local Government shall maintain insurance as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

**SECTION 20: NONAPPROPRIATION**

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

**SECTION 21: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties unless otherwise expressly provided within this Agreement.

**SECTION 22: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

**SECTION 23: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 9, 10, 11, 12, 16, 17, and 23 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

**SECTION 24: SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**SECTION 25: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

**SECTION 26: COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state, and local law.

**SECTION 27: INDEPENDENT CONTRACTORS**

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Local Government is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

**SECTION 28: INTENDED BENEFICIARIES**

Agency and Local Government are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

**SECTION 29: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to Local Government after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

**SECTION 30: ASSIGNMENT AND SUCCESSORS IN INTEREST**

Local Government may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

**SECTION 31: SUBCONTRACTS**

Local Government shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of Local Government under this Agreement. Agency's consent to any subcontract will not relieve Local Government of any of its duties or obligations under this Agreement.

**SECTION 32: TIME IS OF THE ESSENCE**

Time is of the essence in Local Government's performance of its obligations under this Agreement.

**SECTION 33: MERGER, WAIVER**

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or

representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**SECTION 34: RECORDS MAINTENANCE AND ACCESS**

Local Government shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Local Government shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Local Government's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Local Government acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Local Government shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, Local Government shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

**SECTION 35: HEADINGS**

The headings and captions to Sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

**SECTION 36: SIGNATURES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**SIGNATURE OF LOCAL GOVERNMENT'S AUTHORIZED REPRESENTATIVE**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

By (Insert Name and Title): \_\_\_\_\_

**SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE**

**AGENCY:** STATE OF OREGON, acting by and through its Oregon Youth Authority

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Amber Forster, Designated Procurement Officer/Chief Financial Officer

*Signatures continued on the following page*

**ATTORNEY GENERAL:** Approved for Legal Sufficiency

By: Susan Amesbury Approved via email 12302021 Date: \_\_\_\_\_  
Name:

**PROCUREMENT UNIT:** Reviewed by Contract Specialist

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Susanna Ramus

**AGREEMENT ADMINISTRATOR:** Reviewed and Approved

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Laura Ward

**EXHIBIT A****Statement of Work**

SB 575 (2021) contains new requirements for expunctions of juvenile records. SB 575 would have a financial impact for Local Government to complete new work required by this legislation. Agency has analyzed the associated costs and determined an estimated cost for additional work brought forward by SB 575 as described below. Through this Agreement, Agency will reimburse Local Government a flat rate per Qualified Expunction, as defined below and according to the compensation details listed in Section 2 of this Exhibit.

Agency considers the following Juvenile Records expunctions to be qualified for reimbursement (“Qualified Expunctions”):

- Expunctions described in Section 2(2)(a) of SB 575, and
- Expunctions described in Section 6, Subsection 2(a)(A) of SB 575.

**1. RESPONSIBILITIES OF EACH PARTY****1.1. Local Government Responsibilities:**

- 1.1.1. Complete Qualified Expunctions.
- 1.1.2. Submit a monthly Billing Report for Qualified Expunctions to Agency according to the requirements listed below. The Billing Report must:
  - Be generated using the BIS Report through the Juvenile Justice Information System (JJIS).
  - List the total number of Qualified Expunctions that were processed during the previous month.
  - Include the anonymized youth Identification number created by JJIS for the Report and shall not include any juvenile identifying information.
  - Be submitted according to the requirements listed in Section 3 of this Exhibit.

**1.2. Agency Responsibilities:**

- 1.2.1 On the date that the youth becomes eligible for expunction under either Section 2(2)(a), or Section 6, Subsection 2(a)(A), provide Local Government with a Business Intelligence Systems (BIS) report (“Expunction Report”) notifying Local Government of youth’s eligibility.
- 1.2.2 Review the submitted Billing Report submitted with the invoice and provide reimbursement to Local Government within 45 days of receipt of the invoice, at the rate listed in Section 2.1 of this Exhibit, for Qualified Expunctions completed and listed on the Billing Report.

**1.3. Acceptance Criteria and Process**

Agency will reimburse Local Government following Agency’s approval of Local Government’s invoice submitted to Agency for Qualified Expunctions in accordance with

the terms and conditions of this Agreement. Agency will consider the Services complete when the final Billing Report is received from Local Government under this Agreement.

- 2. COMPENSATION.** The total not to exceed amount available for payment to Local Government is as follows:

Services (Exhibit A, Section 1.1, Local Government Responsibilities)	\$25,562.60
<b>Total Not to Exceed Amount for this Agreement</b>	<b>\$25,562.60</b>

**2.1. Method of Payment for Services**

Agency will reimburse Local Government at the rate of **\$206.15** per Qualified Expunction.

**3. Invoices**

- 3.1. Local Government shall send monthly invoices to Agency as soon as possible but no later than quarterly, for Services completed and Goods delivered and accepted by Agency in accordance with Exhibit A, Section 1. Local Government shall include on each invoice:
- 3.1.1. Agreement number
  - 3.1.2. Billing Report
  - 3.1.3. Payment address
- 3.2. Local Government shall send all invoices to Agency's Agreement Administrator at the address specified on page one of this Agreement or to any other address as Agency may indicate in writing to Local Government. Local Government's claims to Agency for overdue payments on invoices are subject to ORS 293.462.
- 3.3. If payments to Local Government by the Agency under this Agreement, or under any other agreement between Local Government and Agency, are made in error or are found by the Agency to be excessive under the terms of this Agreement or the other agreement, the Agency, after giving written notification to the Local Government, may withhold payments due to Local Government under this Agreement in such amounts, and over such periods of time, as are deemed necessary by the Agency to recover the amount of the overpayment. This Exhibit A, Subsection 3.3, shall survive expiration or earlier termination of this Agreement and be fully enforceable thereafter.
- 3.4. Local Government must submit its final invoice to the Agency no later than 60 days after the termination or expiration date of this Agreement. The Agency will be under no obligation to pay for services not billed within 60 days after the termination or expiration date of this Agreement.
- 3.5. Local Government certifies with each invoice and reporting form submitted to Agency that the materials, services, or expenses included in the invoice have been furnished, rendered, or expended pursuant to the terms of this Agreement, that they are as stated in the Agreement and the Local Government has not previously requested payment for the item(s) from the Agency.



**EXHIBIT B**  
**Insurance (Reserved)**

## EXHIBIT C

## Miscellaneous Provisions

1. **Media Disclosure:** Local Government shall not provide information to the media regarding a recipient of Services purchased under this Agreement without first consulting the Agency. Local Government shall make immediate contact with the Agency's Communications Office when media contact occurs. The Agency's Communications Office will assist Local Government with an appropriate follow-up response for the media.
2. **Client Records:** Local Government shall appropriately secure all records and files to prevent access by unauthorized persons. Local Government shall, and shall require its employees and subcontractors to, comply with all appropriate federal and state laws, rules, and regulations regarding confidentiality of client records.
3. **Conflict of Interest:** Local Government shall notify Agency in writing when a current employee or newly hired employee is also an employee of the Agency. Local Government shall submit the notification to the Agency Agreement Administrator and the Agency Procurement Unit and shall include the name of the employee and their job description. The Agency will review the employment situation for actual and potential conflicts of interest as identified under ORS Chapter 244.
4. **Mandatory Reporting:** As required by Oregon Law (ORS 419B.005 through ORS 419B.050), all the Agency contractors must immediately inform either the local office of the Department of Human Services ("DHS") or a law enforcement agency when they have reasonable cause to believe that any child with whom Local Government comes in contact has suffered abuse, or that any person with whom the Local Government comes in contact has abused a child. Oregon Law recognizes child abuse to be: physical injury; neglect or maltreatment; sexual abuse and sexual exploitation; threat of harm; mental injury; and child selling.

Reports must be made immediately upon awareness of the incident. Local Government is encouraged to contact the local DHS office if any questions arise as to whether an incident meets the definition of child abuse.

5. **Criminal Records Check:** Contractor shall ensure that any person having direct contact with Agency youth in the course of providing services under this Contract has passed a criminal history and child abuse registry check and meets the Agency's criminal history records check standards as set forth in OAR 416-800-0000 to 416-800-0095 before the person provides services under this Contract. Contractor shall ensure that criminal records checks are updated at least every five years.

Any person who has failed a criminal history check as set forth in OAR 416-800-0000 to 416-800-0095 is prohibited from serving as a contracted service provider.



# Oregon

Kate Brown, Governor

**Oregon Youth Authority  
Procurement Unit**  
530 Center Street NE, Suite 500  
Salem, Oregon 97301  
Voice: (503) 373-7330  
Fax: (503) 373-7921  
www.oregon.gov/OYA



## Document Return Statement

January 4, 2022

**Re:** Contract# 14813 hereafter referred to as "Contract."

Please complete and return the following documents:

- This Document Return Statement
- Completed signature page(s)

*Note: If you have any questions or concerns with the above referenced Contract, please feel free to contact Susanna Ramus, Contract Specialist at 971-301-0918.*

**Please complete the following:**

I \_\_\_\_\_, \_\_\_\_\_  
(Name) (Title)

received a copy of the above referenced Contract, consisting of 16 pages between the State of Oregon, acting by and through its **Oregon Youth Authority** and **Crook County** by email from OYA Procurement Unit on the date listed above.

**On** \_\_\_\_\_, I signed the electronically transmitted Contract without change.  
(Date)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

17-76

9

# Prospective Petition Local Initiative and Referendum

SEL 370

rev 01/18 ORS 250.045,  
250.165, 250.265, 255.135

FILED

**Warning** Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

<b>Petition Information</b>	<b>Type</b>		
This filing is an	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Initiative
			<input type="checkbox"/> Referendum

<b>Jurisdiction</b>	<b>Some Circulators may be Paid</b>		
<input checked="" type="checkbox"/> County	<input type="checkbox"/> City	<input type="checkbox"/> District	<input type="checkbox"/> Yes
			<input checked="" type="checkbox"/> No

**Title** Subject or name you give your petition.  
Hindering State Border Relocation Consideration Prohibited

**Website** if applicable  
greateridaho.org

**Petition Correspondence** Select the method of receiving notices or other correspondence from the Filing Officer.

Correspondence Recipient       Email Chief Petitioners       Mail Chief Petitioners

**Recipient Information**

Name	Email Address
------	---------------

**Chief Petitioner Information** At least one original chief petitioner must remain throughout the petition process or the petition is void.  
→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

<b>Name</b> Jerald Jackman	<b>Contact Phone</b> 541 815 3829
-------------------------------	--------------------------------------

**Residence Address** street, city, state, zip  
375 SE Knowledge St, Prineville, Oregon, 97754

<b>Mailing Address</b> if different	<b>Email Address</b> jerald.jackman@gmail.com
-------------------------------------	--

<b>Signature</b> 	<b>Date Signed</b> 11/23/2021
---	----------------------------------

<b>Name</b>	<b>Contact Phone</b>
-------------	----------------------

**Residence Address** street, city, state, zip

<b>Mailing Address</b> if different	<b>Email Address</b>
-------------------------------------	----------------------

<b>Signature</b>	<b>Date Signed</b>
------------------	--------------------

<b>Name</b>	<b>Contact Phone</b>
-------------	----------------------

**Residence Address** street, city, state, zip

<b>Mailing Address</b> if different	<b>Email Address</b>
-------------------------------------	----------------------

<b>Signature</b>	<b>Date Signed</b>
------------------	--------------------

9

## Hindering State Border Relocation Consideration Prohibited

### Section 1.

The people of Crook County ordain as follows:

### Section 2.

- 1) Unless fulfillment of the request is prohibited by state or federal law, no person shall prohibit or hinder the fulfillment of information requests that:
  - a. come from the government of the state or the government of a neighboring state, and
  - b. are addressed to the government of the County, and
  - c. request information that is in the possession of the government of the County, and
  - d. are designated by that state to be requests in support of efforts to consider relocating a state border,

### Section 3. Penalties:

- 1) Anyone within the jurisdiction of the County found in violation of Section 2 of this ordinance may be made a defendant in a civil proceeding by the county seeking redress of the violation, per ORS 203.065
- 2) Fines recovered under ORS 203.030 – 203.075 shall be paid to the clerk of the court in which recovery is had. After first deducting court costs in the proceedings, the clerk shall pay the remainder to the treasurer of the county for the general fund of the county, per ORS 203.065.
- 3) A civil offense against this ordinance is a Class D violation, per ORS 203.065, with a maximum fine of \$250 for an individual, and \$500 for a corporation, per ORS 153.018.
- 4) Any peace officer, as defined by ORS 161.015, may enforce this ordinance, adopted under ORS 203.035.

### Section 4.

- 1) If any provision of this ordinance or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this ordinance or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.
- 2) If this ordinance conflicts with another County ordinance or code, the provisions of this ordinance shall prevail.
- 3) This ordinance shall be effective 90 days after passage.

7-80

9

# Prospective Petition Local Initiative and Referendum

SEL 370

rev 01/18 ORS 250.045,  
250.165, 250.265, 255.135

**Warning** Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

<b>Petition Information</b>			
This filing is an	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Initiative
			<input type="checkbox"/> Referendum

<b>Jurisdiction</b>		<b>Some Circulators may be Paid</b>	
<input checked="" type="checkbox"/> County	<input type="checkbox"/> City	<input type="checkbox"/> District	<input type="checkbox"/> Yes
			<input checked="" type="checkbox"/> No

**Title** Subject or name you give your petition.  
Prohibits Non-Disclosure of Information Relating to Oregon/Idaho Border Relocation

**Website** if applicable  
greateridaho.org

**Petition Correspondence** Select the method of receiving notices or other correspondence from the Filing Officer.

Correspondence Recipient       Email Chief Petitioners       Mail Chief Petitioners

**Recipient Information**

Name	Email Address
------	---------------

**Chief Petitioner Information** At least one original chief petitioner must remain throughout the petition process or the petition is void.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

<b>Name</b> Jerald Jackman	<b>Contact Phone</b> 541 815 3829
-------------------------------	--------------------------------------

**Residence Address** street, city, state, zip  
375 SE Knowledge St, Prineville, Oregon, 97754

<b>Mailing Address</b> if different	<b>Email Address</b> jerald.jackman@gmail.com
-------------------------------------	--

<b>Signature</b> 	<b>Date Signed</b> 12/17/2021
--	----------------------------------

<b>Name</b>	<b>Contact Phone</b>
-------------	----------------------

**Residence Address** street, city, state, zip

<b>Mailing Address</b> if different	<b>Email Address</b>
-------------------------------------	----------------------

<b>Signature</b>	<b>Date Signed</b>
------------------	--------------------

<b>Name</b>	<b>Contact Phone</b>
-------------	----------------------

**Residence Address** street, city, state, zip

<b>Mailing Address</b> if different	<b>Email Address</b>
-------------------------------------	----------------------

<b>Signature</b>	<b>Date Signed</b>
------------------	--------------------

9



## New Petition

1 message

gerald jackman <JRJ97750@hotmail.com>  
To: "pknship@gmail.com" <pknship@gmail.com>

Thu, Dec 16, 2021 at 3:34 PM

### **Prohibits Non-Disclosure of Information Relating to Oregon/Idaho Border Relocation**

Section 1. The people of Crook County ordain as follows:

Section 2.

1) Unless fulfillment of the request is prohibited by state or federal law, no person shall prohibit or hinder the fulfillment of information requests that:

- a. come from the government of the State of Idaho, and
- b. are addressed to the government of the County, and
- c. request information that is in the possession of the government of the County, and d. are designated by that state to be requests in support of efforts to consider relocating the Oregon/Idaho border.

Section 3. Penalties:

1) Anyone within the jurisdiction of the County found in violation of Section 2 of this ordinance may be made a defendant in a civil proceeding by the county seeking redress of the violation, per ORS 203.065.

2) Fines recovered under ORS 203.030 – 203.075 shall be paid to the clerk of the court in which recovery is had. After first deducting court costs in the proceedings, the clerk shall pay the remainder to the treasurer of the county for the general fund of the county, per ORS 203.065.

3) A civil offense against this ordinance is a Class D violation, per ORS 203.065, with a maximum fine of \$100 for an individual, per ORS 153.018.

4) Any peace officer, as defined by ORS 161.015, may enforce this ordinance, adopted under ORS 203.035.

Section 4.

- 1) If any provision of this ordinance or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this ordinance or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.
- 2) If this ordinance conflicts with another County ordinance or code, the provisions of this ordinance shall prevail.
- 3) This ordinance shall be effective 90 days after passage.

To increase the chances that the DA will give a better ballot title. We could submit a new petition tomorrow and know the ballot title by Dec 30. Hoping that the DA would mention the word "Idaho". Here's the important part of the new text:

## Section 2.

- 1) Unless fulfillment of the request is prohibited by state or federal law, no person shall prohibit or hinder the fulfillment of information requests that:
  - a. come from the government of the State of Idaho, and
  - b. are addressed to the government of the County, and
  - c. request information that is in the possession of the government of the County, and
  - d. are designated by that state to be requests in support of efforts to consider relocating the Oregon/Idaho border.

## Section 3.

- 3) ) A civil offense against this ordinance is a Class D violation, per ORS 203.065, with a maximum fine of \$100 for an individual, per ORS 153.018.

Summary change to: ... A person found to be violation of this ordinance may be subject to civil proceedings and a maximum fine of \$250.



# Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 301 NE 3<sup>rd</sup> St., Ste 200, Prineville, OR 97754

• Fax: 541-447-6705



## MEMO

TO: Crook County Court

FROM: John Eisler, Asst. County Counsel

DATE: January 25, 2022

RE: Ordinance 327 – Noxious Weed List  
Our File No.: A Misc. Ordinances

---

Enclosed is Ordinance 327, which updates the County's Noxious Weed List. The Crook County Noxious Weed Advisory Board has updated their list of noxious weeds in the County for 2022. The list is found in CCC 8.24.060, and amending any non-emergency ordinance requires two public hearings at least 14 days apart. This will be the second and final hearing.

Please let me know if you have any questions.

**Please place this memo and the attached document(s) on the Wednesday, February 2, 2022 County Court Agenda as a DISCUSSION/PUBLIC HEARING ITEM.**

IN THE COUNTY COURT OF THE STATE OF OREGON  
 FOR THE COUNTY OF CROOK

AN ORDINANCE AMENDING CROOK  
 COUNTY CODE CHAPTER 8.24 UPDATING  
 THE COUNTY’S NOXIOUS WEED LIST

ORDINANCE 327

WHEREAS, Crook County regulates noxious weeds in Crook County by periodically updating the list of weeds considered noxious; and

WHEREAS, the Crook County Noxious Weed Advisory Board has met to consider amending the County’s Noxious Weed List and suggests the amendments as depicted below; and

WHEREAS, pursuant to CCC 8.24.060, the Noxious Weed List may be amended from time to time by the County Court.

NOW THEREFORE, the Crook County Court ordains as follows:

Section One: The above recitals are adopted into and made a part of this Ordinance 327 as the County’s findings of fact.

Section Two: Crook County Code Chapter 8.24.050 is amended to read as follows, with deletions ~~struck through~~ and additions *italicized*:

For the purposes of this chapter, the weeds listed below are declared to be noxious:

<b>CLASS A NOXIOUS WEEDS (those receiving the highest priority)</b>	
Yellow Starthistle	Purple Loosestrife
Dalmation Toadflax	Mediterranean Sage
Scotch Thistle	Squarrose Knapweed
Wild Carrot	Tansy Ragwort
Rush Skeleton Weed	African Rue
Musk Thistle	Perennial Pepperweed
Jointed Goatgrass	<i>Orange Hawkweed</i>
<i>Yellow Toadflax</i>	<i>Yellow Flag Iris</i>
<i>Eurasian Watermilfoil</i>	
Leafy Spurge (all areas except Mill Creek drainage and within 50 feet of the high-water mark on the Crooked River)	

CLASS B NOXIOUS WEEDS	
Canada Thistle	St. John's Wort
Common Groundsel	Scotch Broom
Poison Hemlock	Hound's Tongue
Russian Knapweed	White Top
Spiny Sowthistle	Medusa Head
Puncture Vine	Yellow Flag Iris
Myrtle Spurge	<i>Diffuse Knapweed</i>
<i>Spotted Knapweed</i>	<i>Perennial Pepperweed</i>
<i>Medusahead Rye</i>	

CLASS C NOXIOUS WEEDS	
Teasel	Yellow Sweetclover
Russian Thistle	Common Mullein
Kocia	Bur Buttercup
Bull Thistle	Field Bindweed
Western Water Hemlock	<i>Chicory</i>
<i>Ventenata</i>	

Section Three: If any portion of this Ordinance 327 is found by a court of competent jurisdiction to be invalid, all other portions of this Ordinance will remain in full force and effect.

Section Four: Emergency Clause. This Ordinance 327 being necessary for the health, safety, and welfare of the people of Crook County, an emergency is declared to exist, and Ordinance 327 becomes effective immediately upon the second reading.

First Reading: January 19, 2022

Second Reading: February 2, 2022

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Judge Seth Crawford

\_\_\_\_\_  
Commissioner Jerry Brummer

\_\_\_\_\_  
Commissioner Brian Barney



# Crook County Counsel's Office

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## MEMO

TO: Crook County Court

FROM: John Eisler, Asst. County Counsel

DATE: January 25, 2022

RE: Ordinance 328 – Goal 5 PAPA  
Our File No.: Comm Dev 71

Enclosed is Ordinance 328 (the "Ordinance"), which amends our County's comprehensive plan by adding an approximately 78-acre site to our Goal 5 Inventory as a significant resource site as a "3B site." Attachment A to the Ordinance are the County Court's findings of fact, including the ESEE analysis and program to achieve the goal.

This is Ordinance declares an emergency, and invokes a not-often-used exception (ORS 203.045(4)) to allow the Ordinance to go into effect upon only one reading. Knife River, the Applicant, has granted extensions to the County in the time needed to process its application, but due to the extra public hearings and continuances, we are still behind schedule.

With this post acknowledgement plan amendment (PAPA), the County may process the Applicant's conditional use permit, subject to the plan to achieve the goal which imposes no restrictions on conflicting uses.

Please let me know if you have any questions.

**Please place this memo and the attached document(s) on the Wednesday, February 2, 2022 County Court Agenda as a DISCUSSION/PUBLIC HEARING ITEM, for approval and signatures.**

Approved this 2nd day of February 2022.

CROOK COUNTY COURT

\_\_\_\_\_  
Seth Crawford  
County Judge

\_\_\_\_\_  
Jerry Brummer  
County Commissioner

\_\_\_\_\_  
Brian Barney  
County Commissioner

**IN THE COUNTY COURT OF THE STATE OF OREGON**

**FOR THE COUNTY OF CROOK**

**AN ORDINANCE OF THE CROOK  
COUNTY COURT AMENDING THE  
CROOK COUNTY COMPREHENSIVE  
PLAN GOAL 5 INVENTORY BY  
INCLUDING A NEW 3B AGGREGATE  
SITE AND ADOPTING A SITE  
SPECIFIC ENVIRONMENTAL SOCIAL  
ECONOMIC (ESEE) ANALYSIS AND  
PROGRAM TO ACHIEVE GOAL 5 FOR  
THE AGGREGATE SITE AND  
DECLARING AN EMERGENCY.**

**ORDINANCE No. 328**

**WHEREAS**, the Crook County Planning Commission has recommended that the Crook County Comprehensive Plan be amended to include the subject property as a new aggregate site and adopt a site specific ESEE analysis and Program to Achieve Goal 5 for the aggregate site; and

**WHEREAS**, the Crook County Court considered the matter, *de novo*, and confirms the Planning Commission's recommendation that the Crook County Comprehensive Plan be amended to include the subject property as a new aggregate site and adopt a site specific ESEE analysis and Program to Achieve Goal 5 for the aggregate site; and

**WHEREAS**, the comprehensive plan amendment is authorized by Crook County Code Title 18, Chapter 18.168, and the Comprehensive Plan of Crook County; and

**NOW, THEREFORE**, the Crook County Court ordains as follows::

**SECTION 1: Amendment.** Ordinance 17 (the Crook County Comprehensive Plan) is amended to add the approximately 77.98 acre site, described as T 14 S, R 15 EWM, Section 14, Tax Lot 103, to the Goal 5 Inventory as a significant aggregate resource site and to adopt the ESEE analysis and Program to Achieve Goal 5 as a text amendment to place the subject site on the inventory of significant sites as a 3B site.

**SECTION 2: Findings.** The Crook County Court adopts the recommendation of the Crook County Planning Commission and issues its Findings of Fact and Conclusions of Law (Attachment A), which includes an ESEE Analysis and Program to Achieve Goal 5, as its findings in support of its Decision.

**SECTION 3: Emergency.** The Ordinance being necessary for the health, welfare, and safety of the people of Crook County, an emergency is hereby declared to exist and this Ordinance shall become effective upon signing.

Reading: \_\_\_\_\_, 2022

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Judge Seth Crawford

\_\_\_\_\_  
Commissioner Jerry Brummer

\_\_\_\_\_  
Commissioner Brian Barney

## Attachment A to Ordinance 328

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
IN THE MATTER OF  
FILE NO. 217-21-000436-PLNG

**I. INTRODUCTION**

**Applicant:** Knife River Corporation – Northwest  
32260 Old Highway 34  
Tangent, Oregon 97389

**Owner:** Robert J. and Lani Vanier  
P.O. Box 326  
Dayville, Oregon 97825

**Subject Property:** 6487 NW Lamonta Road  
Prineville, Oregon 97754  
Tax Lot: 14151400-00103

**II. PROPOSAL**

The Applicant proposes to amend the Crook County Comprehensive Plan (“Comprehensive Plan”) to add a 77.98-acre quarry site to Crook County’s inventory of Significant Mineral and Aggregate Sites (“Aggregate Inventory”).

**III. PROCEDURAL STATUS**

Knife River Corporation - Northwest (the “Applicant”), submitted an application on or about May, 25, 2021, to add the subject property to the Crook County Aggregate Inventory. Additionally, the Applicant filed an application for a conditional use permit (“CUP”) on or about July 9, 2021, to allow Knife River to operate an aggregate mine on the subject property. That CUP application, record no. 217-21-000573-PLNG, is currently before the Crook County Planning Commission pending the County Court’s decision on this comprehensive plan amendment request.

Regarding the Applicant’s comprehensive plan amendment request, the Planning Commission conducted public hearings on July 28, 2021, and August 25, 2021, and then held a hearing to deliberate on September 22, 2021. At the conclusion of the deliberations on September 22, 2021, the Planning Commission recommended that the County Court add the subject site to the County’s Inventory of Significant Aggregate and Mineral Resources sites as a 3B site.

In addition to the Planning Commission hearings, the County Court has held three public hearings on this matter, the first on October 20, 2021, the second on November 3, 2021, and third on December 3, 2021 (with testimony limited to rebuttal argument). A hearing for deliberations only was held on January 5, 2022.

The County Court closed the record to written evidence on Monday, November 15, 2021. The Applicant submitted its final written argument on December 10, 2021 (Exhibit 66).

The record consists of oral testimony received at both the Planning Commission and County Court hearings, as well as written testimony. The exhibits are available on the County Court's website and for review at the Community Development Department. A list of the exhibits is attached to these Findings of Fact as Appendix 1.

In this proceeding, the County Court is considering the Planning Commission's recommendation to add the subject site to the County's Aggregate Inventory as a 3B site. The County Court may elect to adopt the Planning Commission's recommendation, modify the recommendation, or deny the request.

#### IV. BASIC FINDINGS

##### A. Location

The subject property is located on the north side of Stahancyk Lane and the west side of Lamonta Road, approximately three (3) miles northwest of the City of Prineville. The address is 6487 NW Lamonta Road, Prineville, Oregon. The property is identified on the County Assessor's maps as Township 14S, Range 15E WM, Section 14, tax lot 103 (the "Subject Property"). Figure 1 is a vicinity map depicting the Subject Property.

Figure 1



Property Lines as Approximate



## **B. Zoning**

The Subject Property is zoned Exclusive Farm Use (EFU-2) and is designated as agricultural land in the County's Comprehensive Plan. The Subject Property is not located within any wildlife overlay (e.g., deer winter range) and is not located within the City of Prineville's city limits or urban growth boundary.

## **C. Site Characteristics**

The Subject Property is approximately 77.98 acres and currently employed for farm use. The property includes a single-family dwelling that has been on the property since the 1920s, two general purpose buildings and a machine shed.

The site slopes gently towards the northwest. There is an unnamed drainage just north of the property flowing towards the west and southwest. This is part of the irrigation system maintained by the Ochoco Irrigation District. Water flows from the northeast toward the southwest and into the Rye Grass Canal system.

## **D. Surrounding Area**

The area surrounding the Subject Property is depicted on Figure 2 and Figure 3<sup>1</sup>. Both figures depict a 500-foot impact area. All properties within the impact area are zoned EFU-2. Further to the west is a portion of the Woodward site that is zoned Heavy Industrial. Beyond the Woodward site to the west is an area zoned rural residential (R5) (Green Acres subdivision). There are larger agricultural operations to the southeast, east and north. There are several smaller farms south of the Subject Property, across Stanhancyk Lane. Many of the properties have existing dwellings, as show on Figures 2 and 3, below.

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<sup>1</sup> The Applicant included Figure 2 and Figure 3 in its Burden of Proof statement.

Figure 2

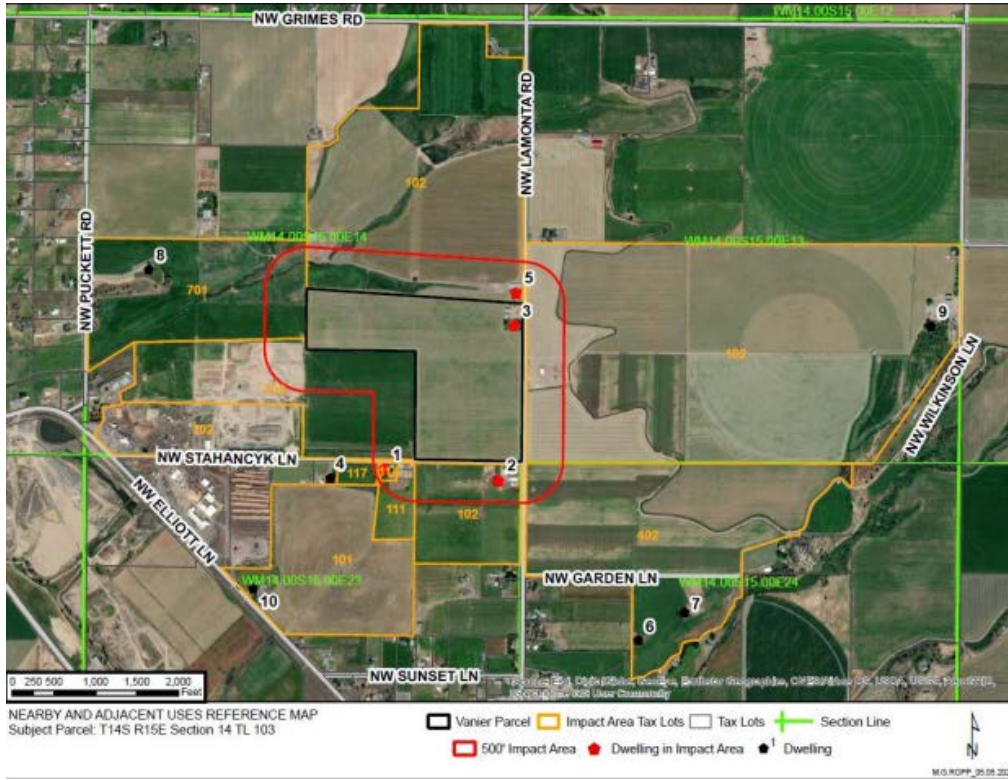


Figure 3

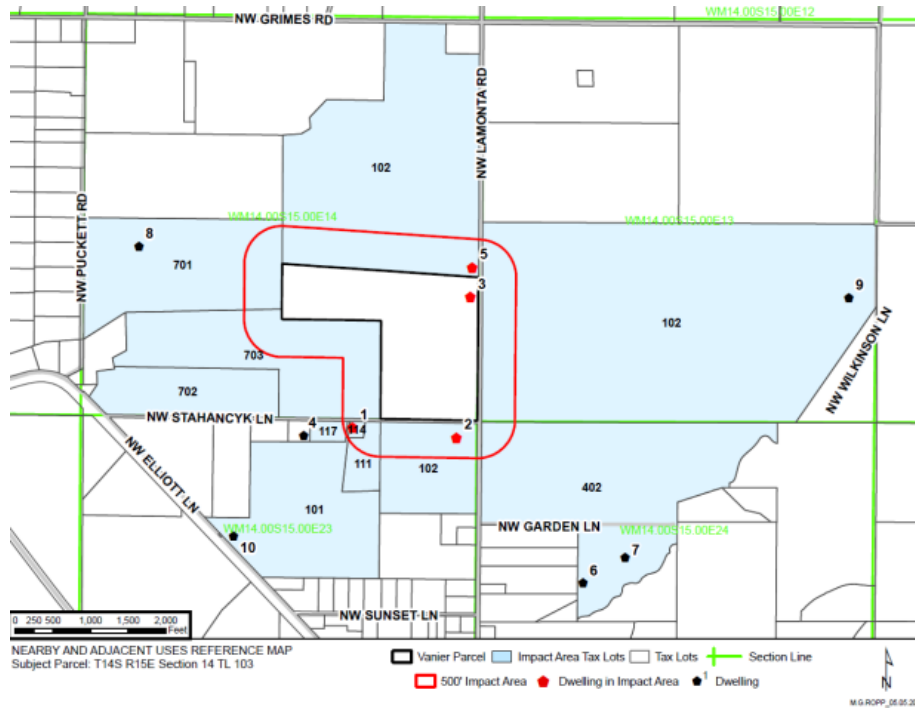


Table 1<sup>2</sup>, below, lists all 11 properties that are at least partially located within the 500-impact area. It includes information indicating the distance from the proposed mining site, primary use, and ownership.

**Table 1**

T-R-S Tax Lot	Direction from Subject	Distance from Mining to Tax Lot	Site Address	Existing Dwelling	ID # on Map	Distance from Mining to Dwelling	Acres	Zoning	Primary Use	Land Owner
14-15-13 TL 102	East	160'	5777 NW Wilkinson Rd	Yes	9	5,010'	286.5	EFU-2	Farm Use - Hay	Mark & Casey McKinnon
14-15-14 TL 102	North	50'	6525 NW Lamonta Rd	Yes	5	245'	156.0	EFU-2	Farm Use - Hay	Dean & Teresa Davis
14-15-14 TL 701	West	0'	5950 NW Puckett Rd	Yes	8	1,845'	76.1	EFU-2	Farm Use - Hay	Scott & Crista Porfily
14-15-14 TL 702	West	1,350'	4755 NW Stahancyk Ln	No	-	-	35.4	HM	Industrial - Aggregate	Woodward Land & Timber LLC
14-15-14 TL 703	West	0'	Stahancyk Ln	No	-	-	76.1	EFU-2	Farm Use & Aggregate	Woodward Land & Timber LLC
14-15-23 TL 101	Southwest	425'	4243 NW Elliot Ln	Yes	10	2,560'	66.8	EFU-2	Farm Use - Hay	Samual Stafford
14-15-23 TL 102	South	140'	3320 NW Stahancyk Ln	Yes	2	320'	33.2	EFU-2	Farm Use - Pasture	Billie Johnson
14-15-23 TL 111	Southwest	140'	Stahancyk Ln	No	-	-	8.8	EFU-2	Farm Use - Pasture	Adam & Karen Mikulski
14-15-23 TL 114	Southwest	245'	3992 NW Stahancyk Ln	Yes	1	390'	0.9	EFU-2	Residential	Adam & Karen Mikulski
14-15-23 TL 117	Southwest	455'	Stahancyk Ln	*No	*4	-	3.0	EFU-2	Residential & Farm Use	Rick Kriege
14-15-24 TL 402	Southeast	205'	2720 NW Garden Ln	Yes (X2)	6 7	2,685' 2,780'	123.3	EFU-2	Farm Use - Hay & Pasture	Simmons Farm, LLC; Elsie & Henry Simmons

\* Kriege owns 14-15-23 TL 116, west of TL 117. TL 116 is outside of the 500' impact area and includes a dwelling that is 1,000 feet from the mining area.

**E. Access**

The Subject Property has frontage on NW Stahancyk Lane and NW Lamonta Road. Both roads are County owned and maintained roads. However, the proposed mining operation on the Subject Property will only be accessed from the existing access for the mining operation on the Woodward property, directly to the west of the Subject Property. There will be no direct access to NW Stahancyk Lane or NW Lamonta Road for mining operations on the Subject Property.

**F. Soils**

According to United States Department of Agricultural – Natural Resource Conservation Service (“NRCS”) Web Soil Survey the Subject Property is comprised of three soil mapping units.

Soil Type	Acres	Soil Classification	
		If irrigated	Non-irrigated
#020 Boyce Silt Loam 0-2% slopes	0.2	3	-
#123 Ochoco Prineville Complex 0-3% slopes	75.9	3	-
Ochoco Prineville Complex 3-8% slopes	2.0	3	-

**G. Other Information**

There are no mapped natural hazards on the subject property. The property is not in a mapped special flood hazard area.

<sup>2</sup> The Applicant included Table 1 in its Burden of Proof statement.

## V. CRITERIA AND ANALYSIS

### 1. Character of the Request

The application request is characterized as a Post-Acknowledgment Plan Amendment (“PAPA”) to the Crook County Comprehensive Plan. The Applicant requests that the County Court add the Subject Property to the Crook County Significant Mineral and Aggregate Inventory. Before the County may issue a conditional use permit to authorize operating a mine on the Subject Property, the PAPA must be approved, and the site added to the Aggregate Inventory (see CCC 18.144.040). As noted above, the Applicant also requests a conditional use permit to operate a mine on the Subject Property; however, that application is currently in front of the Crook County Planning Commission pending the County Court’s final decision on this PAPA request.

### 2. Applicable Approval Criteria

- **Oregon Administrative Rules (OAR) Chapter 660, Division 16<sup>3</sup>**
- **Crook County Comprehensive Plan. Ordinance No. 55, Comprehensive Plan Mineral and Aggregate Policies**
- **Ordinance No. 43, Crook County Goal 5 Resources (Mineral and Aggregate Elements) (to the extent consistent with Ord. 51 and Ord. 55).**

Assistant County Counsel John Eisler summarized the County’s comprehensive plan policies for mineral and aggregate inventories (Exhibit 47). Ordinance 43 (December 14, 1990), adopted in response to a Department of Land Conservation and Development (DLCD) enforcement order (Order 89-EO-656) established plan policies for the County’s Goal 5 mineral and aggregate sites. DLCD staff requested

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<sup>3</sup> Many jurisdictions now apply Division 23 (the “new” Goal 5 rule) to implement their Goal 5 program. However, Crook County continues to apply Division 16, as permitted by OAR 660-023-0180(9):

(9) Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for consideration of PAPAs (post-acknowledgement plan amendments) concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:

(a) Such regulations were acknowledged subsequent to 1989; and,

(b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review after September 1, 1996, except as provided under OAR 660-23-0250(7).

Crook County Ordinance 51, a comprehensive plan amendment including provisions governing the County’s compliance with Goal 5, was adopted and acknowledged by the Oregon Land Conservation and Development Commission in 1991. It was amended by Ordinance 55 in 1992. Crook County has not since entered periodic review. Therefore, the County’s consideration of a PAPA to add the subject property to the County’s Inventory is not subject to the OAR 660, Division 23. The provisions of OAR 660, Division 16 continue to apply. No party disputes that Division 16 applies to this application.

changes to the County’s plan and the County passed Ordinance 51 on September 16, 1991. The County then adopted Ordinance 55 on February 26, 1992, which deleted and renumbered many of the policies from Ordinance 51. These plan policies provide a framework for County decisions regarding mineral and aggregate sites. County Counsel recommends the following order for reference while reviewing the current application: (1) OAR 660-016 (“the old rule”), (2) ordinance 51/55 and (3) ordinance 43. OAR 660-023 (“the new rule”) should be considered only if the other policies provide no guidance and the guidance in OAR 660-023 is consistent with OAR 660-016 and County plan policies.

### 3. Summary of Decision Making Process

As stated in Exhibit 47 (Memorandum from John Eisler), the decision-making process is as follows:

Step One: Determine Whether the Resource Site Is Significant

Step Two: Identify Conflicts

Step Three: Analyze Economic, Social, Environmental and Energy (ESEE) Consequences

Step Four: Develop a Program to Achieve Goal 5

The findings of fact that follow are presented step-by-step as outlined above.

### 4. Findings of Fact

The findings are organized into the four steps identified above and outlined below.

#### **STEP ONE (DETERMINE IF SITE IS SIGNIFICANT)**

##### **OAR 660-016-0000(2):**

***A “valid” inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. Some Goal 5 resources (e.g., natural areas, historic sites, mineral and aggregate sites, scenic waterways) are more site-specific than others (e.g., groundwater, energy sources). For site-specific resources, determination of location must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.***

Ordinance 43 also includes policies to establish the location, quality and quantity of mineral and aggregate resources. These policies are consistent with OAR 660-016-0000(2).

##### **Location -**

Ordinance 43 identifies information that provides supporting evidence of the location of a resource site. The location is determined by the best information available to Crook County at the time of the determination. Ordinance 43 requires the information to include at least:

- (a) A legal description of the site;
- (b) The highway/mile post designation (if available)
- (c) A description of the impact area (if different); and
- (d) A map of the boundaries of the resource site and the impact area to be affected (if different).

**FINDING:** The request before the County Court is for a site-specific resource, thus the determination of location must include description or map of the boundaries of the resource site and of the impact area to be affected. The Applicant included with its application, a legal description of the site, a map depicting the resource site and a 500' impact area (See Figures 2 and 3 above). There are no highway or milepost designations available.

Ordinance 43 defines "impact area" as that area surrounding and near a Goal 5 mineral and aggregate resource site wherein the presence or application of a conflicting use that is allowed outright or conditionally in the surrounding broad zoning district would adversely impact the resource site by limiting the mining or processing of the resource. The Ordinance goes on to state, "Unless otherwise indicated in the text of this Plan or on the respective resource site and impact area map, the impact area is that property extending outward from the resource site boundary to a distance of five hundred (500 feet)." There is no evidence in the record suggesting that an impact area of greater than or less than 500 feet is appropriate.

A determination as to location and impact area may be made based on evidence in the record.

#### Quality -

OAR Chapter 660 Division 16 does not include standards specifying the minimum quality and quantity of an aggregate resource that constitutes a significant resource. Rather, it describes quality in terms of the site's relative value compared to other examples of the same resources found in the jurisdiction.

#### **OAR 660-016-0000(3):**

***The determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of quantity requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or "obtainable."***

Ordinance 43 directs the County to consider the following when evaluating the quality of mineral and aggregate resources:

- (1) All available information concerning test results;
- (2) The resource site's relative value as compared to other examples of the same resource existing in at least Crook County.<sup>4</sup>

Ordinance 43 includes a process to assign a relative value to mineral and aggregate resources:

1 = resource material meeting at least the following ODOT specifications

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<sup>4</sup> Ordinance 43 states that "All sand has potential value and has not been given a ranking value."

- (a) Resistance to abrasion
- (b) Sodium sulphate soundness
- (c) Air degradation

2 = resource material not meeting the rank of 1, but is such quality that it is used for roads;

3 = resource material that is used for roads and fill; and

4 = resource material that is used only for fill.

Ordinance 43 states that the determination of quality on each resource site is based on the best information available to Crook County at the time of the determination.

**FINDING:** The Applicant provided information on the sand and gravel resource on the Subject Property. Materials were tested for quality relative to Oregon Department of Transportation (ODOT) specifications for Portland Cement Concrete (PCC) as part of the Aggregate Resource Investigation conducted by Tim Marshall, an Oregon Registered Professional Geologist. See Knife River Comp Plan Amendment Application. Mr. Marshall provided the Applicant with a report of the investigation entitled “Aggregate Resource Investigation, Vanier Site” (the “Geologist’s Report”). The Geologist’s Report describes sample collection and testing protocol and concludes that the aggregate resource on the subject property meets ODOT specifications for resistance to abrasion, sodium sulfate soundness and air degradation. The report was based on seven (7) test holes located on the Vanier property. Detailed results are included in the tables provided in the Geologist’s Report.

Sodium Sulfate Soundness – Coarse and fine aggregates used for PCC Concrete are tested for “soundness” using sodium sulfate salt. According to the Geologist’s Report, the samples from the proposed site for coarse aggregates (5% by weight) and fine aggregates (7%) are less than the specified thresholds of 12% (coarse aggregates) and 10% (fine aggregates).

Abrasion (durability) – Coarse aggregates to be used for PCC aggregates shall have a maximum result of 30%. According to the Geologist’s Report, the sample tested for abrasion had a result of 17.5% and meets the ODOT specification for resistance to abrasion.

Oregon Air Aggregate Degradation – Coarse aggregates used for PCC aggregates are tested for Oregon Air Aggregate Degradation. The test sets a maximum allowable amount passing the No. 20 sieve of 30% and a maximum sediment height of 3.0 inches. According to the Geologist’s Report, the representative sample had results of 19.9% passing the No. 20 sieve and a maximum sediment height of 1.1 inches. The material passed the “degradation” test.

In addition to the above, the Applicant also conducted “gradation” tests to determine the relative percentages of different sizes of aggregate. ODOT specifications require that there not be greater than 4% by weight of the fine aggregates passing through the “number 200 sieve”. According to the Geologist’s Report, during the testing an average of 7.7% of material passed through the sieve. The Geologist’s Report suggested that because materials are washed during processing, the finer materials would be sorted out and the final, processed material would meet the specification.

The gravel from the site was also tested. The average percent of gravel greater than  $\frac{3}{4}$ " from the tested samples was 14%. While that fraction is generally too coarse for use in PCC concrete, it could be crushed and incorporated into concrete aggregates as is done currently at the Woodward site.

OAR 660-016-0000(3) notes that determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. This is consistent with the County's plan policy adopted as Ordinance 43. Because material from the Subject Property meets the specified ODOT standards, the quality of materials from the site has a relative value of "1" using the ranking system in Ordinance 43.

Several other sand and gravel sites were included in the County's original inventory of aggregate resources in Ordinance 43. Although testing information was not generally available, most sites were ranked as "2" with material being sufficient for fill and concrete. The "O'Neil Sand and Gravel site" was ranked as "1" as were several small ODOT-owned sites along the Paulina Highway.

Exhibit 37 in the record is the County's Ordinance adding the adjacent Woodward site to the County's Aggregate Inventory. On page 2 of Attachment A to Exhibit 37, the quality of the material on the Woodward site is discussed. The information was provided by a registered professional geologist and noted that Woodward site meets ODOT specifications for resistance to abrasion, sodium sulfate soundness and air degradation. Moreover, approximately  $\frac{2}{3}$  of the aggregate resource on the Woodward site appeared suitable for Portland Cement Concrete. Based on the information provided by the Applicant regarding the quality of the aggregate resource on the Subject Property (as discussed in detail above), it appears the relative value of the aggregate resource on the Subject Property is comparable to one recent example of a nearby resource site and to the relative value of several sites on the County's original inventory. It is also ranked higher than many sand and gravel sites from the original inventory.

Based on information provided in the Geologist's Report (and summarized above), the resource meets ODOT specifications for Portland Cement Concrete and the aggregate resource on the Subject Property has similar value to other sites in the County. Thus, the quality of the aggregate resource meets the requirements of OAR 660-016-0000(2)-(3).

#### Quantity –

A determination of quantity requires consideration of the relative abundance of the resource. (OAR 660-016-0000(3)).

**FINDING:** The subject property is 77.98 acres in size. The Geologist's Report estimates the property contains a total of 1,509,381 cubic yards of aggregate resource. For comparison to the minimum quantity threshold at OAR 660-023-0180(3), cubic yards must be converted to tons: 1 cubic yard = 1.6 tons. The recoverable aggregate resource will be reduced by required 100' setbacks. The Applicant stated that the intent is to maintain a 100-foot setback from the north, south and east property line and a 50-foot setback from the northwest property line (the Porfily property). No setback (zero) is proposed along the west property line, bordering the Woodward mining site. Even accounting for the setbacks, there will still be more than 1.5 million tons of recoverable aggregate resource. Based on the information provided by the Applicant, this is more than three (3) times the minimum quantity (500,000 tons east of the Willamette Valley) required to be considered significant under OAR 660-023-0180(3). The evidence in the record establishes that the Subject Property contains a quantity of aggregate resource that is "significant."



**OAR 660-016-0000(5):**

**Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:**

***(a) Do Not Include on Inventory: Based on information that is available on location, quality and quantity, the local government might determine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information;***

***(b) Delay Goal 5 Process: When some information is available, indicating the possible existence of a resource site, but that information is not adequate to identify with particularity the location, quality and quantity of the resource site, the local government should only include the site on the comprehensive plan inventory as a special category. The local government must express its intent relative to the resource site through a plan policy to address that resource site and proceed through the Goal 5 process in the future. The plan should include a time-frame for this review. Special implementing measures are not appropriate or required for Goal 5 compliance purposes until adequate information is available to enable further review and adoption of such measures. The statement in the plan commits the local government to address the resource site through the Goal 5 process in the post-acknowledgment period. Such future actions could require a plan amendment;***

***(c) Include on Plan Inventory: When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory and indicate the location, quality and quantity of the resource site (see above). Items included on this inventory must proceed through the remainder of the Goal 5 process.***

**FINDING:** There is sufficient, undisputed evidence in the record for the County to determine the location, quality, and quantity of the aggregate resource at the Subject Property. Based on the information in the record, and in accordance with OAR 660-016-0005(5), the County Court determines the location, quality, and quantity of the resource, and places the Subject Property on the Crook County Aggregate Inventory as a significant 1C site.

**Crook County Ordinance No. 51 (as amended by Ordinance No. 55):****Policy 3:**

***The County shall insure that significant inventory sites are designated for mineral and aggregate.***

**FINDING:** The County maintains an inventory of significant aggregate and mineral sites. The above findings indicate that the Subject Property meets the requirements for location, quality, and quantity and should be added to the Aggregate Inventory as a significant site.

**Policy 4:**

***An abundance of a Goal 5 mineral or aggregate resource shall not be used as the basis to deny placement on the County plan inventory list.***

**FINDING:** Evidence of other mineral or aggregate resources has not been used as justification or a basis to deny placement of the Subject Property on the County inventory list. The Subject Property should be placed on the inventory list.

**Policy 6:**

***A mineral and aggregate resource site that is not on the Crook County Goal 5 inventory or that is listed as a 1B site shall be placed on the inventory of significant sites and shall be conserved and protected for surface mining after all the following conditions are met:***

- (a) A report is provided by a certified geologist, engineer or other qualified person or firm verifying the location, type quantity and quality of the resource.***
- (b) The site is determined to be a significant 1C site after reviewing all the evidence regarding location, quality, and quantity of the mineral and aggregate resource and site is added by amendment to the comprehensive plan;***
- (c) There are no conflicting uses [or] the ESEE analysis results in a determination that the resource is important relative to conflicting resources, uses and [other] applicable statewide planning goals.<sup>5</sup>***

**FINDING:** The Subject Property is not currently listed as a Goal 5 resource on the County's Aggregate Inventory. To be conserved and protected as a 3A site, the conditions in subsections (a)-(c) must be met.

As discussed above, the Applicant has provided a report by a certified geologist verifying the location, type, quantity, and quality of the resource. Based on the above findings, the County Court can find that the conditions in subsection (a) of Ordinance 55 are met.

Upon finding that the site is a significant 1C site based on the evidence described above, the County will adopt an ordinance amending the Comprehensive Plan to add the Subject Property to the Aggregate Inventory. Thus, the requirement of subsection (b) can be met.

The conditions of subsection (c) (conflicting uses and ESEE analysis results) are addressed below. As noted below, the ESEE analysis results in a determination that there *are* conflicting uses relative to the resource. Thus, the site cannot be added to the Aggregate Inventory as a 3A site (as discussed in more detail below in Step 2), as all three conditions for this policy are not met.

**Policy 9:**

***Crook County's plan policy is to classify, each significant resource site according to current available dat[a] on location, quality and quantity, and regulate each site according to its classification. Crook County will not allow expansion of any site without additional data. Therefore, in order to expand mining operations on a mineral or aggregate site into an area not currently designated for mining, the***

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<sup>5</sup> Policy 6(c) is addressed in Step 2.

***operator must provide the best information available regarding quantity, quality, and location of the resource in the proposed expansion area to update plan data. An ESEE analysis shall be required if the expansion area is found to be a significant Goal 5 resource based on location, quality, and quantity information.***

**FINDING:** The Subject Property will be added to the County’s Aggregate Inventory as a separate site; not an expansion of the adjacent Woodward site. Nonetheless, as explained above, the Applicant has provided substantial evidence regarding location, quality, and quantity to identify the Subject Property as a significant aggregate site. An ESEE analysis is required and discussed below.

## **STEP TWO**

### **(IDENTIFY CONFLICTS)**

**OAR 660-016-0005(1):**

**It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences.**

**FINDING:** The County must identify negative impacts on the resource site; not negative impacts from the resource site on surrounding land uses, unless the County finds those negative impacts may eventually come back to negatively impact the resource site. The County may consider any present or potential future allowed land uses in the impact area and any incidental uses reasonably connected to those allowed land uses. For instance, the evidence in the record of neighbors of the resource site frequently or potentially contacting DOGAMI/DEQ/the County with complaints regarding the resource site’s operation and/or permit violations, thus forcing a change in behavior of the resource site operator, is an appropriate example of an identification of conflicts. Similarly, “if operation of an aggregate mine (a Goal 5 resource) were predicted to engender social protests or economic boycotts because of perceived negative impacts of the resource on local residents, such activity might be deemed a ‘negative impact’ on the Goal 5 resource itself.” *Hegele v. Crook County*, 190 Or. App. 376, fn. 4 (2003).

The Applicant notes in Exhibit 63 that there are several neighbors in the impact area that are opposed to the mining site. The Applicant goes on to note three abutting properties contain single-family dwellings (four if you count the dwelling on the Subject Property) and one of the neighbors has a dairy. As noted by the Applicant in Exhibit 63, to minimize impacts on surrounding uses, mining of the aggregate resource will be less efficient and increase the cost of mining. The Applicant specifically notes that existing uses on Tax Lots 1415140000102, 1415230000102 and 1415230000114/111 conflict with the proposed resource site. There is substantial evidence in the record that the complaints by neighbors have led the Applicant to address concerns including noise, groundwater, and dust. *See, e.g.*, Exhibits 5, 6, 44, 55, and 57.

Additionally, the Applicant lists in Exhibit 63 the allowable uses in the EFU zone, which include:

1. New Farm Dwelling/Residential Use

2. Home Occupations/Business Use
3. Equine Facilities
4. Churches
5. Private Airports
6. Solar Energy Sites
7. Wind Generation Sites
8. Farm Stands
9. Other uses allowed in the EFU-2 zone.

A complete list of allowed uses in the EFU zone is attached as Appendix 2.

The Applicant states in Exhibit 63 that it is unlikely that new conflicting uses (e.g., those listed above) will be established within the impact area before the aggregate resource is depleted. The County agrees that there is limited potential for new permitted or conditional uses in this area to conflict with the proposed mine site due to the area's EFU zoning and existing development patterns.

Aggregate mining is a conditional use in an exclusive farm use zone (Crook County Code 18.16.015(11) and ORS 215.283(2)(b)). Potential conditional uses in the EFU zone could include schools, churches, parks, campgrounds and home occupations, equine facilities, private airports, renewable energy sites, farm stands and other conditional and permitted uses allowed in the County's EFU zones. Any of these uses could conceivably result in negative impacts to mining operations.

In summary, there are eleven (11) tax lots at least partially within the impact area (Table 1). There are four residences within the impact area including one dwelling on the Subject Property. The presence of these existing residential uses present conflicts to a mining operation as a result of evidence in the record of the concerns raised by area property owners regarding the existing mining operation on the Woodward property and the need for the proposed mining operation to address concerns regarding noise, dust, groundwater, and operating hours. As a result of this evidence, limits on the operation are necessary to minimize impacts to neighbors, resulting in less efficient mining operation and increased costs to the operator.<sup>6</sup> There are also six farming operations within the impact area, including a dairy and hay/pasture operations. Neighboring farmers raised concerns regarding potential impacts to crop productivity due to dust and concerns regarding mining impacts on groundwater. These complaints likewise may result in limits to mining operations resulting in less efficient mining operations and increased costs. Accordingly, the agricultural operations could be viewed as conflicting uses.

Based on the evidence, including Applicant's Exhibit 63, the County finds that residential uses in the impact area will conflict with the proposed resource use of the Subject Property. The County finds further that agricultural uses may conflict with the resource use of the Subject Property. Accordingly, the impacts of the resource use on the adjacent and nearby uses must be examined through an ESEE analysis (Step 3).

**Ordinance 43, Section 3(B)(1)(a),(c), (d)**

**Definition of Conflicting Uses. Conflicting uses are those existing or potential uses, allowed outright or conditionally within a zoning district, which, if allowed within the impact area surrounding a resource**

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<sup>6</sup> Impacts to property owners from mining activities are outlined in the ESEE analysis.

site, could negatively impact that Goal 5 resource site by impeding the extraction of the resource, or which could impose limitations on efficient and economic mining activities

**Definition of Impact Area.** The impact area is that area surrounding and near a Goal 5 mineral and aggregate resource site wherein the presence or application of a conflicting use that is allowed outright or conditionally in the surrounding broad zoning district would adversely impact the resource site by limiting the mining or processing of the resource.

**Description of Impact Area.** Unless otherwise indicated in the text of this Plan or on the respective resource site and impact area map, the impact area is that property extending outward from the resource site boundary to a distance of five hundred (500) feet.

**FINDING:** The definition of “conflicting uses” in Ordinance 43 is consistent with how the County applied OAR 660-016-0005(5)(1) above. Moreover, the Applicant has suggested a 500’ impact area consistent with Ordinance 43 (see Figure 2 and Figure 3). The above analysis is incorporated in response to these provisions of Ordinance 43. This request is consistent with Ordinance 43.

**OAR 660-016-0005(2):**

***Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which ensure preservation of the resource site.***

**FINDING:** This section is not applicable because there are conflicting uses as found above.

**Policy 6:**

***A mineral and aggregate resource site that is not on the Crook County Goal 5 inventory or that is listed as a 1B site shall be placed on the inventory of significant sites and shall be conserved and protected for surface mining after all the following conditions are met:***

\*\*\*\*

- (c) ***There are no conflicting uses [or] the ESEE analysis results in a determination that the resource is important relative to conflicting resources, uses and [other] applicable statewide planning goals.<sup>7</sup>***

**FINDING:** As noted above when previously discussing Policy 6, there is no dispute that there are conflicting uses. Thus, the Subject Property cannot be added to the County’s Aggregate Inventory as a 3A site. Instead, because of the conflicting uses, the County must complete an ESEE analysis (Step 3).

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<sup>7</sup> Policy 6(c) as written in Ordinance 55 is as follows:

*There are no conflicting uses of the ESEE analysis results in a determination that the resource is important relative to conflicting resources, uses and thither applicable statewide planning goals.*

The two identified apparent errors, as indicated by [ ] make the Policy unclear and are inconsistent with how the Policy was stated in Ordinance 55. Therefore, staff has inserted the original language from Ordinance 55.

This concludes Step Two. Since there are identified conflicts, the next step is complete an ESEE analysis.

**STEP 3  
(ESEE ANALYSIS)**

**OAR 660-016-0005(3):**

***Determine the Economic, Social, Environmental, and Energy Consequences: If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.***

**FINDING:** A proper ESEE analysis is even-handed and applies the significant, relevant evidence in the record from both sides to consider fully the economic, social, environmental, and energy consequences in a two-way conflict analysis. The County’s ESEE analysis is discussed below.

The intent of an ESEE analysis is to weigh the economic, social, environmental and energy consequences (both positive and negative) of protecting the aggregate site as a significant Goal 5 resource. The ESEE analysis provides the basis for the County to weigh the values of competing uses and the consequences of allowing or restricting resource uses and conflicting uses. The ESEE analysis considers not only the consequences associated with protecting the resource but also considers the consequences of mining and processing the aggregate resource. The ESEE analysis applies to all conflicting uses within the 500-foot impact area surrounding the proposed mine site. As discussed, there are 11 properties within the impact area including the adjacent Woodward mining and processing site, three dwellings, an existing dairy and other agricultural properties to the north and east. These uses are identified on Table 1.

Specifically, conflicting uses include existing residential uses within the impact area and existing agricultural activities including the dairy and hay/pasture activities within the impact area. There is limited potential for new conditional uses within the impact area, but those would likely conflict with mining operations if approved. Appendix 2 includes a list of permitted and conditional uses in the County’s EFU-2 zone.

The Planning Commission considered the Applicant’s burden of proof statement and testimony, as well as written and oral testimony provided by neighboring property owners and the public in the recommendation to the County Court. The County’s ESEE findings include the Commission’s findings on the economic, social, environmental and energy consequences of the aggregate site and incorporate additional testimony received by the County Court on October 20, 2021; November 3, 2021; November 15, 2021, when the record was closed; final statements made at the December 3, 2021 hearing; and final written argument submitted on December 10, 2021, by the Applicant.

Before launching directly into the ESEE analysis, the County Court finds it beneficial and appropriate to briefly review the County’s role and obligation in this process. Crook County considers this an application under our quasi-judicial amendment standards. Whether the County Court must make a decision based on an “adequate factual base” or “supported by substantial evidence in the whole record,” the standards are synonymous, and a reviewing court is tasked with determining whether a reasonable person *could* make a similar finding after reviewing the whole record. *Restore Or. v. City of Portland*, 301 Or App 769,

778 (2020). A reviewing court must defer to our interpretation of our comprehensive plan and land use regulations unless the reviewing court finds our interpretation “is inconsistent with the express language, purpose, or underlying policy of the comprehensive plan or land use regulation.” *Id.* at 786. The standard is “plausible” not irrefutable or even the most logical. *Id.*

Which brings us to the issue of substantial “evidence.” In this plan amendment application under OAR Division 16, the County Court’s “inquiry requires case-by-case assessment, and local governments are free to consider any and all negative impacts on a Goal 5 resource site that *could arise* if an allowable use *were to exist* in the zoning district along with the Goal 5 site.” *Hegele v. Crook County*, 190 Or. App. 376, 384 (2003) (emphasis added). Thus the County Court is tasked with weighing the evidence from competing interests regarding hypothetical future events. Any such forward-looking “evidence,” whether produced by experts or laymen is by its very nature speculative. Though we do have the benefit of the observations from the neighboring Woodward property, the impacts from and to the Subject Property will necessarily differ. Despite this lack of certainty or facts to rely upon, the County Court here must make a difficult decision based only on the evidence in the whole record to evaluate the potential impacts and craft a plan to ameliorate what harm it can in the pursuit of achieving Goal 5.

As such, it should also be noted that the County Court does not read the ESEE rules to require the imposition of a quantitative value on the potential consequences or that each of the categories must be given equal weight. For instance, the County Court may decide that \$100 in a corporation’s pocket does not equally offset a loss of \$10 for ten different homeowners, or that a benefit in one category equally offsets a detriment in another category. Instead, the analysis is sufficient “if it enables a jurisdiction to provide reasons to explain why decisions are made.” OAR 660-016-0005(3).

With that said, the County now transitions to evaluate the various economic, social, environmental, and energy consequences that may occur from this future use. The conflicts *to* the resource site, as discussed in the previous section, arise as a reaction to the impacts *from* the resource site. Thus minimizing the impacts to the conflicting uses will then lessen the impacts to the resource site itself. The major impacts raised in the record fall under three broad categories, and each bleeds into multiple ESEE considerations. The County Court will address each issue broadly before segmenting the consequences into their respective categories.

### **Groundwater**

The record is replete with concerns from area property owners and farmers regarding the impacts to groundwater resulting from mining the Subject Property. Both the Applicant and property owners employed professionals to provide testimony. The quality and quantity of groundwater in the area carries economic, social, and environmental consequences. Local farmers and dairies depend upon such groundwater for their livelihood; dwellings need it for health, safety, and sanitation; and the environmental consequences are obvious. Among the issues before the County Court in this application, groundwater was the most contentious.

Perhaps anticipating this, the Applicant employed a consultant (Stantec) to prepare a hydrogeologic report (the “Report”) that was included in the application. The Report notes that the Applicant has encountered increasing amounts of groundwater as it mines eastward on the Woodward Site, hindering reclamation efforts. This was unexpected. The Report was prepared to answer five questions, ultimately trying to determine whether there is a means to mine the sand and gravel at the two sites without

affecting the water resource for others using the same aquifer and whether reclamation can be successful despite the presence of shallow groundwater.

The Report is comprised of ten sections and tables and charts. The Report discusses a 2014 test pit investigation, which encountered water as shallow as nine feet below the surface on the northeastern edge of the Woodward property. The Report also discusses three test holes made during a 2020 investigation, near the southern and eastern boundaries of the Woodward property, as shown on Figure 2 of the Report. Each of the test holes encountered groundwater at between seven and fifteen feet below the ground surface.

In January of 2021, three more test wells were completed—WW-1A through WW-3A, along the boundary line between the Woodward and Vanier properties, as shown on Figure 2 of the Report. The wells were drilled using sonic drilling methods and fully penetrated the shallow aquifer into the silt/clay unit below, at approximately 30 feet below the ground surface. Static water levels for these wells on January 21, 2021, were between 17 and 21 feet below the surface.

The Report conducted a groundwater inflow analysis for the two properties. On the Woodward property, the Report considered three mining approaches and recommended mining the cells from east to west and backfilling with low permeability to the east, effectively re-routing the groundwater, which has a general flow from northeast to southwest. Only one mining approach was considered for the Subject Property, which considered each mining area as a whole and assumed contemporaneous backfilling of each previously mined cell.

The Report also conducted a water rights impact analysis. The purpose of the analysis was to assess potential impacts to nearby shallow wells from “dewatering” at the site. The analysis considered impacts to wells within a 1000’ buffer and a half-mile radius and distinguished between “shallow” wells 40’ or closer to the surface and deeper wells. The shallow wells were of particular interest as they are in the same aquifer and at a similar depth to the proposed extraction at the Subject Property. The analysis was performed using AquiferTest Pro and showed a possibility for several wells within both the 1000’ and half-mile areas could be affected in the absence of mitigative efforts.

Section 9 of the Report recommends a water management plan for the two properties. As it pertains to the Subject Property, the Report recommends approval for an increased mining depth and the ability to dewater with injections into a recharge trench, beginning with Area 1 on Figure 4 at the northeast corner of the Subject Property, with a recharge trench along Areas 4-7, redirecting the natural flow to the southwest. The Report recommends two observation wells within Areas 4-7 for continuous monitoring using a downhole pressure transducer. Following successful mining reclamation of Areas 1-3, the process would repeat for Areas 4-11. The Report supports this plan by its successful implementation at numerous floodplain mines in the State and summarizes that the plan will “minimize and/or eliminate the negative impacts of dewatering.”

Section 10 of the Report covers reclamation considerations. This section begins by noting that where alkaline and/or sodic soils are subject to a high water table, salts can leach from below to the rooting zones of plants. Though the water table will eventually recover around only five feet from the surface, the Report noted the sodium and sodium absorption ratios were low, decreasing the perceived risk of



upward movement of salts. The Report recommended that backfill be overburden first, with the upper portion ripped and perhaps disked, then placing the topsoil directly on that overburden.

The Report ends with “Conclusions and Recommendations.” Some of those include:

- The Applicant will encounter groundwater throughout the Subject Property;
- The shallow aquifer has a relatively high permeability;
- Recharge trenches and observation wells between the mining area and adjacent water users, with downgradient reinjections, are required to minimize potential impacts; and
- With this plan, the final ground surface and recovery elevation of the groundwater “should be acceptable for growing hay and similar forage crops.”

A memorandum (the “Memo”) was prepared by Jim Newton of Cascade Geoengineering (CGE) on behalf of Richard Zimmerlee on November 15, 2021. Ex. 62. Mr. Newton is an Oregon registered professional geologist, Oregon registered professional engineer, and Oregon certified water right examiner. The Memo addresses the Report and Stantec’s September 8, 2021 letter, in the record as Exhibit 33. In preparation of the Memo, Mr. Newton reviewed Stantec’s documents and took a visit to the Subject Property on November 8, 2021.

Mr. Newton raised the following issues with the Report:

- The Report failed to follow State guidelines for such a report, including the registrant’s stamp and seal, designating the responsible party;
- The Report’s water table map used data from only June through October;
- Insufficient data regarding the design of the completed borings into test wells and completion methods and materials;
- Improper testing methods regarding a constant rate pump test and secondary response;
- Improper extrapolation of pump test data from an isolated location on the Woodward property to the entirety of the Subject Property;
- Incomplete well/water right information;
- Unsupported conclusions or those based on faulty data; and
- Failure to account for the shallow groundwater’s exposure to agricultural fertilizers.

Mr. Newton also states that Stantec’s September 8, 2021 letter is basically a regurgitation of the information in the Report and does not present any new data. In conclusion, Mr. Newton states “it is the opinion of CGE that the [Report] be deemed suspect and not relied upon by the County.” The Memo recommends that any such future work be conducted by an Oregon registered professional geologist following Oregon guidelines, exploratory borings and wells within the Subject Property, and increased area engagement.

Christopher Lidstone of Stantec, who prepared the Report, responded to Mr. Newton’s observations at the December 3, 2021 public hearing. Mr. Lidstone testified that the lack of certifications and seal is an issue that can be sorted out by the Board of Geologist Examiners. Mr. Lidstone testified that he is qualified, as he has been working in Oregon since the 1980s and with mining and reclamation since 1974. Mr. Lidstone noted that the mitigation technique of recharge trenches is proven technology and

supported by Bob Brinkman of DOGAMI. Mr. Lidstone also noted that the Report was merely a preliminary study prepared to evaluate the likelihood of success without mitigation measures, and the Report showed that mitigation measures would be needed.

Stantec also responded with a letter addressing written comment of Richard Zimmerlee in the record as Exhibit 53. Ex. 60. In the letter, Stantec states that all Stantec work was performed under the supervision of Mark Stacy, an Oregon registered geologist. The letter also addresses concerns about the water table rising upgradient, stating that groundwater flows from areas of higher hydraulic head to areas of lower hydraulic head, and thus, the water will instead flow through and around the reclaimed cells not upgradient. Stantec's theory, it says, is supported by the groundwater measurements performed on November 10, 2021.

Further support for the Report was offered by another consultant of Applicant, Amber Hudspeth of Hudspeth Land+Water. In an August 21, 2021 memorandum, Hudspeth notes that water quality issues can be monitored and addressed through "analytical analysis" and verification. Ex. 24. This will include baseline data collection of water level, pH, turbidity, VOCs, organic and synthetic compounds, and microorganisms. The memorandum also notes existing issues with the water quality in the basin—background levels of arsenic and sulfur—as well as seasonal variations to be expected year over year. Hudspeth presented another memorandum on November 13, 2021. Ex. 61. In this memo, Hudspeth states that she joined Newton on the November 10, 2021 site visit to measure the static water levels in the three on-site monitoring wells. Both parties took measurements that were generally consistent. The memorandum makes note of the static water level measurement difference between the February 2021 reading of WW-1A of 24.8' in February and 21.3' in November. Based on her experience and knowledge, Hudspeth then states that the water levels reflect normal seasonal fluctuations, drought conditions, and minor influence of irrigation water delivered through the unlined irrigation canal and ditch system. Hudspeth concludes that she has not observed any evidence that suggests water levels have been impacted by Applicant's activities on the Woodward property.

A representative from DOGAMI, Bob Brinkmann, submitted a letter in support of the plan to dewater and reinject into recharge trenches. Ex. 38. Mr. Brinkmann states that this technique is practiced at a number of sand and gravel sites in the State, and with baseline testing and continuous monitoring, problems are found early and remedied through mitigation measures.

On the issue of groundwater, the County finds each of Mr. Lidstone, Mr. Newton, Ms. Hudspeth, and Mr. Brinkmann to be credible and qualified. None of the members of the County Court are hydrogeologists and none are in a position to second-guess the technical data or conclusions presented. The County Court does find that, as the Report represented, that the Subject Property cannot be mined safely without groundwater mitigation measures. The County Court bases this on the evidence in the record that there is a shallow aquifer under the Subject Property with high permeability that will be encountered throughout any effort to extract the resource material. This aquifer is shared with the others in the Impact Area for various uses and it is critical that the extraction of the resource material does not come at the expense of the aquifer. The County Court also finds that dewatering with reinjection into recharge trenches, as proposed, along with continuous monitoring and a groundwater guarantee of "you break it, you buy it" provides a path to lessen the risk and magnitude of potential harm that may occur.

### **Reclamation**

There was a great deal of testimony regarding the ability and likelihood of the site returning to productive agricultural use following the extraction of the Subject Property's sand and gravel. Should such efforts fail, there would be economic, social, and environmental consequences—a loss in income to the tenant or landowner, an eyesore to the rural community, and a means for invasive weeds to gain a foothold in the area.

Evidence in the record on this matter includes a letter from the owner of and a site visit to the Butler property, testimony from Clay Woodward regarding reclamation efforts at the Woodward site, a letter from Ben Mundie of Dogami, and numerous comments and exhibits from concerned neighbors. For example, Brian Zednik, a nearby farmer, noted in his testimony on November 3, 2021 and in his letter (Ex. 52) that the favorable reclamation conditions at the Butler site (no berms or neighbors) are not present at the Subject Property. Reclamation at the Subject Property, due to the berms, recharge-trench plan, lower final elevation, and high level of groundwater, will lead to the creation of a bog and may jeopardize the springs on the Davis property, which Mr. Zednik uses to contribute to his stock and irrigation water. There was also testimony regarding the shortcomings and compliance failures of reclamation at the Woodward site (pigweed and multiple open cells).

These concerns were addressed by the Applicant and others. Mr. Woodward testified that he was to blame for the pigweed at the Woodward property, as he contracted with a farmer to plant in the spring and that did not happen, but he plans to plant in the near future. Mr. Woodward also testified that a mammoth was discovered on his property, and the cells were left open for a university to procure the mammoth, but the process took longer than expected. Mr. Woodward also testified that 13 acres of his were reclaimed a few years ago, and this year's harvest of 6.5 tons per acre was very good.<sup>8</sup> Additionally, the letter from DOGAMI's Ben Mundie (Ex. 41) pointed out successful reclamation projects by the Applicant and in Crook County, including the Woodward site.

The County Court agrees that there are reclamation challenges not present at the Butler site. The County Court also acknowledges that reclamation of a portion of the Woodward site has not gone as planned and there will be issues with groundwater that the Applicant will need to address in its reclamation efforts. The County Court also recognizes that the Applicant has a demonstrated record of successful reclamation efforts. More importantly, the plan for reclamation, which includes a reclamation bond, is governed by the State through DOGAMI.

### **Operations**

The bulk of the remainder of the evidence in the record was focused on impacts from operations at the Subject Property. Though the site is not yet operational, much of the evidence focused on impacts from the neighboring, active Woodward property. Numerous exhibits raised issues concerning noise, dust, hours, and other factors that disrupt the traditional rural quality of life in the impact area. The effects from operations carry economic, social, and environmental consequences.

For example, Adam and Karen Mikulski presented significant testimony and evidence regarding impacts from operations, including audio tapes of the noise, photographs of the dust, and photographs of the

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<sup>8</sup> There was competing testimony that the harvest figure included non-reclaimed agricultural ground and that the number for the reclaimed portion was roughly half of the stated 6.5 tons per acre.

berms. The theme of unavoidable noise and dust was common among those that live around the Subject Property. Don Pomraning testified that, though he lives outside the impact area, the noise from grinding is constant, random, and jarring—worse than the lumber mill before it. Bryan Zednick testified that the noise and dust is uncontrollable despite any efforts from the Applicant. Billie Johnson testified that the exposure to silt from the operations has caused her gutters to rust out in only two years.

Another common theme among the participants was that the previous conditions of approval from the County and standards from the State were not being followed. The Mikulskis mention that there is a lack of documentary evidence of violations because the Applicant has encouraged face-to-face resolutions, which have left no paper trail. The Mikulskis have contacted DOGAMI in the past, but did not find the interaction helpful or that DOGAMI took their concerns seriously. The Mikulskis testified that they did bring an operating hour issue to County Compliance Officer, Louis Seals, and the issue was quickly remedied.

The Applicant responds that much of the angst is directed at the Woodward site, which is not the focus of this application. Ex. 66. Regarding the Mikulskis, the Applicant states that they purchased and live in a property on resource land and next to heavy industrial zoned land. The activities the Mikulskis complain of are the intended uses for that area.

With that background, the County Court will now address specific ESEE consequences.

#### 1. **Economic Consequences.**

The Applicant stated that the proposed aggregate site will have positive economic impacts by providing a local source of high-quality aggregate material for area construction projects. For example, the Applicant claims 90% of the ready-mix concrete used by the Facebook construction projects are produced from aggregate material from the Woodward site (Exhibit 66). This will benefit the economy of Crook County and Central Oregon to an unknown extent. However, others testified that much of the remaining material produced from the Woodward site would be exported out of the County with little benefit to the local economy.

The Applicant identified negative economic impacts to the resource site from allowing conflicting uses (Exhibit 63). The Applicant cited neighbors' testimony in opposition to the site that raised concerns about dust, noise, noxious weeds, reclamation, hours of operation, impacts to groundwater and reduction in property values. The Applicant stated that these concerns can result in increased costs to mining operation due to requirements to mitigate impacts to neighboring property owners. The Applicant went on to state that these increased costs would be passed on to consumers, resulting in negative impacts to the regional economy.

It was noted that the current property owner will receive economic benefits from the mining of aggregate resources without significant negative consequences because the subject property is required to be reclaimed for agricultural use (hay production). However, the current tenant on the Vanier property disagrees, as a loss of organic material during the mining process will reduce yields without expenditures for soil additives, resulting in increased costs for the farm operator. The tenant also testified that high groundwater levels would make site reclamation difficult, negatively impacting farm productivity.

Neighboring property owners offered testimony that there would be negative economic consequences including reduced property values due to ongoing mining operations. Testimony was offered that there

may be negative economic impacts to surrounding farmers because of dust impacting crop productivity and potential impacts to groundwater availability and quality.

The County does not have hard numbers to evaluate any of the above. The issues with groundwater, reclamation, and impacts from operations are addressed at length above. There is also little to no evidence in the record of the positive economic benefits of the conflicting uses. Regardless, the County Court finds that there will be both economic benefits and burdens from the resource use. The County Court finds further that the economic burdens faced by the Applicant in its efforts to limit noise, dust, and harm to the aquifer are justified.

## 2. Social Consequences.

According to the Applicant, there are likely to be negative social consequences for the mining operation associated with conflicting uses and the opposition of neighbors. The Applicant suggested that positive social impacts of the proposed mining operation will include continued opportunities for employment, tax revenue and local aggregate supply produced by the operation.

The Planning Commission noted that while the mining operation would provide employment and tax revenue for a number of years, no new, permanent jobs would be created solely from the Subject Property.

Neighboring property owners provided testimony regarding negative social impacts associated with the mine site, based in part on ongoing mining operations on the adjacent Woodward property. Negative impacts identified include a reduction in the rural quality of life, continued heavy truck traffic, noise and dust. Neighbors were concerned about the impacts to scenic vistas. They expressed concerns that approval of this site would set a precedent, resulting in loss in the future of other farms in the area. Concerns were also raised about the mining operation's potential impacts to groundwater quality and quantity.

Testimony from neighbors suggested that the Applicant was not always responsive to complaints regarding dust and operating hours on the Woodward site. They expressed frustration regarding the lack of enforcement of conditions of approval for the existing mining operation on the Woodward property and they were not confident that enforcement of conditions on the proposed site would be effective.

The County finds that the relative social consequences weigh significantly in favor of conflicting uses.

## 3. Environmental Consequences:

The Applicant did not include information regarding positive environmental impacts associated with mining.

Environmental concerns regarding groundwater were addressed above. The Applicant, at its expense, has proposed baseline water quality and quantity testing of three wells (shallow well on the Vanier property and wells on the Mikulski and Johnson properties) and two springs on the Davis property. (Page 2 of Exhibit 24). The Applicant has also proposed a "Groundwater Guarantee" to address potential impacts to neighboring groundwater wells (Exhibit 34).

Environmental consequences of operations were also addressed above. Neighbors provided testimony regarding possible negative impacts including increased dust and disruption of wildlife by noise and mining activities. They testified about the impact of dust from the adjacent Woodward mine site and suggested that berms did little to mitigate the effects of dust. Neighbors suggested that dust mitigation at the Woodward site did not happen when the mine operator was not actively mining (e.g., evenings and Sundays). They noted that stockpiles were not vegetated and no dust control for stockpile areas was provided.

The County finds, based on substantial evidence in the record, that the environmental consequences of the resource use on conflicting uses are significantly greater than conflicting uses' environmental impacts on the resource use, if any.

#### **4. Energy Consequences.**

The Applicant stated that positive energy impacts will result from continued operation of the established processing facilities at the Woodward property, located in an area that minimizes transportation costs related to moving aggregate materials. Reducing emissions associated from transferring aggregate from outside Crook County area is a positive impact. They suggested that negative energy impacts may occur only if aggregate is mined from the area for transport out of the area, which is unlikely because of the distances involved. Neighbors noted that material is often transported out of the County, thus negating positive energy consequences.

The County finds, based on substantial evidence in the record, that the energy consequences from utilization of resource is positive, notwithstanding the evidence that significant quantities of the material may be transported out of the County. The major construction projects in the County demand aggregate materials, and there is an undeniable energy benefit in sourcing such materials locally.

#### **5. Conflicts with Statewide Planning Goals.**

OAR 660-16-0005(3) requires local governments, in analyzing the ESEE consequences of conflicting uses, to also consider the applicability and requirements of other Statewide Planning Goals.

*Goal 1 – Citizen Involvement:* Crook County requires notice to adjacent property owners and a public hearing before the Planning Commission and the County Court prior to adoption of any comprehensive plan amendment. In addition, public notice is provided through the local newspaper. Information relating to the hearing (e.g., the staff report and exhibits) are available on the County's website and hard copies are available to the public when requested. Notice of the proposed plan amendment was also provided to the Department of Land Conservation and Development. The Planning Commission conducted a site visit to the Subject Property prior to the first hearing. Adjacent property owners within 750-feet of the subject property were notified of the visit and invited to attend. Two public hearings were held by the Planning Commission to consider this application and the related conditional use application. Members of the public were provided an additional seven days to respond to new evidence and the Applicant was provided seven days to submit a final argument.

The proposed plan amendment was forwarded to the Crook County Court. The Court has provided two public hearings and kept the record open until November 15, 2021 to allow an opportunity for additional testimony. The County Court conducted a site visit on October 26, 2021, and adjacent property owners were invited to attend.

*Goal 2 – Land Use Planning:* This decision will be subject to the policies and processes of Crook County’s Comprehensive Land Use Plan and Ordinances and the County’s zoning code (Chapter 18) and applicable criteria in Oregon Revised Statutes and Oregon Administrative Rules and will meet the Goal 2 requirements regarding land use planning.

*Goal 3 – Agricultural Lands:* The Applicant stated that the aggregate operation will not force a significant change in accepted practices, nor will it result in a significant cost increase to accepted farm practices. The Applicant stated that it intends to minimize conflicts with neighboring agricultural activities by the operational design for mining the site.

The agricultural use on the site will be temporarily interrupted as actual mining is conducted in phases. There will be a disruption of current irrigation practices on the subject property until site reclamation is complete. The site will be reclaimed to allow agricultural use after mining is complete. The reclamation permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) requires the site to be reclaimed to the current agricultural use. Testimony was provided regarding the lack of organic matter and nutrients in the topsoil and overburden preventing the site from returning to productive agricultural use.

Adjacent property owners are also concerned about the impacts of dust on their crops causing reduced yields and reduction in quality.<sup>9</sup> While there may not be a change in farm practices, there may be reductions in yields and income. The Applicant states that the proposed berms and dust control measures are intended to mitigate the impacts of dust on adjacent properties. The Applicant stated that mining operations on the Woodward property have been occurring for several years and they are not aware of any of its current operational activities that have caused adverse impacts to surrounding lands devoted to farm use to the extent that the impacts have forced a significant change in, or significant increase in the costs of, accepted farm practices.

Neighboring property owners raised concerns regarding the potential dewatering or contamination of area wells due to mining operations. Concerns were raised by an adjacent dairy operator regarding impacts due to a potential loss of water supply or groundwater who stated that she needs access to a clean, reliable source of water for livestock.

*Goal 4 – Forest Lands:* There are no forest lands in the vicinity of the subject property. Forest lands will not be impacted. There is no conflict with Goal 4.

*Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces:* The Applicant proposes to add this site to the Goal 5 inventory of significant aggregate resource sites. Based on information from the Oregon Department of Fish and Wildlife (ODFW) and other resource management agencies, development of this site for aggregate productions does not conflict with any Goal 5 wildlife resources. The Applicant will be required to submit an “inadvertent discovery plan” regarding notification to the State Historic Preservation Office in the event of discovery of any natural or cultural resources. This will be addressed in the review of the conditional use permit. The County has not identified any significant groundwater resources in the area surrounding the proposed mine site.

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<sup>9</sup> As noted above, the County Court visited the Butler property on October 26, 2021, an aggregate site successfully reclaimed by Knife River. Knife River’s reclamation activities were acknowledged by Ben Mundie, Oregon Department of Geology and Mineral Industries (Exhibit 41).

*Goal 6 – Air, Water and Land Resources Quality:* Goal 6 relates to protection of air and water quality. The operation of the aggregate mining site will be conducted in compliance with all other applicable state and local permits and regulations. DOGAMI has oversight responsibility for mining operations and final reclamation. Dust control is a required component of the operating plan. The Oregon Department of Environmental Quality (DEQ) permits will be required for stormwater management and the dust control plan will be reviewed to address air quality concerns. The Applicant has agreed to provide limited baseline monitoring of groundwater quality and quantity and to grant a “groundwater guarantee” to offset potential impacts to neighboring wells.

*Goal 7 – Areas Subject to Natural Disasters and Hazards:* The proposed mine site is not recognized as being an area subject to natural disasters or hazards. There is no conflict with Goal 7.

*Goal 8 – Recreational Need:* The proposed mining operation will not impact recreational needs or areas used for recreation. There is no conflict with Goal 8.

*Goal 9 – Economy of the State:* Development of the aggregate site is consistent with Goal 9 because aggregate is a necessary commodity for road and building projects. A local source of aggregate provides an economic benefit to Crook County and the Central Oregon region.

*Goal 10 – Housing: Development.* The aggregate resource site will have no direct impact on the supply of housing in Crook County. Properties zoned for Exclusive Farm Use are typically unlikely to be approved for residential development. Having a local supply of aggregate materials should help meet demand for residential construction.

*Goal 11 – Public Facilities and Services:* No new public services will be required to support development of the aggregate resource site. Sewer service is not required, and water and power are currently available to serve the site. An existing truck route will be used for traffic associated with the site and no new connections to County roads are required. The Applicant will receive water from the Ochoco Irrigation District.

*Goal 12 – Transportation:* Development of the proposed aggregate resource site does not conflict with the Crook County Transportation Plan or Goal 12. The site is located on an existing designated truck route less than ½ mile from Highway 26. No new access points are needed or requested. No new access to County roads is required.

*Goal 13 – Energy Conservation:* Development of an aggregate resource site in Crook County reduces the consumption of energy needed to move aggregate from locations farther away to projects in Crook County. The proposed site is consistent with Goal 13.

*Goal 14 – Urbanization:* This proposal does not include expansion of any urban growth boundary. This area has not been considered for UGB expansion. If the area is considered for urbanization in the future, the reclaimed site could be available for development.

With the adoption of the ESEE analysis, Step 3 is complete. The next step is to develop a program to achieve Goal 5.



**STEP 4  
(PROGRAM TO ACHIEVE GOAL 5)**

**OAR 660-016-0010(2)-(3):**

*Based on the determination of the economic, social, environmental and energy consequences, a jurisdiction must “develop a program to achieve the Goal.” Assuming there is adequate information on the location, quality, and quantity of the resource site as well as on the nature of the conflicting use and ESEE consequences, a jurisdiction is expected to “resolve” conflicts with specific sites in any of the following three ways listed below. Compliance with Goal 5 shall also be based on the plan’s overall ability to protect and conserve each Goal 5 resource. The issue of adequacy of the overall program adopted or of decisions made under sections (1), (2), and (3) of this rule may be raised by the Department or objectors, but final determination is made by the Commission, pursuant to usual procedures:*

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*(2) Allow Conflicting Uses Fully: Based on the analysis of ESEE consequences and other Statewide Goals, a jurisdiction may determine that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. This approach may be used when the conflicting use for a particular site is of sufficient importance, relative to the resource site. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.*

*(3) Limit Conflicting Uses: Based on the analysis of ESEE consequences, a jurisdiction may determine that both the resource site and the conflicting use are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource site to some desired extent. To implement this decision, the jurisdiction must designate with certainty what uses and activities are allowed fully, what uses and activities are not allowed at all and which uses are allowed conditionally, and what specific standards or limitations are placed on the permitted and conditional uses and activities for each resource site. Whatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses and activities are allowed, not allowed, or allowed conditionally and under what clear and objective conditions or standards. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.*

**FINDING:** Based on the evidence in the record, the Planning Commission recommended that conflicting uses be allowed fully, and the site designated as a “3B” site, consistent with subsection (2) above. The Planning Commission determined that the conflicting uses for the site were of sufficient importance based on existing land uses and potential impacts, regardless of potential impacts of the conflicting uses on the resource site. Reasons for this determination relate to the potential impact to existing uses within the proposed mining operation’s impact area. Impacts associated with dust, noise, and potential impacts to groundwater resources are primary concerns. It is anticipated that these impacts can be mitigated to some extent.

In addition to the Planning Commission’s reasons, the County Court finds, based on an analysis of the ESEE consequences, that conflicting uses should be allowed fully because they are of such importance relative to the resource site. Specific reasons for this finding include:

- The ESEE analysis identified both positive and negative consequences associated with mining operations.
- Economic consequences do not tilt the scales significantly in either direction. There will be economic benefits from utilizing the resource site, as some of the aggregate material produced will be used in local construction projects that provide economic benefits to the County. The economic burdens faced by the Applicant from conflicting uses, as discussed above, are justifiable. Additionally, the reduction in the property values of the dwellings in the impact area and potential economic burdens faced by neighboring agricultural producers—i.e., potential reductions in crop productivity—can be assumed to be significant. As noted above, the record is void of hard numbers on this issue either way, but as Applicant conceded, “Who would prefer to live next to a mining operation versus a landscape where one can enjoy the clean, quiet open space of another’s private property?” Ex. 66.
- Social consequences favor allowing conflicting uses fully. The social benefits of allowing the resource use include employment opportunities, tax revenue, and local aggregate supply. The social consequences to the conflicting uses include a drastic reduction in the rural quality of life—traffic, noise, dust, groundwater issues, etc. The area surrounding the resource site is closer to the County’s urban center and in an area of smaller lots. The social consequences suffered by the conflicting uses in the Impact Area outweigh the benefits of the resource use.
- Environmental consequences strongly favor allowing conflicting uses fully. The evidence in the record establishes that with no safeguards or mitigation steps in place, groundwater could be impacted well outside the Impact Area. There is also evidence in the record, though not directly applicable to the site at issue, that plans *can* fail, and severe environmental harm *can* occur from mining activities. Ex. 58. Even if the risk of such an event were low, the severity of such an event demands our consideration. The evidence in the record also suggests that, even with stringent efforts to mitigate, there will still be significant noise pollution and particulate in the air. The balance of environmental consequences tilts towards allowing conflicting uses fully.
- Energy consequences favor resource use. Energy impacts from or to the conflicting uses are minimal. Energy benefits from the resource use derive from the reduction in transportation of aggregate materials to local and regional construction projects. Even if some or a large portion of the material produced at the Subject Property is transported out of the County or region, the County will still receive the beneficial reduction in energy use from a local source of aggregate material.
- The impacts on the resource from the conflicting uses, based on the ESEE analysis, are less significant than the impacts on the conflicting uses from the resource site. The importance of these conflicting uses, relative to the resource site, warrant allowing conflicting uses fully.

The County hereby adopts a Program to Achieve the Goal (the "Program"), based on the ESEE analysis and other Statewide Goals, that conflicting uses shall be allowed fully or a “3B Plan.” The subject property is hereinafter designated a 3B site on the County’s Inventory of Aggregate Sites.

The County’s Program must be focused on minimizing impacts to the conflicting uses, as those impacts, in turn, exacerbate the impacts *to* the resource site. The Applicant has proposed numerous steps to mitigate such impacts, and compliance with those steps will be essential to allow the resource materials to be extracted in relative harmony with the conflicting uses. The Program must ensure that best practices are observed in the effort avoid harm to groundwater. The Groundwater Guarantee must be simple to invoke, fair, and remedy any harm that may occur. Efforts to offset noise and dust impacts from operations

must be reasonable, and they must be followed. With those overarching goals in mind, the following conditions are adopted to achieve Goal 5:

PROGRAM TO ACHIEVE GOAL 5:

**General Requirements:**

**Site plan:** The Applicant shall submit an updated site development plan to the Crook County Community Development Department reflecting required setback and berms and consistent with applicable conditions of County land use approval.

**Water rights:** The Applicant shall submit evidence of water rights for mining and reclamation use to the Crook County Community Development Department prior to such use of water.

**Quality of Life Concerns:**

**Setbacks:** To minimize impacts to neighboring properties, no active mining shall occur closer than 100 feet from property lines on the north, east and south side of the subject property. Mining shall not extend closer than fifty (50) feet from adjacent parcel 141514 Tax lot 701 (the Porfily property) on the west side of the subject property. No setback is required on the boundary with the Woodward property to the west of the subject property (141514 tax lot 703). Berms and groundwater trenches may be placed with the setback area subject to the final site plan.

Ordinary operating hours shall be Monday through Friday, June 1 through October 31, from 6:00 a.m. to 9:00 p.m., or sunrise to sunset, whichever time period is shorter. Operating hours shall be Monday through Friday, November 1 through May 31, from 7:00 a.m. to 6:00 p.m., or sunrise to sunset, whichever is shorter. No operations shall be conducted on weekends or specific holidays.

**Traffic:** Access to the subject property shall be limited to the existing access at the Woodward site. Materials will be transferred from the subject property via an internal haul road, or an alternative internal system approved as part of a conditional use permit, to the processing plant on the Woodward property. No new access is permitted on Stahancyk Lane or Lamonta Road.

**Berms:** Berms are intended to buffer neighboring properties from noise, dust and visual impacts. The Applicant has proposed a height of 8 feet with a slope no steeper than 2:1. The 2:1 slope is intended to allow for mowing of the berms.

Berms shall be placed at the time mining begins in adjacent cells to minimize the amount of disturbed ground. Berms will be hydroseeded, irrigated to maintain vegetation, and managed to prevent the spread of noxious weeds. Berms may be placed within the 100' property-line setback area. Berms shall be removed upon completion of the mining operation.

**Dust Mitigation:** The Applicant shall control all fugitive dust emissions associated with all extraction operations on the site. The Applicant shall implement provisions in the Dust Management Plan (Exhibit 23). Excepting actively mined areas, the Applicant shall stabilize all disturbed areas to minimize dust using hydro-seeding or other soil stabilization methods consistent with the Dust Management Plan. The Applicant shall stabilize all stockpile areas with mulch, vegetation, or chemical binders. During non-operation days, the stockpiles and active mining areas shall be sprinkled with water to limit fugitive dust.

If constructing an internal haul road, the Applicant shall construct said road between the subject property and the Woodward processing site with an all-weather surface and aggregate base sufficient to support heavy vehicles and equipment. The surface shall be treated regularly to minimize fugitive dust.

A contact person representing the aggregate operator shall be named and all appropriate contact information shall be provided to Crook County Community Development and to any neighbor that requests such information so the aggregate operator can be contacted if dust is being released. The contact information for the regional office of the Oregon Department of Environmental Quality – Air Quality Division, shall also be provided.

**Noise:** Noise is an impact that has been identified as an issue by surrounding property owners. The berms proposed by the applicant and limits on operating hours are intended to help minimize noise impacts. The County has no noise ordinance, but noise is regulated by the Oregon Department of Environmental Quality.

To the extent authorized by law, the Applicant agrees to replace existing back-up “beepers” on mining equipment and vehicles with directional “white noise” back-up alarms.

**Reclamation:** No more than 10 acres of ground shall be disturbed by mining at any time. The 'disturbed area' refers to the active mining area (5 acres) and reclamation cells and does not include the stockpile area or the berm areas. The site will be reclaimed concurrently with mining as cells are completed. Prior to reclamation, the mine operator shall stabilize disturbed areas using hydro-seeding or other soil stabilization product to help minimize dust from disturbed areas.

Upon completion of mining cells, the Applicant agrees to remove standing water. Overburden will be replaced and ripped and disked to reduce compaction. Topsoil will be replaced. Reseeding will occur in the next planting season, but soil will be stabilized until planting can occur. The site will be reclaimed concurrently with mining as cells are completed.

All reclamation activities shall be subject to a reclamation plan approved by DOGAMI. The Applicant shall work with the property owner to ensure that reclamation is carried out in a manner that restores the property to its current use for grazing and hay production.

**Groundwater:** The Applicant acknowledges that groundwater may be encountered while mining the Subject Property. If water is encountered, it will be pumped out of the mining area and infiltrated on-site into recharge trenches as described in the Hydrogeologic Characterization report and in Exhibit 33. Groundwater concerns pose economic, social and environmental issues for neighboring properties within the impact area. It is understood that requirements for groundwater monitoring and remediation may have economic consequences for the mine operator. Table 3 of the Aggregate Mine Hydrogeologic Characterization report identifies wells that have potential to be influenced by mining activities on the Vanier property in the absence of mitigation.

The Applicant has identified properties within the 500’ buffer area for baseline testing. These properties identified by the Applicant primarily have relatively shallow wells (drilled above 40 feet) that are in the same aquifer and similar depth to the area proposed for mining.

Baseline data shall be collected for said wells within the 500’ foot buffer area prior to mining, and information collected shall be provided to the respective property owner and Crook County Community

Development Department.<sup>10</sup> Baseline testing will consist of water level measurements for the wells and discharge measurements of spring flow, as appropriate. Baseline water quality testing will consist of GRO (Gasoline Range Organics), DRO (Diesel Range Organics), turbidity, total dissolved solids, iron, manganese, pH, *conductivity and temperature*.<sup>11</sup>

The Operator shall collect on-site monitoring well water quantity data continuously and on-site monitoring well water quality data quarterly and shall share all collected data quarterly with designated well/spring owners who have granted access and sampling permission. Prior to mining through a trench or a monitoring well, all previously collected groundwater data will be reviewed by licensed professional geologist or engineer. This data analysis shall consider the relocation and placement of the next infiltration trench and monitor wells as well as any potential adverse impacts to surrounding properties. The Operator shall adjust the Mine Plan to minimize or eliminate any mine related adverse impacts. All data shall be maintained on file by the Operator for 5 years.

The Applicant has proposed a groundwater protection guarantee. The Applicant will work with the Crook County Community Development Department and Crook County Counsel to finalize the groundwater protection guarantee. Said groundwater protection guarantee will ensure, at a minimum, that any injury to the quality or quantity of water is promptly and completely compensated through interim measures by the Applicant for the period of the appropriate state agency's review, and that should causation for said injury be determined by the state agency to be attributed to Operator, said injury shall be remedied in a complete and permanent manner. Any violation of the groundwater protection guarantee by the Applicant shall be prosecuted by the County under CCC 18.144.070, in addition to any other remedies or penalties under law.

## VI. CONCLUSION

Based on the above findings of fact, the County Court amends the Crook County Comprehensive Plan to include the Subject Property as a 3B site and to include the ESEE analysis and program to achieve described above.

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<sup>10</sup> The Applicant proposed baseline water quality and quantity testing of three wells (shallow well on the Vanier property and wells on the Mikulski and Johnson properties) and two springs on the Davis property. (Page 2 of Exhibit 24).

<sup>11</sup> The Hydrologic report (table 3) also identifies an additional 39 wells within ½ mile of the subject property that share the same aquifer and could have "possible adverse impacts" in the absence of mitigation measures.

## APPENDIX 1

- Planning Commission Recommendation to County Court
- Comp Plan Amendment Application
- Comp Plan Amendment Burden of Proof
- Exhibit 1 - Ayres
- Exhibit 2 - Daly
- Exhibit 3 - Wheeler-Johnson
- Exhibit 4 - Pepper
- Exhibit 5 - Davis, Monique
- Exhibit 6 - Davis, Teresa
- Exhibit 7 - Mikulski
- Exhibit 8 - Sieben
- Exhibit 9 - Pomraning
- Exhibit 10 - Stafford
- Exhibit 11 - Fenderson
- Exhibit 12 - Pomraning, Alex
- Exhibit 13 - DOGAMI
- Exhibit 13A - DOGAMI Code Reference table
- Exhibit 14 - Knife River
- Exhibit 15 - Gamble
- Exhibit 16 - Knife River presentation
- Exhibit 17A & B - Pomraning
- Exhibit 18 - Pomraning
- Exhibit 19 - Mikulski
- Exhibit 20 - Pomraning
- Exhibit 21 - Richard Zimmerlee
- Exhibit 22 - Applicant Site Plans
- Exhibit 23 - Applicant Dust Management
- Exhibit 24 - Applicant Groundwater Exhibits
- Exhibit 25 - Radabaugh
- Exhibit 26 - Applicant Outline for Responses to Groundwater Questions
- Exhibit 27 - Opposition Signatures
- Exhibit 28- Stec
- Exhibit 29 - Mikulski
- Exhibit 30 - Mikulski
- Exhibit 31a & b - Zimmerlee
- Exhibit 32 - Applicant Rebuttal
- Exhibit 33 - Stantec Rebuttal Letter
- Exhibit 34 - Applicant Final Rebuttal
- Amended Staff Report - 9.15.2021 - Comp Plan Amendment
- Exhibit 35 - Billie Johnson
- Exhibit 36 - Pence Kelly

- Exhibit 37 - Knife River Ord 281
- Exhibit 38 - Brinkman
- Exhibit 39 - Knife River
- Exhibit 40 - Butler
- Exhibit 41 - DOGAMI
- Exhibit 42 - Hydro Assessment
- Exhibit 43 - Existing DOGAMI sites
- Exhibit 44 - Richard Zimmerlee
- Exhibit 45 - Applicant - Butler and Woodward Reclamation
- Exhibit 46 - Radabaugh
- Exhibit 47 - John Eisler, Asst. County Counsel
- Exhibit 48 - Will Van Vactor CCCD Director, Memo to Court
- Exhibit 49 - Applicant Submittal of Draft Minutes of PC Deliberations
- Exhibit 50 - Applicant - Vanier-Woodward Aerial Photos
- Exhibit 51 - Teri White
- Exhibit 52 - Bran Zednik
- Exhibit 53 - Zimmerlee
- Exhibit 54 - Pomraning
- Exhibit 55 - Mikulski
- Exhibit 56 - Johnson
- Exhibit 57 - Mikulski
- Exhibit 58 - Pomraning
- Exhibit 59 - Applicant - Woodward-Vanier Final Contours
- Exhibit 60 - Stantec
- Exhibit 61 - Hudspeth
- Exhibit 62 - Newton, Cascade Geoengineering LLC
- Exhibit 63 - Applicant - ESEE Analysis and Program to Achieve Goal 5
- Exhibit 64 - Mikulski
- Exhibit 65 – Memo from County Counsel regarding new exhibits
- Exhibit 66 – Applicant’s Final Argument

## APPENDIX 2

Farm use.
Propagation or harvesting of a forest product.
Composting limited to accepted farming practices in conjunction with and auxiliary to farm use on the subject tract.
A facility for the processing of farm products with a processing area of less than 2,500 square feet.
Agricultural buildings customarily provided in conjunction with farm use.
Creation of, restoration of, or enhancement of wetlands.
A facility for the processing of farm products with a processing area of at least 2,500 square feet but less than 10,000 square feet.
A facility for the primary processing of forest products.
Primary farm dwelling.
Relative farm help dwelling.
Accessory farm dwelling.
Lot of record dwelling.
Nonfarm dwelling.
Replacement dwelling for historic property.
Replacement dwelling.
Temporary hardship dwelling.
Residential home as defined in ORS <a href="#">197.660</a> , in existing dwellings (limited to the EFU-2 and EFU-3 zones only).
Room and board arrangements for a maximum of five unrelated persons in existing residences.
Dog training classes or testing trials.
Farm stand.
Winery.
Cider business.
Agri-tourism and other commercial events or activities that are related to and supportive of agriculture.
Parking of up to seven log trucks.
Home occupations.



Commercial dog boarding kennels or dog training classes or testing trials that cannot be established under Use 3.1.
A landscape contracting business, as defined in ORS <a href="#">671.520</a> , or a business providing landscape architecture services, as described in ORS <a href="#">671.318</a> , if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under Use 1.6, but excluding activities in conjunction with a marijuana crop.
Equine and equine-affiliated therapeutic and counseling activities.
Guest ranch.
Exploration for and production of geothermal, gas, oil and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
Operations for the exploration for minerals as defined by ORS <a href="#">517.750</a> .
Operations conducted for mining and processing of geothermal resources as defined by ORS <a href="#">522.005</a> and oil and gas as defined by ORS <a href="#">520.005</a> not otherwise permitted.
Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources.
Processing as defined by ORS <a href="#">517.750</a> of aggregate into asphalt or Portland cement.
Processing of other mineral resources and other subsurface resources.
Climbing and passing lanes within the right-of-way existing as of July 1, 1987.
Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur or no new land parcels result.
Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

<p>Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.</p>
<p>Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.</p>
<p>Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.</p>
<p>Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required but not resulting in the creation of new land parcels.</p>
<p>Transportation improvements on rural lands allowed by and subject to the requirements of OAR <a href="#">660-012-0065</a>.</p>
<p>Personal use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.</p>
<p>Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS <a href="#">540.505</a>.</p>
<p>Land application of reclaimed water, agricultural or industrial process water or biosolids, or the on-site treatment of septage prior to the land application of biosolids.</p>
<p>Utility facility service lines.</p>
<p>Utility facilities necessary for public service, including associated transmission lines as defined in ORS <a href="#">469.300</a> and wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.</p>
<p>Transmission towers over 200 feet in height.</p>
<p>Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities or photovoltaic solar power generation facilities.</p>
<p>Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.</p>

Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
Disposal site for solid waste approved by the governing body and for which the Oregon Department of Environmental Quality has granted a permit under ORS <a href="#">459.245</a> , together with equipment, facilities or buildings necessary for its operation.
Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS <a href="#">459.245</a> and OAR <a href="#">340-093-0050</a> and <a href="#">340-096-0060</a> .
Firearms training facility in existence on September 9, 1995.
Fire service facilities providing rural fire protection services.
On-site filming and activities accessory to on-site filming for 45 days or less as provided for in ORS <a href="#">215.306</a> .
A site for the takeoff and landing of model aircraft.
On-site filming and activities accessory to on-site filming for more than 45 days as provided for in ORS <a href="#">215.306</a> .
Living history museum as defined in CCC <a href="#">18.08.120</a> .
Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
Public parks and playgrounds.
Public parks or park uses in an adopted park master plan.
Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS <a href="#">565.210</a> .
A county law enforcement facility that lawfully existed on August 20, 2002 and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS <a href="#">162.135</a> as provided for in ORS <a href="#">215.283</a> (1).
Operations for the extraction of water.
Churches and cemeteries in conjunction with churches.
Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

Private parks, playgrounds, hunting and fishing preserves, and campgrounds.
Golf courses.
An outdoor mass gathering of more than 3,000 persons that is expected to continue for more than 24 hours but less than 120 hours in any three-month period, as provided in ORS <a href="#">433.735</a> .
Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month period is subject to review by a county planning commission under ORS <a href="#">433.763</a> .

**IN THE COUNTY COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CROOK**

**AN ORDINANCE AMENDING SECTION  
18.116.040 TO PERMIT THE BONDING  
FOR THE COMPLETION OF DESTINATION  
RESORT OVERNIGHT LODGING UNITS  
UNDER CERTAIN CIRCUMSTANCES, AND  
DECLARING AN EMERGENCY**

**ORDINANCE 329**

**WHEREAS**, Oregon law permits the creation of “destination resorts,” a type of development including private residences, overnight accommodations, and tourist facilities. Crook County has adopted local ordinances regulating the creation of destination resorts. Under both state and local law, one of the conditions for the development or expansion of destination resorts is that a stated ratio of units for residential sale to units of permanent overnight lodging. In Crook County, that ratio is 2.5:1; and

**WHEREAS**, in addition to the required ratio, a destination resort development must meet a minimum number of overnight lodging units, according to the following timeframes:

- (i) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, shall be constructed or guaranteed prior to the closure of sale of individual lots or units through an agreement and security provided to the county in accordance with CCC 17.40.080 and 17.40.090.
- (ii) The remainder shall be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.

See Crook County Code 18.116.040(3)(a); and

**WHEREAS**, due to the current worldwide COVID-19 pandemic, a variety of economic sectors including but not limited to the hospitality, residential construction, and food service industries have endured extreme unpredictability compared to even the

difficult market conditions of severe recessions. This unpredictability has afflicted the local Crook County economy at least as severely as elsewhere in the State of Oregon. Meeting the normal requirements for the overnight lodging unit ratio has been made more difficult than regular downturns in the economy, however severe those downturns have been, and

**WHEREAS**, to acknowledge that the pandemic, or some future unpredictable circumstance of similar gravity may cause nearly unique disruption in the normal course of business, the County wishes to create a process whereby meeting the destination resort overnight lodging unit ratio may be met through an alternative method; and

**WHEREAS**, securing the obligation to meet the overnight lodging unit ratio requirement through providing a bond and associated contractual commitments, acceptable to the County, in such circumstances and as the County may choose to approve, would not prejudice the general public and will ensure the compliance with Oregon and local law regarding the development of destination resorts; and

**WHEREAS**, the Crook County Planning Commission held a public hearing on Tuesday, January 18, 2022, to make a recommendation to the Crook County Court regarding whether to adopt a revision to the County's destination resort regulations.

**NOW, THEREFORE**, the Crook County Court ordains as follows:

**Section One:** The above recitals and exhibits are adopted into and made a part of this Ordinance No. 329 as the County's findings of fact.

**Section Two:** Crook County Code section 18.116.040 is amended to read as depicted on the attached Exhibit A, with additions **underlined** and deletions ~~struck through~~.

**Section Three:** If any court of competent authority invalidates a portion of this Ordinance 329, the remaining portions will continue in full force and effect.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**Section Four:** Ordinance 329 being immediately necessary for the health, welfare, and safety of the people of Crook County, an emergency is hereby declared to exist, and this Ordinance 329 shall become effective upon signing.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Judge Seth Crawford

\_\_\_\_\_  
Commissioner Jerry Brummer

\_\_\_\_\_  
Commissioner Brian Barney

Vote:	Aye	Nay	Excused
Seth Crawford	_____	_____	_____
Jerry Brummer	_____	_____	_____
Brian Barney	_____	_____	_____

## EXHIBIT A

**18.116.040 Standards**

A destination resort shall meet the following standards:

- (1) Development shall be located on a tract that contains at least 160 acres.
- (2) Development shall not be located on high value farmland.
- (3) Development shall include meeting rooms, restaurants with seating for at least 100 persons, and a minimum of 150 separate rentable units for overnight lodging, oriented toward the needs of visitors rather than area residents. However, the rentable units may be phased in as follows:
  - (a) ) A total of 150 units of overnight lodging shall be provided as follows:
    - (i) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, shall be constructed or guaranteed prior to the closure of sale of individual lots or units through an agreement and security provided to the county in accordance with CCC 17.40.080 and 17.40.090.
    - (ii) ) The remainder shall be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.
  - (b) ) The number of units approved for residential sale shall not be more than two units for each unit of permanent overnight lodging provided under subsection (3)(a)(i) of this section; provided, however, after an applicant has constructed its first 150 permanent overnight lodging units, the county may approve a final development plan modification to increase the ratio of units approved for residential sale to units of permanent overnight lodging from two to one to two and one-half to one.
  - (c) The development approval shall provide for the construction of other required overnight lodging units within five years of the initial lot sales.
  - (d) In a phased development, after completing construction of the initial 150 units of overnight lodging units described in subsection (a) of this section, in lieu of fully constructing required overnight lodging units, an applicant may request at the time it submits a tentative plan application to guaranty construction of any overnight lodging units required per subsection (b) of this section if the following requirements are met:



- (i) The applicant shall provide an agreement and security in amount equal to or greater than 130% of the anticipated costs to construct the overnight lodging units to the county in accordance with CCC17.40.080 and 17.40.090;
- (ii) Such agreement and security shall have a maximum term of four (4) years and must require construction of the required overnight lodging units to be complete (as evidenced by a certificate of occupancy issued by the Crook County Building Department) prior to the expiration of such term; and
- (iii) The applicant must demonstrate to the hearing authority's satisfaction that the need to provide a guaranty is the result of factors outside the applicant's control (e.g., a lack of necessary construction materials or shortage of necessary labor to complete construction). Routine development costs changes, labor disputes, competition from other entities, or events that are the inherent risks of business do not qualify.

(4) Prior to closure of sale of individual lots or units, all required developed recreational facilities, key facilities intended to serve the entire development, and visitor-oriented accommodations shall be either fully constructed or guaranteed by providing an agreement and security in accordance with CCC 17.40.080 and 17.40.090. In phased developments, developed recreational facilities, ~~and other~~ key facilities intended to serve a particular phase, **and required visitor-oriented accommodations** shall be **either fully** constructed prior to sales in that phase or guaranteed by providing an agreement and security in accordance with CCC 17.40.080, ~~and~~ 17.40.090, **and, if applicable, 18.116.040(3)(d)**. Nothing in this subsection shall be interpreted to require the construction of all approved phases of a destination resort; provided, that the destination resort as developed complies with the minimum development requirements of subsections (3), (5), and (7) of this section.

(5) At least \$7,000,000 shall be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities, and roads. Not less than one-third of this amount shall be spent on developed recreational facilities. Spending required under this subsection is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

(6) Commercial uses are limited to those listed in CCC 18.116.070(8). Such uses must be internal to the resort, and are limited to the types and levels of use necessary to meet the needs of visitors to the resort. Industrial uses of any kind are not permitted.

(7) At least 50 percent of the site shall be dedicated to permanent open space, excluding yards, streets, and parking areas.

(8) If the site includes a resource site designated on the county's Goal 5 inventories as significant, the resource site shall be protected in accordance with the adopted Goal 5 management plan for the site. Sites designated for protection pursuant to Goal 5 shall also be preserved by design techniques, open space designation, or a conservation easement sufficient to protect the resource values of the resource site. Any conservation easement created pursuant to this subsection shall be recorded with the property records of the tract on which the destination resort is sited prior to development of the phase of which the resource site is a part.

(9) Riparian vegetation within 100 feet of natural lakes, rivers, streams and designated significant wetlands shall be retained as set forth in CCC 18.124.090.

(10) The dimensional standards otherwise applicable to lots and structures in underlying zones pursuant to Chapters 18.16 through 18.112 and 18.120 through 18.140 CCC shall not apply within destination resorts. The planning commission shall establish appropriate dimensional standards during final development plan review.

(11) Except where more restrictive minimum setbacks are called for, the minimum setback from exterior property lines, excluding public or private roadways through the resort, for all development (including structures and site-obscuring fences of over three feet in height but excepting existing buildings and uses) shall be as follows:

- (a) Two hundred fifty feet for commercial development listed in CCC 18.116.070, including all associated parking areas;
- (b) ) One hundred feet for visitor-oriented accommodations other than single-family residences, including all associated parking areas;
- (c) Twenty-five feet for above-grade development other than that listed in subsections (11)(a) and (b) of this section;
- (d) ) Twenty-five feet for internal roads;
- (e) Twenty-five feet for golf courses and playing fields;
- (f) ) Twenty-five feet for jogging trails, nature trails and bike paths where they abut private developed lots, and no setback where they abut public roads and public lands;
- (g) ) The setbacks of this section shall not apply to entry roadways, landscaping, utilities and signs.

(12) Alterations and nonresidential uses within the 100-year flood plain and alterations and all uses on slopes exceeding 25 percent are allowed only if the applicant submits and the

planning commission approves a geotechnical report that demonstrates adequate soil stability and implements mitigation measures designed to mitigate adverse environmental effects. Such alterations and uses include, but are not limited to:

- (a) ) Minor drainage improvements which do not significantly impact important natural features of the site;
- (b) ) Roads, bridges, and utilities where there are no feasible alternative locations on the site; and
- (c) Outdoor recreational facilities, including golf courses, bike paths, trails, boardwalks, picnic tables, temporary open sided shelters, boating facilities, ski lifts, and runs.

**THE COUNTY COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CROOK**

**IN THE MATTER OF ORDERING FEES**      ORDER ~~2021-0540~~  
**FOR FISCAL-CALENDAR YEAR ~~2021-2022-~~ Amendment #2**  
~~2022-2023~~

WHEREAS, ORS 294.160 requires the establishment of fees by county governing bodies by order or ordinance after providing the public an opportunity to comment; and

~~WHEREAS, this Order 2021-40 was previously approved on July 21; and~~

WHEREAS, this Order reflects changes to fees which have not been raised in the preceding six months.

NOW, THEREFORE, BE IT ORDERED BY THE CROOK COUNTY COURT that the following fees are set for the fiscal-calendar year ~~2021-2022-2022-2023~~ commencing upon the effective date of this ~~Amendment # 1 to~~ Order ~~2021-0540~~, which shall continue in effect until amended by the Crook County Court or amended by operation of law:

**ALL DEPARTMENTS**, except as otherwise specified below:

Photocopies, per page	
Black and white pages	\$0.25
Color pages	\$0.75
Computer prints:	
first 10 pages,	\$0.40
next 100 pages,	\$0.20
additional pages, each	\$0.10
Faxes (up to 10 pages – does not include microfilm fees, search fees, etc.)	\$2.50
Research and collation fee, per hour	\$25.00
Returned and NSF check charge	\$25.00
<b>ASSESSOR</b>	
Farm disqualification estimates	\$150.00 each

Laser print enlargements of tax lot	\$1.50 each
Research Fee (per hour w/ 1/2 hour minimum)	\$45.00
Mapping fee (per plat)	\$35.00
Mobile Home Fees:	
Trip Permit	\$25.00 per section
Ownership/Situs Change/Title Transfer	\$80.00

## COMMUNITY DEVELOPMENT

The International Code Council Building Valuation Table has been adopted by Crook County and is published in February of every year and adopted through the County Court effective April 1<sup>st</sup> of every year. The current valuation table is as follows:

Total Valuation	Fee
\$1 to \$500	\$14.40
\$501 to \$2,000	\$14.40 for the first \$500.00 plus \$2.16 for each additional \$100 or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$46.80 for the first \$2,000 plus \$8.64 for each additional \$1,000 or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$245.52 for the first 25,000 plus \$6.47 for each additional \$1,000 or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$394.33 for the first \$50,000 plus \$4.32 for each additional \$1,000 or fraction thereof, to and including \$100,000
\$100,001 and up	\$610.33 for the first \$100,000 plus \$3.60 for each additional \$1,000 or fraction thereof

- 1.) 12% State Surcharge is required to be added to Building fees as per State of Oregon.
- 2.) Code Compliance Fee for New Residential, Single Family Dwelling valuations will be 0.15% of building valuation (Maximum of \$300.00) (Supports code enforcement program.)
- 3.) Code Compliance Fee for New Accessory Building valuations 0.15% of building valuation (Maximum fee of \$200.00) (Supports code enforcement program)
- 4.) Code Compliance Fee for Commercial Structures Valuations 0.15% of building valuations (Maximum fee of \$300.00) (Supports code enforcement program).
- 5.) Minimum Building Permit Valuation Fee is \$5,000.
- 6.) Agricultural Building Exemption Review \$55.00
- 7.) Residential Demolition Permit Fee \$85.00
- 8.) Commercial Demolition Permit Fee \$220.00
- 9.) Additional Plan Review - Plan modifications – 2 hour minimum \$85.00 hr

- 10.) Refund processing fee (refunds must be requested within 180 days of application. Refunds are not available for any work that has been performed.) 75.00
- 11.) Change of Occupancy Review \$150.00
- 12.) Complex/large project consultation or review fee (may include charges for review from technical experts as ACS) 2 hour minimum \$150.00/hr
- 13.) Re-Roofing, Residential \$147.00
- 14.) Re-Roofing Fee Commercial Only Based on the Valuation of the Project
- 15.) A Fire Life Safety Plan Review Fee is required on all structures over 4000 sq. ft. and/or any project deemed necessary by the Building Official and assessed based on 40% of the Permit Fee.
- 16.) Addressing Fee:  
A Utility Address may be required for a permit where a utility is requested. \$25.00
- 17.) Address Fees: County: \$100.00 Community Development  
\$10.00 Road Sign Reserve  
\$25.00 Fire Marker Fee = \$135.00  
  
City: \$100.00 Community Development  
\$10.00 Road Sign Reserve = \$110.00
- 18.) Fire Marker Fee \$25.00
- 19.) Re-Inspection Fee \$100.00
- 20.) Investigation fee \$100.00/hr
- 21.) Each additional inspection \$100.00
- 22.) Inspection outside normal business hours – 2 hour minimum \$75.00/hr
- 23.) Inspection for which no fee is indicated \$100.00/hr
- 24.) Replacement Copy provided by owner for Plan Review and Stamp \$30.00
- 25.) Copying of Plans Reviewed, Stamped Plans \$30.00
- 26.) Permit Reinstatement due to expired permit (within 6-month window) 50% of current fee for new permit. New Permit Fee thereafter.
- 27.) Permit History Research Fee \$25.00 + .25 per page
- 28.) Permit Shipping \$10.00
- 29.) Phased Plan Review “per phase” for Residential/Commercial. \$250 minimum phasing fee plus 10% of the total project building permit fee, not to exceed \$1,500.00 for each phase.
- 30.) Deferred plan Review – 65% of permit fee on deferred portion valuation with a \$250.00 minimum fee
- 31.) Temporary Certificate of Occupancy – Commercial \$375.00
- 32.) Temporary Certificate of Occupancy – Residential \$225.00
- 33.) Temporary Gold Seal Job Trailer Placement Inspection
  - a. Single-wide unit \$450.00
  - b. Double-wide unit \$550.00
  - c. Triple-wide unit \$650.00

**Manufactured Home Park Fee Schedule – Valuation**

<b>Table 1</b>	
\$1 to \$500	\$25

\$501 to \$2000	\$25 for the first \$500 plus \$2.20 for each additional \$100 or fraction thereof, to and including \$2,000
\$2001 to \$25,000	\$58 for the first \$2000 plus \$9.90 for each additional \$1000 or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$285.70 for the first \$25,000 plus \$7.15 for each additional \$1000 or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$464.45 for the first \$50,000 plus \$4.95 for each additional \$1000 or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$711.95 for the first \$100,000 plus \$3.85 for each additional \$1000 or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$2,251.95 for the first \$500,000 plus \$2.20 for each additional \$1000 or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$3,351.95 for the first \$1,000,000 plus \$2.20 for each additional \$100 or fraction thereof

**Evaluation: Table 2 – spaces per acre**

**Park Class A:**

4 or less	5901
5	5517
6	5197
7	4941
8	4685
9	4493
10	4365
11	4301
12	4237

**Park Class B:**

4 or less	5504
5	5120
6	4800
7	4544
8	4288
9	4096
10	3968
11	3904
12	3804

**Park Class C:**

4 or less	5312
5	5028
6	4608

7	4352
8	4269
9	3904
10	3776
11	3712
12	3648

Note:

1. Table 2 is based on the 1990 evaluation of Mobile Home Parks published by Oregon Department of Revenue
2. Deduct ten percent from the valuation of parks constructed east of the Cascade Summit.
3. "Class A" parks contains paved streets, curbs and no sidewalks.
4. "Class B" Parks contains paved streets, no curbs and no sidewalks.
5. "Class C" parks contain no paved streets, no curbs, but have a sidewalk on one side of each street.

Additional plan review (required when approved plan is added to, changed, or revised – Min. 1/2 hour)	\$75.00
Consultation fee (min charge - one hour)	\$150.00
Plan check fee for manufactured home park	65%
Prefabricated structural inspections (includes site development and connection of the prefabricated structure)	_____
MH Park Installation connection	_____

**Recreation Park Fee Schedule**

<b>Table 1</b>	
\$1 to \$500	\$25
\$501 to \$2000	\$25 for the first \$500 plus \$2.20 for each additional \$100 or fraction thereof, to and including \$2,000
\$2001 to \$25,000	\$58 for the first \$2000 plus \$9.90 for each additional \$1000 or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$285.70 for the first \$25,000 plus \$7.15 for each additional \$1000 or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$464.45 for the first \$50,000 plus \$4.95 for each additional \$1000 or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$711.95 for the first \$100,000 plus \$3.85 for each additional \$1000 or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$2,251.95 for the first \$500,000 plus \$2.20 for each additional \$1000 or fraction thereof, to and including \$1,000,000



\$1,000,001 and up	\$3,351.95 for the first \$1,000,000 plus \$2.20 for each additional \$100 or fraction thereof
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**Recreation Park Valuation Table - Table 2**

**Park Class A:**

6 or less spaces per acre	2637
8 spaces per acre	2470
10 spaces per acre	2320
12 spaces per acre	2189
14 spaces per acre	2074
16 spaces per acre	1978
18 spaces per acre	1907
20 spaces per acre	1849
22 spaces per acre	1798

**Park Class B:**

6 or less spaces per acre	2483
8 spaces per acre	2317
10 spaces per acre	2176
12 spaces per acre	2035
14 spaces per acre	1920
16 spaces per acre	1824
18 spaces per acre	1754
20 spaces per acre	1696
22 spaces per acre	1645

**Park Class C:**

6 or less spaces per acre	2483
8 spaces per acre	2317
10 spaces per acre	2176
12 spaces per acre	2035
14 spaces per acre	1920
16 spaces per acre	1824
18 spaces per acre	1754
20 spaces per acre	1696
22 spaces per acre	1645

Plan check fee for Rec park 65 %

**Solar Fees:**

- 1.) Solar Photo voltaic prescriptive (roof-mounted) \$155.00
- 2.) Solar Photo voltaic – non-prescriptive Fee is based on the valuation of the project – see Structural Permit fee table for rates.

**Mechanical Fees:**

All mechanical permits are subject to a state Surcharge of 12% of the total permit fee. The minimum mechanical permit application fee is \$100.00.

The Mechanical Plan Review Fee is based on valuation of 75% of the determined Permit Fee, where applicable.

Commercial Mechanical permits are based on the valuation of the project – see Structural Permit fee table for rates.

1. Air Conditioner	\$13.29
2. Air handling unit up to 10,000 cfm	\$13.29
3. Air handling unit 10,001 cfm and over	\$17.72
4. Appliance vent installation, relocation or replacement not included in an appliance	\$10.52
5. Attic/crawl space fans	\$7.75
6. Chimney /liner/flue/vent	\$11.08
7. Clothes dryer exhaust	\$11.08
8. Decorative gas fireplace	\$11.08
9. Evaporative cooler other than portable	\$7.75
10. Floor furnace, including vent	\$11.08
11. Flue Vent for water heater or gas fireplace	\$9.42
12. Furnace/burner including duct work/vent/liner	\$17.72
13. Gas or wood fireplace/insert	\$17.72
14. Gas Fuel piping outlets	\$11.08
15. Heat pump	\$16.62
16. Hood served by mechanical exhaust, including ducts for hood	\$7.75
17. Hydronic hot water system	\$70.90
18. Mini spit system	\$16.62
19. Oil tank/gas/diesel generators	\$16.62
20. Pool or spa heater, kiln	\$11.08
21. Propane or natural gas vented room heaters, gas fired appliances, includes vent	\$17.75
22. Range hood/other kitchen equipment	\$10.52
23. Suspended heater, recessed wall heater, or floor mounted floor heater	\$11.08
24. Ventilation fan connected to single duct	\$7.75
25. Ventilation system not a portion of heating or air-conditioning system	\$7.75
26. Water heater	\$44.31
27. Wood/pellet stove	\$17.72
28. Other heating/cooling	\$11.08
29. Other fuel appliance	\$11.08
30. Other environment exhaust/ventilation	\$7.75
31. Mechanical-additional plan review per hour (min 2 hours)	\$85.00
32. Re-inspection fee-mechanical	\$90.00
33. Inspections outside normal business hours – mechanical (min 2 hours)	\$75.00
34. Inspections for which no fee is specifically indicated – mechanical (2 hours min)	\$75.00
35. Mechanical investigation fee	\$100.00/hr
36. Minimum fee – mechanical	\$100.00

### Plumbing Fees:

All Plumbing permits are subject to a State Surcharge of 12% of the total permit fee

The minimum Plumbing Permit Application Fee is \$100.00

Plumbing Plan Review Fee is 75% of the permit fee.

1. Permit Fee, where applicable. Sanitary Sewer-first 100'	\$74.17
2. Storm Sewer-first 100'	\$74.17
3. Water Service - first 100'	\$74.17
4. Backflow preventer	\$74.17

5. Each additional 100' of water, sewer or storm sewer line	\$60.93
6. Water heater	\$44.31
7. Reinspection fee	\$/100.00 ea
8. Each additional inspection – plumbing	\$75.00
9. Inspections for which no fee is specifically indicated – plumbing (2 hours min)	\$75.00
10. Inspections outside normal business hours – plumbing (2 hours min)	\$75.00
11. Plumbing investigation fee	\$100.00
12. Plumbing – additional plan review per hour (2 hour minimum)	\$85.00
13. Single Family Residence –additional bath/kitchen	\$140.00
14. First Kitchen & Bathroom includes 100' of water, sewer & storm lines	\$175.00
15. First Kitchen & 2 Bathrooms Includes 100' of water, sewer & storm lines	\$300.00
16. First Kitchen & 3 Bathrooms includes 100' of water, & sewer & storm lines	\$340.00
17. Each fixture as marked on application	\$24.72
18. Re-piping of existing fixtures - per fixture	\$24.72
19. Residential Fire Sprinklers (connected to potable water) 13D:	
0-2,000 sq. ft.	\$136.00
2,001-3,600 sq. ft.	\$150.13
3,601 to 7,200 sq. ft.	\$190.78
Over 7,200 sq. ft.	\$232.77

**Medical Gas Fees:**

<u>If the valuation is:</u>	<u>Your Fee is:</u>
\$1.00 to \$5,000	\$110.78
\$5,001 to \$10,000	\$110.78 for the first \$5,000 plus \$1.66 per add'l \$100 or fraction thereof
\$10,001 to \$100,000	\$193.78 for the first \$10,000 plus \$ 11.30 per add'l \$1,000 or fraction thereof
\$100,001 and above	\$1210.78 for the first \$100,000 plus \$7.76 for each add'l \$1,000 or fraction thereof

**Manufactured Homes:**

1. Manufactured Home permits are subject to a \$30.00 State Administration Fee.
  2. Manufactured Home placement fee of \$550.00 + 12% State Surcharge +\$30.00 State Fee = \$646.00
  3. Manufactured Home Code Books \$35.00
- The 12% State Surcharge will be applied to the following fees:
- a. Inspections outside normal business hours (2 hour minimum) \$75.00hr
  - b. Inspections for which no fee is indicated. (2 hour minimum) \$75.00 hr
  - c. Manufactured dwelling investigative fee \$100.00
  - d. Reinspection fee \$100.00 ea

**Electrical Division Fees: Minimum permit fee is \$100.00**

1. All electrical permits are subject to a State Surcharge of 12% of the total permit fee
2. Electrical plan review is 25% of the permit fee when required
3. Master Electrical application permit fee \$100.00
4. Master Electrical hourly inspection fee \$100.00
5. Residential, per unit, service included

A.) 1,000 sq. ft. or less	\$166.16
B.) Each additional 500 sq. ft. or portion thereof	\$27.69
Multi-family is based on largest unit using residential square footage with each additional unit at 50%	
6.) Limited energy	\$38.77
7.) Each manufactured home or modular dwelling service or feeder	\$74.17
8.) Service or feeders: (installation, alteration, relocation)	
200 amps or less / 5KVA or less	\$106.90
9.) 201 to 400 amps	126.28
10.) 401 to 599 amps	\$212.13
11.) 600 to 1,000 amps	\$278.25
12.) Over 1,000 amps or volts	\$633.15
13.) Reconnect only	\$100.00
14.) Temporary service of feeders: (installation, alteration, relocation)	
A.) 200 amps or less	\$100.00
B.) 201 to 400 amps	\$116.31
C.) 401 to 599 amps	\$167.82
15.) Over 600 amps or 1,000 volts. ( <i>See services or feeders section above</i> )	
Branch circuits: (new, alteration, extension per panel)	
16.) Fee for branch circuits w/purchase of a service or feeder fee	\$7.98
17.) Fee for branch circuits without purchase of a service or feeder fee:	
A.) First branch circuit	\$74.17
B.) Each additional branch circuit	\$7.98
18.) Miscellaneous: (service or feeder not included)	
A.) Each pump or irrigation circle	\$74.17
B.) Each sign or outline lighting	\$74.17
C.) Signal circuit(s) or a limited-energy panel, alteration or extension	\$74.17
D.)	
E.) Reinspection Fee	\$100.00 ea
F.) Inspection outside normal business hours (two hour minimum)	\$75.00 hr
G.) Inspection for which no fee is specifically indicated (2 hour min)	\$/hour 75.00
H.) Additional plan review	\$100.00 hr
I.) Investigation fee	\$100.00 hr
19.) Commercial Electrical Multi-Family	
Multi-family limited energy by floor	\$74.17
Multi-family protective signaling by floor	\$74.17

### Renewable Energy

Renewable Energy 5KVA or Less	\$100.00
5KVA to 15KVA	\$126.00
15.01KVA to 25KVA	\$168.00

### WIND ENERGIZED SYSTEMS

1.) 25.01 KVA through 50 KVA/ 601 to 1000 AMPs	\$225.98
2.) 50.01 KVA through 100 KVA / OVER 1,000 AMPs OR VOLTS	\$519.53

### Road Naming Fees:

1.) Road Naming	\$300.00
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2.) Road Re-Naming \$300.00

**PUBLIC AND PRIVATE ROADS intersecting with a County Maintained Road**

New or replacement road name sign/stop/post installed by County Road Dept. that is within the County Right of Way on a Private or Public Road \$750.00

**Code Enforcement Fees:**

- 1.) Code Compliance fee for on-site (septic) Environmental Health Program applications (Supports code enforcement program) 6% of Environmental Health fee
- 2.) Code Compliance fee for Planning applications 10% of Planning Dept. fee (Supports code enforcement program)
- 3.) Code Compliance Fee for New Residential Buildings 0.12% of building valuation (Maximum fee of\$200.00) (Supports code enforcement program)
- 4.) Code Compliance Fee for New Accessory Buildings 0.12% of building valuation (Maximum fee of\$100.00) (Supports code enforcement program)
- 5.) Code compliance Fee for Commercial Buildings 0.12% of building valuation (Maximum fee of\$300.00) (Supports code enforcement program)
- 6.) Code Enforcement Hourly Rate \$75.00/hour (As permitted by Crook County Code Title 1, cost recovery)
- 7.) Site investigation 2 hour minimum \$75.00/hour
- 8.) Code compliance letter, research and investigation 2 hour minimum \$75.00/hour
- 9.) Code compliance hearing fee \$250.00

**On-Site (Septic Systems)**

*Fee schedule for on-site septic program includes the state surcharge of\$100 for all site evaluation, permits and other activity where an application is required: all state fee schedules are subject to change based on legislative action and may be revised throughout the year. A code compliance fee of 6% of the County's base fee (before the DEQ surcharge is added) for specific on-site septic permits rounded to the nearest dollar amount is also included in the fee schedule.*

Site evaluation fee	\$760.00
Septic system permit, first 1,000 gallons, standard system	\$920.00
Septic system permit, first 1,000 gallons, capping fill	\$1,125.00
Septic system permit, first 1,000 gallons, grey water sump	\$470.00
Septic system permit, first 1,000 gallons, pressure distribution	\$1,335.00
Septic system permit, first 1,000 gallons, redundant	\$705.00
Septic system permit, first 1,000 gallons, sand filter	\$1,650.00
Septic system permit, first 1,000 gallons, sapolite system	\$850.00
Septic system permit, first 1,000 gallons, seepage trench	\$1,120.00
Septic system permit, first 1,000 gallons, steep slope	\$1,120.00
Septic system permit, first 1,000 gallons, tile dewatering	\$2,310.00
Each 500 gallons ("commercial" septic systems) above 1,000 or part thereof	
Add'l	\$155.00
Plan review, commercial facility system, 0-600 gallons---	
(Covered under the permit fee)	\$0.00
Plan review, commercial facility system, 600-1,000 gallons	\$260.00

Plan review, each 500 gallons or part thereof above 1,000-2,500 gallons	Add'l	\$55.00
Renewal/reinstatement/transfer permit (original permit w/I 1 year of expiration)		\$400.00
Major septic system repair, single family dwelling		\$495.00
Minor septic system repair, single family dwelling		\$340.00
Major commercial septic system repair		\$550.00
Minor commercial septic system repair		\$365.00
Major septic system alteration/relocation (drain field)		\$810.00
Minor septic system alteration/relocation (tank)		\$495.00
ATT annual report review-in-house		\$50.00
ATT systems permit/with/ without pressure distribution		\$1,390.00
ATT systems O&M Inspection		\$400.00
Holding tank permit		\$860.00
Holding tank inspection report-in-house		\$40.00
Holding tank inspection annual-field		\$250.00
Authorization, field visit required-permit issued under the authorization will be without the repair fee.		\$630.00
Authorization, no field visit required		\$300.00
Evaluation/renewal of temporary/hardship authorization		\$300.00
Existing system evaluation-field		\$640.00
Sewage disposal service, pumper truck inspection, first truck		\$150.00
Sewage disposal service, each additional truck		\$60.00

Re-inspection fee-when a pre-covered inspection correction requires a subsequent reinspection due to the previous corrections not being made. No further inspections until the reinspection fee is paid.  
\$200.00

Pump evaluation Fee for all permits that specify the use of a pump or dosing system except for Sand Filter, ATT, Recirculating gravel filter and pressurized distribution systems		\$50.00
On-site specialist consultation fee, in-house, 1-hour minimum		\$100.00/hour
On-site specialist consultation fee, field, 1-hour minimum		\$200.00/hour
Refund/Administrative fee		\$50.00

**On-Site may charge twice the established fee for a septic permit or approval if work is commenced before the required permits have been issued.**

**Notice:** A \$100.00 surcharge to offset DEQ administrative and oversight costs and are assessed by DEQ for each site evaluation, construction, repair, renewal authorization, all other activities for which an application is submitted. There is no surcharge for pumper truck inspections. The proceeds are forwarded to DEQ on a quarterly basis. The surcharge is set by the State of Oregon and will be adjusted to reflect State-imposed changes.

**Planning**

*(Unless otherwise indicated all applications include an additional Code Compliance Fee of 10% of the total application fees)*

*(Note: Code Compliance fees may double for violation cases)*

**Appeals—Remands [No Code Compliance Fee]**

Appeal, Planning Commission		\$250.00 or as set by statute
Appeal, County Court	application fee (deposit)	\$2,050.00 + 20% of original
Actual costs with deposit required at time of appeal submission		

Covers costs for notices mailed, copy charges, staff time and other costs. Appellant must also provide transcripts of relevant meeting tapes at appellant's expense

CD/USB records \$5.00 each

**DOCUMENTS PURCHASED**

Duplication fees \$0.25/page

Duplication of oversize exhibits \$5.00/page

Local Appeal Record \$5.00 per CD/USB

**LAND PARTITIONS**

Land partitioning (Residential, Commercial or Industrial)

Land partitions (two – three lots) \$1,900.00

Measure 49 Land Partition \$1,575.00

Farm partition/forest partition (two – three lots) \$1,900.00

Boundary Line Adjustment \$725.00

Lot Combining – Uncombining \$425.00

Final Plat Review \$160.00

Replat \$725.00

**CONDITIONAL USE PERMITS**

Conditional use permit, administrative \$1,000.00

(e.g. Dog Kennels, Home Occupations)

Conditional use permit, w/hearing \$2,600.00

(e.g. bed & breakfast; golf course, multi-family residential)

Conditional use permit, modification of conditions, administrative \$475.00

Conditional use permit, modification of conditions w/hearing \$1,600.00

Conditional use permit – Temporary hardship dwelling \$370.00

Temporary hardship renewal (every 2 years) \$25.00

Conditional use – mineral aggregate \$9,000.00

Conditional use – commercial energy \$10,000.00

(Additional fee will apply if a Goal exception is required)

Non-resource dwelling – conditional use permits

Conditional use permit, Non-farm dwelling on existing parcel \$2,500.00

Conditional use permit, Non-farm partition (two to three lots) \$5,000.00

Conditional use permit, forest dwelling \$3,200.00

**AMENDMENTS**

Comprehensive plan amendment \$5,250.00

Comprehensive plan amendment, required goal exception \$7,350.00

Zone map change, measure 56 notice required \$5,252.00

Zone map change, if no measure 56 notice required \$2,625.00

Zone text change, measure 56 notice required \$4,200.00

Zone text change, if no measure 56 notice required \$2,625.00

**SITE PLAN REVIEWS**

Site plan review – residential \$675.00

Site plan review – accessory structure \$125.00

Site plan review—accessory farm help dwelling \$1,100.00

Site plan review – accessory farm family dwelling \$1,100.00

Site plan review – farm dwelling \$1,100.00

Site plan review—accessory forest-family dwelling \$1,100.00

Site plan review – lot of record – ORS 215.705 \$1,100.00

Site plan review – Commercial, industrial, \$1,000.00

Site plan review - utility facilities, cell towers \$3,025.00

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**SITE PLAN MODIFICATIONS**

Site plan modification \$250.00

**SUBDIVISIONS / PLANNED UNIT DEVELOPMENTS**

Outline development / master plan \$3,150.00+\$200/lot + 10% compliance fee  
 Subdivision name changes \$525 each change  
 Final plat review \$1,000.00  
 Subdivision modification request by applicant w/hearing \$21000.00  
 Public hearing extension request \$525.00  
 Replat \$825.00

**DESTINATION RESORT**

Conditional use permit, modification \$27,000.00  
 Subdivision Phase \$3,0.00+\$200.00 per lot +  
 10% compliance fee  
 Site plan review – residential \$850.00  
 Site plan review – commercial \$1,750.00  
 Final development review \$1,100.00  
 Final plat review \$1,000.00  
 Replat \$825.00

**OTHER PERMIT FEES**

Legal parcel/lot determination 1-4 lots \$800.00 +\$50.00/lot  
 Legal parcel/lot determination 5+ lots \$275.00 +\$50.00/lot  
 Complex project fee \$1,000.00 deposit + actual costs  
 Variance without public hearing \$250.00  
 Variance with public hearing \$1,100.00  
 Vested right application \$550.00  
 Sign permit \$225.00  
 Temporary use permit – Property owners RV on lot for up to 6 months \$200.00  
 Temporary use permit – Renewal fee for property owner RV next 6 months \$25.00  
 Land Use Compatibility Statement \$75.00  
 Planning Director Determination (Interpretation-Advisory Only) \$865.00  
 Staff Research/Consultation \$25.00 per hour  
 All land use extension requests \$250.00  
 Refunds requests (if applicable) 100% of original fee  
 Farm stand reviews \$250.00  
 One mile study/soils report \$200.00  
 Wildlife density analysis \$75.00

**EVENTS**

Agritourism in County Exclusive Farm Use Zones \$1,000.00  
 Social Gatherings As identified in Crook County Code 5.04 Article II –

101 – 250 participants	\$200.00
250 – 500	\$500.00
500 – 1,000	\$1,000
1,000 – 3,000	\$1,500



Mass Gatherings As identified in Crook County Code 5.04 Article I - \$5,000.00

**ROAD APPROACH / VACATION**

Road approach permit – residential, new \$250.00  
 For County-maintained roads or roads approaching County-maintained roads  
 (\$125 to Planning, \$125 to Road Department)  
 Public and private roads that do not approach state, County, or City roads  
 (\$125 to Planning, \$125 to Code Compliance)

Road approach permit – residential, grandfathered \$125.00  
 For County-maintained roads or roads approaching County-maintained roads  
 (\$35 to Planning, \$90 to Road Department)  
 Public and private roads that do not approach state, County, or City roads  
 (\$35 to Planning, \$90 to Code Compliance)

*No fee for access created prior to 2000. Grandfathered Access permits are for single homes only.*

Re-Inspection fee (per re-inspection) \$50.00

Subdivision / PUD / Destination Resort approach \$1,000.00  
 For County-maintained roads or roads approaching County-maintained roads  
 (\$400 to Planning, \$600 to Road)  
 Public and private roads that do not approach state, County, or City roads  
 (\$400 to Planning, \$600 to Code Compliance)

Commercial/ industrial or institutional approach \$500.00  
 For County-maintained roads or roads approaching County-maintained roads  
 (\$250 to Planning, \$250 to Road)  
 Public and private roads that do not approach state, County, or City roads  
 (\$250 to Planning, \$250 to Code Compliance)

**ROAD VACATION**

Road Vacation \$1,360.00  
 (\$910.00 to County Counsel, \$450.00 to Road)

**ROAD DEVELOPMENT INSPECTION FEES**

Public and Private Roads – Road Inspection costs are paid to a third-party engineering firm. The fees below reflect the actual costs.

Type	PADT (potential average daily trips)			
	0-20	21-99	100 or more	Resorts
Traffic review	\$1,650.00	\$1,650.00	\$5,000.00	\$15,000.00
Plan review	\$3,000.00	\$4,000.00	\$5,000.00	\$15,000.00
Site observations	\$2,460.00	\$2,460.00	\$2,460.00	\$5,000.00

Payment of site observation fee includes cost of storm water plan review.

Note 1: Proposed fees assume three reviews will be adequate. For projects requiring additional visits, additional fees will apply.

Note 2: Proposed fees assume four site visits will be adequate. For projects requiring additional visits, additional fees will apply.

Note 3: Assumes 4 site visits (sub base, 3/4", 1/2" and paving). For projects requiring additional visits, additional fees will apply.

Note 4: Proposed fees shown are for subdivisions up to 200 PADT. For subdivisions in excess of 200 PADT, additional fees will apply.

Consultant fee

**Actual costs of service**

Consulting fees are charged when in the judgment of the Planning Director, Planning Commission, or County Counsel, expertise or resources are required outside the scope of the County's ability to evaluate an application accurately or timely and additional assistance is needed. In some cases, consultation is required by County ordinance. Examples include but are not limited to evaluation of a proposed energy-related facility and related impacts, evaluation of environmental impact of certain industries, evaluation of the impact of certain applications on airport operations or a traffic-impact study.

**COMMUNITY CORRECTIONS**

Monthly Supervision Fee	\$35.00
DNA Collection Fee	\$10.00
Dirty Urinalysis Fee	\$20.00
Interstate Compact Fee	\$100.00
Work Crew Orientation Fee	\$25.00
Work crew hourly rate	\$6.00

**COUNTY CLERK**

Board of Property Tax Appeals hearing <del>CD</del> -USB copy	\$10.00
Computer prints:	\$0.40 each
Electronic voter list (email, <del>CD</del> or USB)	\$35.00
Additional first page recording fee ( <i>in addition to statutory fee; supports computer replacement</i> )	\$5.00
Domestic Partnerships conciliation fee	\$10.00
HB 2436 Implementation – (ORS 205.323) (includes the 2018 HB 4007 updates)	\$1.00 per document assessed the Housing Alliance Fee
HB 2339 & SB 618 Implementation	\$2.00 per document assessed the A&T Fee
Marriage License Amendments	\$25.00
<u>Research and Collation Fee</u>	<u>\$40.00 per hour</u>

**COUNTY COURT & COUNTY COUNSEL**

County Court meeting cassette tape copy, per tape	\$5.00 each
CD dubbing, per CD	\$5.00
County Liquor License Application	
New	\$50.00
Renewal	\$25.00
Legal Counsel review	Weighted hourly wage per time spent on project

## DISTRICT ATTORNEY

Traffic violations	\$5.00
Diversion revocations	\$10.00
Probation violations (misdemeanor and felony)	\$10.00
Non-traffic violations and misdemeanor crimes	\$10.00
Felony crimes	\$15.00
Felonies involving unusually large amounts of discovery	\$50.00
Homicides	\$100.00
Audio and video cassette tapes	\$10.00
Diskettes or compact discs	\$10.00
Expungement Process	\$60.00

## EXTENSION

### 4-H CLOVER CLUB BUILDING RENTAL RATES

	Non-Profit Organization		Commercial (For-Profit) Organization	
	Per Hour	Entire Day	Per Hour	Entire Day
Griffin Classroom	\$30	\$150	\$45	\$200
Assembly Room	\$40	\$200	\$55	\$250
Entire Building	\$50	\$250	\$75	\$350
Cleaning / Damage Deposit	\$300		\$300	
Key Deposit	\$10		\$10	

#### Copies/Prints

B/W 8½x11 Copy Paper	\$0.10
Color 8½x11 Copy Paper	\$0.50
Double-sided copies	price is doubled.

#### Faxes

Local	\$1.50/up to 10 pages
Long Distance	\$2.50/up to 10 pages
Additional pages over 10	\$.50 per page

## GEOGRAPHIC INFORMATION SYSTEMS (GIS)

#### Professional Services

Standard labor rate	\$85.00/hr (1 hr min.)
Quick Maps – Small Format (Basic layers with or w/o imagery)	\$10.00 + print costs
Quick Maps – Large Format (Basic layers with or w/o imagery)	\$15.00 + print costs
Custom Mapping	\$85/hr (1 hr min)
GIS Database Analysis	\$85/hr (1 hr min)

#### Printing (Small format)

8.5 X 11 (B&W)	\$0.50 per sheet
8.5 X 11 (Color)	\$1.00 per sheet
11 X 17 (B&W)	\$1.00 per sheet
11 X 17 (Color)	\$2.00 per sheet

#### Printing (Large format)

Plat Copy (B&W)	\$5.00 per sheet
Maps/other (B&W)	\$1.50 per sq ft (\$10 min)

Maps/other (Color)	\$2.00 per sq ft (\$10 min)
<b>Scanning</b>	
Small Format (11 X 17 and smaller)	\$0.50 per sheet (\$5 min)
Large Format (larger than 11 X 17)	\$1.50 per sq ft (\$15 min)
<b>Custom services</b>	
1- mile study and report	\$170.00
Soil survey 1:	\$25.00
Soil survey 2:	\$75.00
<b>GIS Data</b>	
Custom Data Request	\$85/hr (1 hr min)
CD creation	\$5.00
<b>GIS Mapping fee (included in planning fees)</b>	
Conditional use permit, non-farm partitioning/vacant/herbaceous forest	\$60.00 per lot
Conditional use permit, non-farm partitioning w/existing residence	\$60.00 per lot
Conditional use permit, non-farm dwelling on existing parcel	\$60.00
Conditional use permit, farm partitioning	\$60.00
Conditional use permit, non-residential	\$60.00
Site plan review, residential or commercial	\$60.00
Subdivision, PUD, condo, per unit	\$60.00 per lot
Final plat review, subdivision	\$60.00 per lot
Road Vacation	\$60.00

## HEALTH DEPARTMENT

In most cases, the increases in immunizations are based on changes in the cost of supplies. The allowable Medicaid immunization reimbursement is \$21.96.

**Certain fees shown are subject to adjustment on a sliding scale basis for qualifying individuals as determined by Federal guidelines.**

**Worksite & Community Wellness:**

Health Education/Training/Promotion/Consultation (Non County Businesses)	\$30.00 - \$75.00
Blood Borne Pathogen Training	\$40.00
Mental Health First Aid	
QPR	
Living Well with Chronic Conditions	
Diabetes Prevention Program	
Other Training (Businesses)	\$20.00

**Immunizations**

Vaccine For Children (VFC and 317 Program): Vaccine from the State – No Charge for Cost of Vaccine, only the administration fee of \$21.96

DTaP (Tripedia)	\$21.96
DTaP/IPV/Hib (Pentacel)	\$21.96
DTap/Hep B/IPV (Pediatrix)	\$21.96
DTap/IPV (Kinrix)	\$21.96
DTap/Hib (TriHiBit)	\$21.96
Hepatitis A Pediatric (Havrix)	\$21.96

Hepatitis B Pediatric (Recombivax)	\$21.96
Hepatitis B/Hib (Comvax)	\$21.96
Hib (ActHib)	\$21.96
HPV (Gardasil)	\$21.96
IPV (IPOL)	\$21.96
Meningococcal –MCV4 (Menactra)	\$21.96
MMR (Measles, Mumps, Rubella)	\$21.96
MMRV (Measles, Mumps, Rubella, Varicella) (ProQuad)	\$21.96
PCV13 (Pneumovax)	\$21.96
Polio IPV	\$21.96
Rotavirus (RotaTeq)	\$21.96
Td Immunization (7 and older)	\$21.96
Tdap Immunization (10-18 years - Boostrix)	\$21.96
Varicella (Chickenpox – Varivax)	\$21.96

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**Special Programs\*\* Admin. Fee only**

Influenza (VFC and special population)	\$21.96
Flumist (VFC)	\$21.96
IG – only pay administration fee	\$21.96

**Special Programs – No Fee**

COVID-19 Vaccine	\$0
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**Vaccines Non VFC Program**

**Administration Fee included in Price**

All vaccines	cost + \$21.96
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**Vital Statistics and Medical Records:**

Birth and Death Certificates (First)	\$25.00
Additional Birth and Death Certificates, each	\$25.00
Replacement Fee (Birth and Death)	\$5.00/each
Record page copies - client chart (after ten pages)	\$0.25 per page
Expedited Order Fee	\$7.00

**Miscellaneous:**

Shot Record Replacement	\$1.00
Head Lice Check	\$10.00

–	
STI Exam	\$150.00

**Increases in fees for the Reproductive Health program are based on the Required Cost Analysis which demonstrated the following charges.**

**Lab Tests:**

–	
Venipuncture/Court Ordered	\$15.00
Venipuncture/VDRL, Hepatitis	\$15.00

**In House Testing:**

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<u>Bacterial Vaginosis Point of Care</u>	\$15.00
HCG Pregnancy Urine (Lab Test)	\$12.00
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HIV C/T Rapid Test	\$50.00
HIV Rapid Test – State Program	(no charge per state contract)
<u>Trichomonas Point of Care</u>	\$15.00
UA w/o Micro	\$15.00
Wet Mount (Lab Test)	\$15.00
Rapid Hepatitis C Test	(no charge per state contract)
<u>Rapid COVID Testing (pre-approved by clinic staff only)</u>	\$150.00
<b><u>External Lab Testing:</u></b>	
Chlamydia/GC	\$20.00
=	
HIV C/T Test (Sliding Scale)	\$25.00
Thin Prep Pap with Co Testing	\$90.00
Thin Prep Pap Smear	\$65.00
Syphilis Serology + venipuncture fee	\$25.48 + \$15.00
Hepatitis C + venipuncture fee	\$20.00 + \$15.00
Hepatitis B + venipuncture fee	\$15.00
=	
Titer (., Hep B surface, Hep C + venipuncture fee)	\$20.00 + \$15.00
Quantiferon (Risk)	N/C
Quantiferon	\$65.00 + Veni
<b>(If more than one titer is being done, only charge 1 venipuncture fee)</b>	

**\*Lab Fees – actual flow- outside lab price – may change due to laboratory cost change.**

**Injections**

Therapeutic/Antibiotic Injection Administration \$15.00

**Dispensed Medications**

Azithromycin (State Supplied)	\$0.00
Azithromycin	\$.50/pill
Imiquimod cream	_\$15.00/box
Condylox Gel 5% Packet	\$10.00/pck
Doxycycline 100 mg	\$0.05 per pill
Rochepin (STD)	State Supplied
Metronidazole 500mg	\$0.25 per pill
Metronidazole Cream (per package)	\$5.00
Valtrex (per pill)	\$1.50
Fluconazole (per pill)	\$2.50

**\*Reproductive Health Contraceptive Supplies: Sliding Fee Scale (Changes are based on our cost and changes in the cost of supplies)**

Condoms – latex (Pack of 12)	\$5.00
Condoms – non-latex (per box)	\$13.00
Condoms – Female (per 1)	\$611.00
Depo-Provera <u>IM Injection</u>	\$5.00 per injection
<u>Depo Provera Subcutaneous Injection</u>	\$25.00 per injection device

Caya	\$65.00
ECP Pills (Plan B)	\$10.00
ECP (Ella)	\$30.00
Implanon	\$475.00
IUD (Mirena)	\$350.00
IUD (Paraguard)	\$275.00
Oral Contraceptives	\$10.00 based on cost
<a href="#">Slynd Oral Contraceptive</a>	<a href="#">\$194.00 per pack (will change</a>
<a href="#">based on cost) (no generic available)</a>	
Spermicides	\$15.00
Sponge	\$15.00
Nuva Ring	\$10.00
—	
Xulane (per patch)	\$30.00
Annovera	\$1,300.00
<b><u>Reproductive Health New Patient Office Visit</u></b>	
99201 Problem Focused (10 min. face to face)	\$100.00 per visit
99202 Expanded Problem Focused (20 min. face to face)	\$185.00
99203 Detailed low (30 min. face to face)	\$230.00
99204 Comprehensive Moderate (45 min. face to face)	\$345.00
99205 Comprehensive High (60 min. face to face)	\$406.00
<b><u>New Patients Preventive Visits</u></b>	
<u>Code</u>	<u>Billing Price</u>
99384	\$221.00
99385	\$221.00
99386	\$221.00
<b><u>Reproductive Health Established Patient Office Visit</u></b>	
99211 RN Visit	\$79.00
99212 Problem Focused (10 min. face to face)	\$79.00
99213 Expanded Problem Focused (15 min. face to face)	\$125.00
99214 Detailed low (25 min. face to face)	\$175.00
99215 Comprehensive Moderate (40 min. face to face)	\$250.00
<b><u>Established Preventive Visits</u></b>	
99394	\$175.00
99395	\$75.00
99396	\$75.00
<b><u>RH Program/</u></b>	
Contraceptive/Counseling Visit	
Low Complexity	\$60.00
Moderate Complexity	\$167.00
High Complexity	\$260.00
DMAP Clients Only	
All inclusive visit	\$135.00
Translator Services:	
Supply Only Visit	\$6.47
Low Complexity	\$25.88
Moderate Complexity	\$51.76
High Complexity	\$77.63

**Procedures**

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Diaphragm Fit	\$135.00
IUD Insertion	\$150.00
IUD Removal	\$175.00
Wart Treatment (1-14 – cryotherapy) (pay up front)	\$188.00
Wart Treatment (15 or more – cryotherapy) (pay up front)	\$225.00
Implanon Insertion	\$100.00
Implanon Removal	\$100.00
Suture removal	\$10.00

**Maternal Child Health Programs\* (These were not listed on fee slip previously)**

\*Fees set by State OHA Program and may adjust as OHA adjusts fees. These fees are billed through Medicaid.

Babies First Targeted Case Management	\$460.36
Expanded Babies First Targeted Case Management	\$460.36
CaCoon Targeted Case Management	\$460.36

**Tuberculosis Services – Medications (No Charge – State Supplied)**

PPD – TB Test	\$30.00
Vitamin B6	N/C
Ethambutol	N/C
Isoniazid	N/C
Pyrazinamide	N/C
Rifampin	N/C
TB Test-IGRA (blood test) N/C plus venipuncture fee	\$0.00 +15.00

**Food Service Inspection**

Food service inspection fees are those authorized by the Oregon DHS. In addition, the following fees and surcharges are authorized:

Full service restaurant/caterer fees based on seating criteria	
0-15 seats	\$480.00
16-50 seats	\$545.00
51-150	\$615.00
150+ seats	\$650.00
Bed and breakfast	\$210.00
Limited service restaurant	\$250.00
Commissary	\$365.00
Warehouse	\$210.00
Mobile unit, licensed in-County	
Class I	\$220.00
Class II	\$230.00
Class III	\$255.00
Class IV	\$270.00
Mobile unit, licensed out of County, inspected in Crook County, per event	\$25.00
Temporary restaurant license, one day event	\$65.00
Temporary restaurant license, two or more days	\$70.00
Temporary restaurant discount (when applied for 10 days in advance)	\$5.00
Intermittent temporary restaurant license no more than 30 days same food/location, more than one oversight organization	\$65.00
Seasonal temporary restaurant license no more than 90 days same location/food and under one oversight organization	\$65.00
Intermittent/Seasonal Operational Review- prior to either permit being issued (needs to be obtained at least 14 days prior to license application)	\$55.00
Temporary benevolent-license (good for up to 13 one to three day events)	\$No Charge

PAGE 21 OF 29 – CROOK COUNTY FEE SCHEDULE – ORDER 20221-0540-AMENDMENT#2

Last Updated 1/26/2022



(Must show valid IRS tax exempt I.D. number to qualify)  
 (Intermittent and Seasonal for benevolent will require an Operational Review) \$45.00

\*\* Intermittent or seasonal temporaries requiring an additional inspection due to a complaint or infraction will be charged at the daily rate \$40.00  
 Penalty fee for late renewal of restaurant license \$100 per mo.  
 "Late" means after the 31st or last day of the month during which license was required

Vending machines inspection per company

1-10 machines	\$50.00
11-20 machines	\$50.00
21-30 machines	\$75.00
31-40 machines	\$100.00
41-50 machines	\$125.00

Tourist Facility inspection fees

Bed and breakfast (non-kitchen inspection)	\$100.00
Travelers accommodations	\$100.00

Recreation park \$100.00 plus per space charge as follows:

1-50 RV spaces	per space \$2.50
51-100 RV spaces	per space \$1.50
101+ RV spaces	per space \$1.00

Organizational camps	\$150.00
Destination resort overnight lodging unit cluster license	\$175.00
Destination resort hot tub maintenance permit	\$175.00

Note: Any person licensed under ORS 446.310 to 446.350 to engage in the recreation park or traveler's accommodations business who fails to renew a license on or before the expiration date is considered delinquent. If delinquency exceeds 15 days past the expiration date a penalty fee of 50 % of the annual license fee shall be assessed. The penalty fee will increase by 50 percent of the license fee on the first day of each succeeding month of delinquency.

Food Service Plan Review Fees/Initial/New Construction

Full service restaurant	\$275.00
Bed and breakfast and restaurant (if required)	\$275.00
Commissary	\$200.00
Warehouse	\$50.00
Limited service	\$150.00

Mobile units:

Class I	\$145.00
Class II	\$175.00
Class III	\$225.00
Class IV	\$245.00
Organizational Camp - w/o food kitchen building	\$200.00
Organizational Camp w/ food kitchen facility	\$275.00

Remodeling

Full service restaurant	\$150.00
All Others (turn-Key/no construction)	\$150.00

Other:

Daycare inspection	\$100.00
School inspection	\$125.00

Public swimming pool and spa inspection fee, first pool/spa		\$335.00
Additional (year round) pools and spas		\$235.00 each
Seasonal pool		\$230.00
Additional seasonal pool/spa		\$160.00
Loan inspections water		\$145.00
Food handler certificate		\$10.00
Food handler replacement certificate		\$5.00
Administrative fee non-specific to above listed fees.	\$5.00 per 15 minutes (\$5 minimum)	
Environmental health specialist consultation fee, in-house	(min. hrly charge)	\$95.00
Environmental health specialist consultation fee, field	(min. hrly charge)	\$145.00

Note: A supplementary inspection charge equal to 50 percent of the annual license fee shall be assessed for each complete inspection required because of failure to meet applicable standards when such complete inspection is performed during the license period in addition to the two semi-annual inspections normally performed. Charges accrued and not paid during the current license period will be added to the license fee for the next license period and will be subject to the late penalty fee of \$100 for each month fee remains unpaid.

New licensees will not be assessed any surcharges accrued by the previous license holder. Any facility opened in Oct/Nov/Dec will be charged 50 percent of the required fees.

### INFORMATION TECHNOLOGY (IT)

*(Fees not charged to other units of County government.)*

IT – Professional Services	
Server and Desktop Labor	\$85.00/hour billed in ¼ hour increments
Network and Wireless Labor	\$125.00/hour billed in ¼ hour increments
Consulting and Training Labor	\$150.00/hour billed in ¼ hour increments

### JUVENILE DEPARTMENT

Probation supervision fee, per adjudication	\$30.00
Formal accountability, per agreement	\$10.00

### LANDFILL

All weight-based charges are subject to a minimum charge based on 20 lbs. Weights above 20 lbs. will be rounded up to the next 20 lbs. increment due to scale calibration.

“In-county” refers to debris which is being hauled by a resident of Crook County bearing a driver’s license showing a Crook County address or a Crook County landfill-issued resident I.D. card.

#### General services

Minimum disposal rate, any transaction, for county residents with resident’s I. D. card	\$10.00
Minimum disposal rate, any transaction, for Out-of-County residents	\$12.00
Disposal rate, for county residents with resident’s I. D. card, per ton	\$50.00
Disposal rate for non-county residents and residents without I.D. card, per ton	\$60.00

Mixed load disposal rate (in and out of county residents)	\$65/ton (\$20 min.)
Order 2002-45 is of no further effect.	
All other commercial haulers, per ton In-County	\$50.00
All other commercial haulers, per ton Out-of-County	\$60.00
Fee for unsecured/untarped loads	\$10.00
Septage waste disposal, per gallon	per gallon, \$0.11
Contaminated soil originating In-County	\$35.00 per ton +\$50 surcharge
Contaminated soil originating Out-of-County	\$45.00 per ton +\$50 surcharge
Weight Ticket Only	\$1.00
<b>Inert material/Construction debris</b>	
Concrete/cement per ton,	\$10.00
Dirt (clean) or Sod per ton,	\$10.00
Rocks or bricks per ton,	\$10.00
Asphalt per ton,	\$10.00
<b>Waste Recovery Fees</b>	
Composted materials purchase	per yard if purchased on-site \$14.00
Wood chips	per yard if purchased on site \$5.00
Juniper chips	per yard if purchased on site \$7.00
Gypsum	per ton if purchased on site \$40.00
Burning barrel purchase	\$10.00 per barrel
Used mobile home axle purchase	\$100.00 per axle
Sweeper brush roller purchase	\$25.00
<b>Appliance Disposal Fee</b>	
Stoves, washers, dryers, dishwashers	\$9.00
Water heater	\$5.00
Refrigerators/air conditioners	\$15.00
Microwaves	\$3.00
Propane tanks	\$5.00
<b>Tires</b>	
Tire fee, pick-up, up to 20 lbs. without rim	\$3.00
Tire fee, pick- up, to 40 lbs. with rim	\$6.00
Tire fee, semi-truck, up to 100 lbs. without rim	\$7.00
Tire fee, semi-truck, up to 160 lbs. with rim	\$12.00
Tire fee, giant & tractor,	\$200.00 per ton
<b>Mobile Home Disposal Fees</b>	
<i>(Appliance Disposal Fees are in addition to the base disposal fee. In addition, tire fees are charged if there is no axle recovery. Salvage fee is charged if there is axle recovery.)</i>	
No abandoned mobile homes or trailers accepted.	
In County	\$50.00 per ton +\$300.00 surcharge
	+Appliance Disposal Fee / +Tire fees (if no axle recovery)
Out of County	\$60.00 per ton +\$500.00 surcharge
	+Appliance Disposal fees / +Tire fees (if no axle recovery)
<b>Travel Trailers</b>	
In County	\$50.00 per ton +\$6.00 per foot surcharge
	+Appliance Disposal Fee / +Tire fees (if no axle recovery)
Out of County	\$60.00 per ton +\$10.00 per foot surcharge
	+Appliance Disposal Fee / +Tire fees (if no axle recovery)
<b>Campers</b>	
In-County	\$50.00 per ton +\$25.00 surcharge

Out-of-County		+Appliance Disposal Fee \$60.00 per ton +\$25.00 surcharge
		+Appliance Disposal Fee
<b>Dead Animals</b>		
Off-Load fee for dead animals		\$10.00
Commercial Hauler		\$60.00 per ton (\$20.00 minimum)
Residential In-County		\$50.00 per ton
Residential Out-of-County		\$60.00 per ton
<b>Butcher Waste</b>		
In-County		\$50.00 per ton
Out-of-County		\$60.00 per ton
<b>Hazardous Waste/Paint</b>		
<i>(Paint must be in original container; solidified paint will be accepted as regular waste.)</i>		
<b>*Paint must be in original container and not frozen</b>		
<b>Fluorescent Light Tubes</b>		\$0.20 cents per foot
<b>Electronics</b>	<b>Undamaged</b>	<b>Damaged</b>
Computers (Monitors and Towers)	N/C	per piece, N/C
Keyboard and Mouse	N/C	\$1.00
Printers	N/C	\$3.00
Televisions	N/C	N/C
Console televisions	N/C	N/C
VCRs/DVDs	N/C	\$3.00
Copy machines--large	\$25.00	\$25.00
Copy machines--small	N/C	\$3.00
Fax machines	N/C	\$3.00
Asbestos	\$100.00 for first 2,000 lbs. +\$0.05 per lb. over 2,000 lbs.	
	<i>*ASN4 form must be attached with at least one copy for the Landfill to keep</i>	
<b>Recyclable items</b>		
Latex, liquid paint (original container)		No Charge
Oil based liquid paint/stain (original container)		No Charge
Newspaper		No Charge
Corrugated cardboard		No Charge
Glass		No Charge
Magazines		No Charge
Tin cans		No Charge
Car/truck batteries		No Charge
Used automobile oil		No Charge
Antifreeze – Residential Customers		No charge
Antifreeze – Commercial Customers		\$0.50 per gallon
<b>Other Landfill fees</b>		
Yard debris, per ton		
In-County		\$50.00 per ton (minimum applies)
Out-of-County		\$60.00 per ton (minimum applies)
Wood debris only		\$25.00 per ton (minimum applies)
		<i>(no metal except nails, no pressure treated, and no railroad ties)</i>
Scrap metal (no wire)-Metal Load only		\$25.00 (minimum applies)

## LIBRARY

Faxing (up to 10 pages)	\$2.50 (send & receive)
No International Faxing	
Computer print-outs/photocopies –B/W	\$0.05 per side
Computer print-outs/photocopies – color	\$0.25 per side
Nonresident card fee – 12 months	\$85.00
Nonresident card fee – 3 months	\$25.00
Nonresident card fee – 1 month	\$10.00
Interlibrary loan no-pickup fee	\$5.00
Collection fee, per account sent	\$10.00
<b>Use of Library Meeting Rooms</b> (Broughton Room and Juniper Room)	
Non-Profits' Use	N/C
Commercial Use	\$20 per hour
Any damages will be billed to user	

## MAINTENANCE DEPARTMENT

*(Fees not applicable for Crook County or City of Prineville Government)*

### OPEN CAMPUS FACILITY

Photocopies/Prints	
Black and white (8.5 x 11)	\$0.10/page
Color	\$0.50/page
Faxes (Public)	
Local	\$1.50/up to 10 pages
Long Distance	\$2.50/up to 10 pages
Any faxes over 10 pages is extra	\$.50/page
Room Rental	
Classrooms and Conference Room	\$25.00 per hour
Computer Lab and Kitchen	\$50.00 per hour
Refundable cleaning deposit	300.00
Mobile Classroom	\$50.00 per hour + \$1.25/mile

## ROAD DEPARTMENT

### County-Accepted and Maintained Roads

Traffic review related to County-accepted and maintained roads is typically performed by the Oregon Dept. of Transportation. If ODOT-review is not available, the below fees will be applied. If plan review and site observation cannot be performed by County or ODOT staff due to limitations of technical expertise or resources, the below fee-schedule will be applied.

Note 1: Fees assume three reviews will be adequate. For projects requiring additional visits, additional fees will apply.

Note 2: Fees assume four site visits will be adequate. For projects requiring additional visits, additional fees will apply.

Note 3: Assumes 4 site visits (sub-base, ¾", ½" and paving). For projects requiring additional visits, additional fees will apply.

Note 4: Fees shown above are for subdivisions up to 200 PADR. For subdivisions in excess of 200 PADR, additional fees will apply.

Construction Plan Review	\$350.00 plus \$2.50 L.F. of County Road
Additional Reviews	\$175.00 plus \$2.50 L.F. of County Road
Inspection Fees	\$175.00 per visit
Cattle Guard Permit Fee	\$350.00

**Consultant fee** **Actual Cost of Services**

Consulting fees are charged when in the judgment of the Road Master or County Counsel, expertise or resources are required outside the scope of the County’s ability to evaluate an application accurately or timely and additional assistance is needed. In some cases, consultation is required by County ordinance, State law, or Federal law.

### SHERIFF’S OFFICE

Color copies, per page	\$0.75
Electronic media (Includes copies of photos printed for criminal reports)	\$10.00 per disk.
Criminal reports (paper) up to 50 pages	\$10.00
over 50 pages	\$0.25 each page
Postage costs will be assessed if the documents are to be mailed	
Records check (paper) up to 10 pages,	\$6.00
each additional ten pages or portion thereof	\$2.00
Criminal reports (audio)	\$10.00
Criminal reports (video)	\$30.00
Electronic Fingerprinting, per card	\$15.00
Impounded auto processing fee	\$100.00
Electronic monitoring installation and set-up	\$50.00*
Electronic monitoring services	\$15.00 per day*

\* *Electronic monitoring set-up and daily fees may be waived depending on ability to pay at the discretion of the supervisory authority*

**Real Property Foreclosure Sale** **\$600.00 Min.**

Includes \$89.00 statutory sheriff’s fee, one hour sale preparation time at \$32.00, pre-sale posting at \$50.00, one hour allotted for conduct of sale at \$45.00, and \$50.00 after sale posting charge PLUS additional costs incurred for advertising, staff time for preparation, conduct of sale, certified mailing and postage and certification of sale.

**Personal Property Foreclosure Sale** **\$475.00 Min.**

Includes \$89.00 statutory sheriff’s fee, one hour sale preparation time at \$32.00, pre-sale posting at \$45.00, one hour allotted for conduct of sale at \$32.00, fees for publication as instructed (ORS 18.920(4)(5) PLUS additional costs incurred for preparation, conduct of sale, certified mailings and postage, folio fees, keeper fees, and other expenses incurred to conduct the sale.

**Sheriff staff time beyond 1st hour of standby, per deputy per hour** \$55.00

**Dog License Fees**

	<u>Yearly</u>	<u>3-Year</u>
Unaltered	\$25.00	\$75.00
Altered	\$10.00	\$20.00

Senior citizens 62+, altered	\$5.00	\$10.00	
Livestock dog License	\$5.00	\$10.00	(see CCC 6.04.085)
Replacement tag	\$2.00		

\* Rabies vaccination must run concurrent with the license

**Kenel License Fee**

\$50.00 per year or \$100.00 for 3 years for up to 10 dogs. Every adult dog thereafter shall include \$3.00 per dog, per year, or \$6.00 per dog for 3 years.

**Ranch License Fee**

A Ranch License can be obtained at a rate of \$5.00 per dog per year or \$15.00 for 4 or more dogs per year. A 3-year license for ranch dogs will be \$10.00 per dog or \$30.00 for 4 or more dogs.

**For Civil Fees, please refer to the Crook County Sheriff’s Office website.**

**SURVEYOR**

*(Fees do not include Clerk’s recording and certification fees)*

Partition plat review and filing	\$550.00*
	(+ \$50 per sheet over 2 sheets)
Record of survey review and filing, first sheet	\$225.00
Record of survey review and filing, additional sheets, boundary review	\$50.00
Monumented subdivision plat review and filing	\$900.00*
	(+ \$85.00 per lot)
Post monumented subdivision plat and filing	\$1,100.00*
	(+ \$85.00 per lot)
Condominium plat review and filing	\$900.00*
	(+ \$85.00 per unit)
Affidavit of correction	\$110.00
Oregon Corner Restoration Record	\$25.00
Affidavit of plat monument re-establishment and post monumentation affidavit	\$126.00
Vacation review and filing	\$110.00
Blueline copies, per sheet	\$ 4.00
Photocopies, per sheet	\$ 0.50
Property line adjustment review and filing, first sheet	\$300.00*
	(+ \$50 per sheet over 1 sheet )
Additional sheets	\$ 50.00
Additional plat review caused by redesign (per hour charge)	\$120.00

**TREASURER/TAX COLLECTOR**

Computer quick prints, per page	\$0.40
next 100 pages	\$0.20 each
additional pages	\$0.10 each
County Budget Document (bound)	\$40.00
County Budget Document (unbound)	\$25.00
Mailing materials	Cost of reproduction (above) plus actual postage cost
Monthly delinquent file listing for property taxes	\$100/month
Returned Check fee	\$25.00
Research Fee	\$15.00/1-hour min
Special Check Run (outside regular schedule)	\$25.00

Special Districts Administration fee \$0.004\*\*\*

\*\*\* This amount times the total dollar amount for accounts payable paid and gross payroll, if applicable, per month, with a minimum of \$10.00 per month.

BE IT FURTHER ORDERED that the Crook County Court adopts as part of the county fee schedule those fees authorized to be collected by local governments by Oregon Revised Statutes and Oregon Administrative Rules, and other applicable laws.

BE IT FURTHER ORDERED, that County department heads may impose additional fees related to generating custom information and records searches requested by the general public not covered herein in an amount sufficient to recover the actual costs incurred in obtaining and preparing such information, including all wage and benefit costs related to production and supervision, transportation costs, duplications costs and any other costs which such search may require. In the event that a department head shall plan to charge such a fee, the department head shall give notice in advance, along with an estimated cost, and shall require payment in advance. In the event that final cost exceeds the estimated cost, the department head involved shall notify the requesting party that additional cost will be incurred and shall not deliver a final work product until full payment has been made. In the event that payment by the requesting party exceeds payment, refunds shall be made only after the requesting party has submitted a claims sheet to the county finance department through normal processes of reimbursement.

BE IT FURTHER ORDERED that except as indicated above fees shall be charged in accordance with the above schedule unless waiver is authorized by the Crook County Court.

BE IT FURTHER ORDERED that these fees shall continue in effect until modified, amended, removed, or otherwise adjusted by the Crook County Court.

BE IT FURTHER ORDERED that County staff members are authorized to make formatting and pagination changes to improve readability, but which may not alter the fees described herein.

BE IT FURTHER ORDERED that no new fee shall be charged during the fiscal year unless first authorized by the County Court or established by regulation, rule, statute or law of the State of Oregon.

DATED this \_\_\_ DAY OF ~~AUGUST~~JANUARY, ~~2021~~2022.

CROOK COUNTY COURT

\_\_\_\_\_  
Seth Crawford, Judge

\_\_\_\_\_  
Jerry Brummer, Commissioner

\_\_\_\_\_  
Brian Barney, Commissioner

Vote:	Aye	Nay	Abstain	Excused
Seth Crawford	___	___	___	___
Jerry Brummer	___	___	___	___
Brian Barney	___	___	___	___



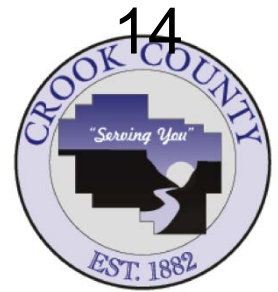
# Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 301 NE 3<sup>rd</sup> St., Ste 200, Prineville, OR 97754

• Fax: 541-447-6705



## MEMO

TO: Crook County Court

FROM: John Eisler, Asst. County Counsel

DATE: January 25, 2022

RE: Architectural Contract with Steele for Belknap Exhibit Center  
Our File No.: Bowman Museum 17

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Enclosed is AIA Document B101-2017 (the "Contract"), amended, between the County and Steele Associates Architects LLC for the design of the planned Belknap Exhibit Center, which will replace the current Hans Pharmacy Building adjacent to the Bowman Museum. The Contract envisions an 18-month project that will result in a two-story, 2,000 square foot building that will resemble the historic house of Dr. Belknap but function as an open space for exhibits through the Bowman Museum and Crook County Historical Society.

To refresh your memories, the ground upon which the building will be built is owned by the County but dedicated to the Historical Society for use as a museum and secured by the County through a recently amended security agreement. This Contract is the next step in the process to achieve the goal of the Exhibit Center. The next step will be to procure a Construction Manager/General Contractor.

The Contract includes architectural, structural, civil, and landscape services; it does not include mechanical, electrical, and plumbing. This is a direct procurement, permissible under both our local contracting code and ORS 279C.110 as the value is less than \$100,000. Please let me know if you have any questions.

**Please place this memo and the attached document(s) on the Wednesday, February 2, 2022 County Court Agenda as a DISCUSSION ITEM, for approval and signatures.**

Approved this 2nd day of February 2022.

CROOK COUNTY COURT

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Seth Crawford  
County Judge

---

Jerry Brummer  
County Commissioner

---

Brian Barney  
County Commissioner



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Twenty-Fourth day of January in the year Two Thousand Twenty-Two  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

Crook County, a political subdivision of the State of Oregon  
300 NE Third Street  
Prineville, OR 97754

and the Architect:  
(Name, legal status, address and other information)

Steele Associates Architects LLC  
1567 SW Chandler Ave., Suite 203  
Bend, OR 97703

for the following Project:  
(Name, location and detailed description)

Bowman Museum Exhibit Center  
Prineville, Oregon

### Recitals

WHEREAS, Owner plans to demolish the existing Hans Pharmacy Building located at 136 NE 3<sup>rd</sup> Street, immediately East of the Bowman Museum, to create a new exhibit center for the Bowman Museum, built in its place;

WHEREAS, Architect has a long-standing reputation in Crook County and the region as one of the preeminent architects in the Central Oregon;

WHEREAS, Owner and Architect have worked together successfully on Owner's projects in the recent past, including the USFS Helibase and the Bowman Museum expansion;

WHEREAS, in addition to much larger public projects, Architect has successfully designed facilities similar in scope to the Project such as the Sunriver Nature Center Observatory Expansion, Erickson Air Museum, and Working Wonders Childrens' Museum;

WHEREAS, contracts with architects are "personal service contracts" under Crook County Code 3.12.110 and are not public contracts for purposes of ORS Chapters 279A, 279B, 279C, and Owner's purchasing rules;

WHEREAS, under ORS 279C.110, personal service contracts from an architectural firm shall be based on the architect's qualifications for the type of service provided, considering such factors as the architect's specialized experience, resources committed, record of past performance, and availability and familiarity with the project locale;

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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**User Notes:**

WHEREAS, the Crook County Historical Society, a non-public, not-for-profit corporation had previously contracted with Architect to provide services regarding the Project on the basis of Architect's qualifications, availability, and familiarity;

WHEREAS, ORS 279C.110(10) permits the direct appointment of an architect where the estimated cost of architectural services does not exceed \$100,000;

WHEREAS, the estimated cost of architectural services for the Project does not exceed \$100,000; and

WHEREAS, Owner finds that due to Architect's qualifications, including specifically Architect's specialized experience, record of past performance, resources committed, availability, and familiarity with the Project, that appointing this personal service contract with Architect directly is in Crook County's best interest.

### Agreement

The Owner and Architect agree as follows.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

## ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Project Description and the Initial Information set forth in this Section 1.1. *(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:  
*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Building Interior: The new building will be two stories, approximately 2,000 square feet, and roughly the same size as the historic Belknap House that once sat on the site. Amenities will include an open space to accommodate a new exhibit center with flexibility to change out exhibits from time to time, ADA accessible restrooms, an office and storage area.

Building Exterior: The exterior of the building will closely emulate the historic Belknap House. A photograph of the house has been provided for the Design Team for reference. Steele will incorporate design elements such as the porch, trim work, lap siding, dormers, doors, and windows to mimic the fenestrations of the historic house and time period.

Site Plan Improvements: The parking lot will be modified to make room for a central courtyard which will provide connection to the Museum and the caboose. Steele will coordinate the parking requirements along with any sitework with the City of Prineville Development Code. The design team will also be responsible for coordinating utilities, grading and drainage requirements.

This contract includes Architectural, Structural, Civil and Landscape (only). Mechanical, Electrical and Plumbing is to be Design-Build by Contractor. Geotechnical and Traffic Engineering are the responsibility of the Owner.

*(Paragraphs deleted)*

§ 1.1.3 The Owner's budget for the Cost of the

*(Paragraphs deleted)*

Work is not determined at time of agreement. It will be set with team and CMGC (hereinafter, "CMGC," "Contractor," or "Construction Manager").

§ 1.1.4 The Owner's anticipated design and construction milestone

*(Paragraphs deleted)*

dates are to be determined after contract execution. Design will begin once a CMGC has been secured by the Client.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

*(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)*

Owner intends to retain a CMGC, through AIA Document A133-2019™, Standard Form of Agreement between Owner and Construction Manager as a Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

*(Paragraphs deleted)*

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

*(Paragraph deleted)*

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 **Insurance.** The Architect shall maintain the following insurance until termination of this Agreement.

§ 2.5.1 Commercial General Liability with policy limits as follows: Applicable to all premises and operations, including Bodily Injury, Property Damage, Personal Injury, Contractual Liability, Independent Contractors, Products and Completed Operations, Broad Form Property Damages (including Completed Operations), and coverage for explosion, collapse, and underground hazards; with limits of liability of not less than one million (\$ 1,000,000 ) for each occurrence and two million (\$ 2,000,000 ) in the aggregate. Such insurance will be (1) written on an occurrence basis; (2) endorsed to name the Owner, its officers, directors, agents, and employees as additional insureds; (3) primary and noncontributory with respect to any insurance or self-insurance programs maintained by such additional insureds; (4) applicable to both ongoing and completed operations; and (4) provide Products and Completed

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Operations coverage for a period of not less than three years following Final Completion of the Work or Termination of this Agreement.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million (\$ 1,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million (\$ 1,000,000 ) each accident, one million (\$ 1,000,000 ) each employee, and two million (\$ 2,000,000 ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million (\$ 2,000,000 ) per claim and four million (\$ 4,000,000 ) in the aggregate.

§ 2.5.7 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

*(Paragraph deleted)*

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 3.1 The Architect's Basic Services consist of those described in this Article 1 and 3 and include usual and customary structural engineering, civil engineering and landscape architecture services. Mechanical/Electrical/Plumbing will be design-build by the CMGC and Geotechnical and Traffic Engineering will be through the Owner. Other Services not set forth are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the CMGC, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the CMGC, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the CMGC's review and Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

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§ 3.1.5 The Architect, in coordination with the CMGC, shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner and CMGC in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 The Architect shall submit information to the CMGC and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action, upon the portion of the Project schedule relating to the performance of Architect's services.

§ 3.1.8 At a time to be mutually agreed upon by the Owner and the CMGC, the CMGC shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the CMGC's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption or any responsibility for the CMGC's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and CMGC.

§ 3.1.9 Upon authorization by the Owner, and subject to Section 4.2.1, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and CMGC and shall discuss with the Owner and CMGC alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and CMGC, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the CMGC's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

*(Paragraph deleted)*

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner and CMGC. The Architect shall meet with the Owner and the CMGC to review the Schematic Design Documents.

§ 3.2.8 Upon receipt of the CMGC's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.3, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.9 In the further development of the Drawings and Specification during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the CMGC under the CMGC's agreement with Owner.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the CMGC's review and the Owner's approval. The Design Development Documents shall be based upon information provided and estimates prepared by the CMGC and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and CMGC. The Architect shall meet with the Owner and CMGC to review the Design Development Documents.

§ 3.3.3 Upon receipt of the CMGC's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.4 and 6.5 and request the Owner's approval of the Design Development Documents.

### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the CMGC's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the CMGC will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and CMGC in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and CMGC. The Architect shall meet with the Owner and CMGC to review the Construction Documents.

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§ 3.4.5 Upon receipt of the CMGC's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

*(Paragraphs deleted)*

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the CMGC as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and CMGC modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in said AIA Document shall mean the "CMGC." The Architect shall consent to any reasonable amendment necessary to incorporate changes to AIA 201-2017 provided that such change does not materially increase the Architect's obligations under this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the CMGC's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the CMGC or of any other persons or entities performing portions of the Work. The Architect is not responsible for the construction cost of reasonable AE errors and omissions.

§ 3.6.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the CMGC's Guaranteed Maximum Price (GMP) proposal, the Owner's approval of the CMGC's Control Estimate, or by a written agreement between the Owner and CMGC which set forth a description of the Work to be performed by the CMGC prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the CMGC, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect, in consultation with the Owner, has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the CMGC, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or CMGC. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Notwithstanding the above or anything herein, the final decision on all construction matters is that of the Owner.

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§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and CMGC, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and CMGC designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and CMGC as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to CMGC

§ 3.6.3.1 The Architect shall review and certify the amounts due the CMGC and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the CMGC's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the CMGC is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the CMGC's right to payment, or (4) ascertained how or for what purpose the CMGC has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the CMGC's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect will inform the Owner and CMGC if the CMGC's submittal schedule contains insufficient time for the Architect to adequately review submittals. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve, or take other appropriate action upon, the CMGC's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the CMGC's responsibility, provided the Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, inconsistency, or other discrepancy between the CMGC's submittals and the Contract Documents. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the CMGC to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the CMGC's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given

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and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the CMGC in accordance with the requirements of the Contract Documents.

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the CMGC; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CMGC of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the CMGC, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the CMGC: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the CMGC under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental and Additional Services

§ 4.1.1 Supplemental and Additional Services are services not included in Article 1 and Article 3 Basic Services but may be required for the Project. The Architect shall provide such services only if specifically designated by the Owner as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Paragraphs deleted)*

*(Table deleted)*

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*(Paragraphs deleted)*

**§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.2 and an appropriate adjustment in the Architect's schedule.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner or CMGC not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

*(Paragraph deleted)*

- .8 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .9 Assistance to the Initial Decision Maker, if other than the Architect;
- .10 Services necessitated by the Owner's unreasonable delay in engaging the CMGC; or
- .11 Services necessitated by replacement of the CMGC or conversion of the CMGC as constructor project delivery method to an alternative project delivery method.

**§ 4.2.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination and the Owner shall have no further obligation to compensate the Architect for those services. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a CMGC's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the CMGC's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the CMGC from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, CMGC-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Construction Change Directives that require evaluation of CMGC's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or CMGC and making subsequent revisions to Instruments of Service resulting therefrom.

**§ 4.2.3** The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

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- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the CMGC
- .2 One ( 1 ) visits to the site every two weeks by the Architect for the anticipated construction duration of 8 months.
- .3 Two ( 2 ) inspections to determine whether Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and CMGC, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within eighteen ( 18 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a CMGC to provide services, duties, and responsibilities described in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and CMGC. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of

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the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 The Owner shall include the Architect in all communications with the CMGC that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the CMGC otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.12 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and CMGC, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the CMGC to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.14 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

*(Paragraph deleted)*

## **ARTICLE 6 COST OF THE WORK**

§ 6.1 For purposes of this Agreement the CMGC will work with the Owner in providing Cost of the Work services. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of Owner.

§ 6.2 The Owner shall require the CMGC to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the CMGC prepares as the Architect progresses with its Basic Services. The Architect shall prepare revisions to the Drawings, Specifications, or other documents required due to the CMGC's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the CMGC's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3 If, prior to the conclusion of the Design Development Phase, the CMGC's estimate of the Cost of Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the CMGC, shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.4 If the CMGC's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5[];
- .3 in consultation with the Architect and CMGC, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.5 If the Owner chooses to proceed under Section 6.4.3, the Architect, without additional compensation, shall incorporate the revision in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.4.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

#### § 6.6

*(Paragraphs deleted)*

After incorporation of modifications under Section 6.5, the Architect shall make any required revisions to the Drawings, Specifications, or other documents necessitated by the CMGC's subsequent cost estimates, the GMP proposal, or control estimate that exceeds the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes, or equipment.

*(Paragraph deleted)*

### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The record drawings, plans, designs, and all Project associated instruments of service, which are limited to final project drawings, models, presentation drawings and specifications (collectively, the "Documents"), are owned jointly by the Owner and Architect. The ownership interest for each party is limited to a license to use electronic media and copies of the Documents for the Project covered by this Agreement. Ownership of Documents by Owner is for the purpose of building maintenance, repairing, expanding and remodeling the Project and is subject to payment of all architectural fees and costs. Owner acknowledges that the final project drawings and specifications contain standard details and specifications, which are not unique to the Project and are commonly used by Architects and other design/construction professionals. Owner acknowledges that Architect is the owner of its original documents. However, any proprietary details and specifications of Owner are solely owned by the Owner, and Architect is granted a license to use these proprietary details and specifications solely for the purpose of the Project.

§ 7.2 If the Owner subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents created by the Architect, where permitted or required by law, the Owner shall remove or completely obliterate the original professional seal, logos, and other indications on the documents of the identity of the Architect. However, if required by law, such identification with appropriate qualifying language or other statutorily required information identifying the original Architect may remain or be applied by Owner or Owner's designee.

§ 7.3 Except as provided in Section 7.1, the Architect shall maintain the confidentiality of all Project documents and shall not publish or in any way disseminate or distribute any Project documents, including but not limited to correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written permission of Owner.

*(Paragraph deleted)*

§ 7.4 In the event Owner requests that Architect provide "As-Built" plans, specifications, and other documents in electronic media or CADD/Revit form (CADD Files), Architect shall do so. However, Owner recognizes that CADD Files are not intended to be used for construction, are not "Contract Documents" under the terms of the Construction Contract, and may be revised by others without the knowledge or consent of the Architect or, when plotted, may result in variances. The electronic media disks may be write-protected by the Architect such that no data on such disk can be manipulated. Architect will provide, to the Owner only, a working copy electronic media disk, drive, or electronically transmitted file (the "File"). The File shall have all indices of the Architect's ownership, professional name, and/or involvement in the Project removed from the electronic display. Any use of any kind and/or change to the CADD Files will be at the user's sole risk and without liability, risk or legal exposure to the Architect, the Owner, and any other person or entity using the CADD Files agrees to release and to the fullest extent of the law defend, indemnify, and hold harmless Architect from and against any and all claims, demands, losses, expenses, damages, penalties, and liabilities of any kind, including attorney fees and costs. Owner acknowledges that the CADD Files are not intended for construction. Owner agrees, as a condition of forwarding the CADD Files to its CMGC or other person or entity, to require such third party to agree in writing to the terms and conditions of this Agreement concerning use of CADD Files.

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

Init.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

*(Paragraph deleted)*

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officials, officers, and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this section shall be limited to the available proceeds of the insurance coverage required this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 Informal Dispute Resolution

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to informal dispute resolution (IDR) as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by IDR or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by IDR, which, unless the parties mutually agree otherwise, shall be administered by the parties. A request for IDR shall be made in writing, delivered to the other party to this Agreement, and specifically detail the circumstances and facts justifying IDR, with that party's desired resolution. Upon receipt of request for IDR, the other party shall respond in writing in no more than ten business days. IDR, as used in this Agreement, means a convening of the Owner, Architect, and their respective representatives or designees, in addition to any parties that would qualify for consolidation or joinder under Section 8.3.4, to discuss and amicably resolve the claim, dispute, or matter in question. The parties will convene for IDR not fewer than three times before proceeding to the method of binding dispute resolution selected in Section 8.2.4.

§ 8.2.3 The IDR shall be held in the place where the Project is located or remotely, unless another location is mutually agreed upon. The parties shall cooperate in good faith to agree on a time for IDR not more than two weeks following receipt of written response to the request for IDR. Agreements reached in IDR shall be enforceable as settlement agreements in any court having jurisdiction thereof, and any conduct or statements made in IDR shall be inadmissible in court as provided in ORS 40.190.

§ 8.2.4 If the parties do not resolve a dispute through IDR pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
*(Check the appropriate box.)*

Arbitration pursuant to Section 8.3 of this Agreement

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[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

### § 8.3 Arbitration.

§ 8.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by IDR shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

*(Paragraph deleted)*

§ 8.3.2 A demand for arbitration shall not be made prior to the conclusion of IDR, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question.

§ 8.3.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrators.

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described the written consent.

§ 8.3.4.3 Whether by joinder or consolidation, the Owner and Architect grant to any person or entity made a party to an arbitration conducted under this section the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the

Init.

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7

*(Paragraphs deleted)*

Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.8 Copyrights and licenses in the event of a termination of this Agreement are set forth in Article 7.

*(Paragraph deleted)*

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by Oregon law.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction. The term "Contractor" as used in A201-2017 shall mean the CMGC.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific

Init.

information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 1 and 3, the Owner shall compensate the Architect as follows:

Architectural Schematic Design: \$10,824  
 Architectural Design Development: \$10,824  
 Architectural Construction Documents: \$10,824  
 Architectural Permitting: \$5,412  
 Architectural Construction Admin: \$16,236  
 Civil On-Site Improvement (HWA): \$19,500  
 Civil Off-Site Public Infrastructure (HWA): \$7,600\*  
 Structural (A&V): \$7,500  
 Landscape Architecture (JBD): \$7,875

*(Paragraphs deleted)*

*\*off-site improvements may not be required and scope for this service will be eliminated if not*

§ 11.2 For the Architect's Supplemental and Additional Services designated in Section 4 the Owner shall compensate the Architect by the work performed and the employee performing the work, by the hour, as follows:

President/Managing Principal	\$200
Principal	\$180
Project Manager	155
Project Architect	135
Designer 4	135
Designer 3	125
Designer 2	110
Designer 1	100
Interior Designer	120
Administration	75

*(Paragraphs deleted)*

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus

*(Paragraphs deleted)*  
ten percent ( 10%).

*(Paragraph deleted)*

*(Table deleted)*

*(Paragraph deleted)*

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

*(Table deleted)*

*(Paragraphs deleted)*

### § 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred.

*(Paragraphs deleted)*

### § 11.10 Payments to the Architect

*(Paragraphs deleted)*

#### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty-one ( 31 ) days after the invoice date are subject to interest at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Paragraphs deleted)*

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:  
*(Include other terms and conditions applicable to this Agreement.)*

| None at time of agreement



Init.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 Other documents:
  - A. Required Terms for All Public Contracts
  - B. Independent Contractor Status
  - C. Protected Information

*(Paragraphs deleted)*

*(Paragraphs deleted)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
Brian Barney County Commissioner  
*(Printed name and title)*

  
\_\_\_\_\_  
**ARCHITECT** *(Signature)*

\_\_\_\_\_  
Scott T. Steele, President  
*(Printed name, title, and license number, if required)*

## Additions and Deletions Report for AIA® Document B101™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:09:45 ET on 01/24/2022.

### PAGE 1

**AGREEMENT** made as of the Twenty-Fourth day of January in the year Two Thousand Twenty-Two

...

Crook County, a political subdivision of the State of Oregon  
300 NE Third Street  
Prineville, OR 97754

...

Steele Associates Architects LLC  
1567 SW Chandler Ave., Suite 203  
Bend, OR 97703

...

*(Name, location and detailed description)*

Bowman Museum Exhibit Center  
Prineville, Oregon

### **Recitals**

WHEREAS, Owner plans to demolish the existing Hans Pharmacy Building located at 136 NE 3<sup>rd</sup> Street, immediately East of the Bowman Museum, to create a new exhibit center for the Bowman Museum, built in its place;

WHEREAS, Architect has a long-standing reputation in Crook County and the region as one of the preeminent architects in the Central Oregon;

WHEREAS, Owner and Architect have worked together successfully on Owner's projects in the recent past, including the USFS Helibase and the Bowman Museum expansion;

WHEREAS, in addition to much larger public projects, Architect has successfully designed facilities similar in scope to the Project such as the Sunriver Nature Center Observatory Expansion, Erickson Air Museum, and Working Wonders Childrens' Museum;

WHEREAS, contracts with architects are "personal service contracts" under Crook County Code 3.12.110 and are not public contracts for purposes of ORS Chapters 279A, 279B, 279C, and Owner's purchasing rules;

WHEREAS, under ORS 279C.110, personal service contracts from an architectural firm shall be based on the architect's qualifications for the type of service provided, considering such factors as the architect's specialized experience, resources committed, record of past performance, and availability and familiarity with the project locale;

WHEREAS, the Crook County Historical Society, a non-public, not-for-profit corporation had previously contracted with Architect to provide services regarding the Project on the basis of Architect's qualifications, availability, and familiarity;

WHEREAS, ORS 279C.110(10) permits the direct appointment of an architect where the estimated cost of architectural services does not exceed \$100,000;

WHEREAS, the estimated cost of architectural services for the Project does not exceed \$100,000; and

WHEREAS, Owner finds that due to Architect's qualifications, including specifically Architect's specialized experience, record of past performance, resources committed, availability, and familiarity with the Project, that appointing this personal service contract with Architect directly is in Crook County's best interest.

### Agreement

#### PAGE 3

§ 1.1 This Agreement is based on the Project Description and the Initial Information set forth in this Section 1.1.

...

Building Interior: The new building will be two stories, approximately 2,000 square feet, and roughly the same size as the historic Belknap House that once sat on the site. Amenities will include an open space to accommodate a new exhibit center with flexibility to change out exhibits from time to time, ADA accessible restrooms, an office and storage area.

Building Exterior: The exterior of the building will closely emulate the historic Belknap House. A photograph of the house has been provided for the Design Team for reference. Steele will incorporate design elements such as the porch, trim work, lap siding, dormers, doors, and windows to mimic the fenestrations of the historic house and time period.

Site Plan Improvements: The parking lot will be modified to make room for a central courtyard which will provide connection to the Museum and the caboose. Steele will coordinate the parking requirements along with any sitework with the City of Prineville Development Code. The design team will also be responsible for coordinating utilities, grading and drainage requirements.

This contract includes Architectural, Structural, Civil and Landscape (only). Mechanical, Electrical and Plumbing is to be Design-Build by Contractor. Geotechnical and Traffic Engineering are the responsibility of the Owner.

**§ 1.1.2** The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

**§ 1.1.3** The Owner's budget for the Cost of the ~~Work~~, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

Work is not determined at time of agreement. It will be set with team and CMGC (hereinafter, "CMGC," "Contractor," or "Construction Manager").

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:



.1 — Design phase milestone dates, if any:

.2 — Construction commencement date:

.3 — Substantial Completion date or dates:

\_\_\_\_\_

.4 — Other milestone dates:

dates are to be determined after contract execution. Design will begin once a CMGC has been secured by the Client.

**PAGE 4**

Owner intends to retain a CMGC, through AIA Document A133-2019™, Standard Form of Agreement between Owner and Construction Manager as a Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™ 2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204 2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204 2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7** The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

**§ 1.1.8** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address, and other contact information.)

**§ 1.1.9** The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 — Geotechnical Engineer:

.2 — Civil Engineer:

.3 — Other, if any:

— *(List any other consultants and contractors retained by the Owner.)*

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
*(List name, address, and other contact information.)*

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
*(List name, legal status, address, and other contact information.)*

§ 1.1.11.1 Consultants retained under Basic Services:

.1 — Structural Engineer:

.2 — Mechanical Engineer:

.3 — Electrical Engineer:

§ 1.1.11.2 Consultants retained under Supplemental Services:

~~§ 1.1.12 Other Initial Information on which the Agreement is based:~~

~~§ 1.3~~ The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

~~§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

...

~~§ 2.5 Insurance.~~ The Architect shall maintain the following insurance until termination of this Agreement. ~~If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~

~~§ 2.5.1 Commercial General Liability with policy limits of not less than (\$ ) for each occurrence and (\$ ) in the aggregate for bodily injury and property damage as follows: Applicable to all premises and operations, including Bodily Injury, Property Damage, Personal Injury, Contractual Liability, Independent Contractors, Products and Completed Operations, Broad Form Property Damages (including Completed Operations), and coverage for explosion, collapse, and underground hazards; with limits of liability of not less than one million (\$ 1,000,000 ) for each occurrence and two million (\$ 2,000,000 ) in the aggregate. Such insurance will be (1) written on an occurrence basis; (2) endorsed to name the Owner, its officers, directors, agents, and employees as additional insureds; (3) primary and noncontributory with respect to any insurance or self-insurance programs maintained by such additional insureds; (4) applicable to both ongoing and completed operations; and (4) provide Products and Completed Operations coverage for a period of not less than three years following Final Completion of the Work or Termination of this Agreement.~~

~~§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million (\$ 1,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

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~~§ 2.5.5 Employers' Liability with policy limits not less than one million (\$ 1,000,000 ) each accident, one million (\$ 1,000,000 ) each employee, and two million (\$ 2,000,000 ) policy limit.~~

~~§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million (\$ 2,000,000 ) per claim and four million (\$ 4,000,000 ) in the aggregate.~~

~~§ 2.5.7 Additional Insured Obligations.~~ To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. ~~The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to~~

~~both ongoing and completed operations.~~ The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

~~§ 2.5.8~~ The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

~~§ 3.1~~ The Architect's Basic Services consist of those described in this Article 1 and 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 structural engineering, civil engineering and landscape architecture services. Mechanical/Electrical/Plumbing will be design-build by the CMGC and Geotechnical and Traffic Engineering will be through the Owner. Other Services not set forth are Supplemental or Additional Services.

...

~~§ 3.1.2~~ The Architect shall coordinate its services with those services provided by the ~~Owner~~ Owner, the CMGC, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the ~~Owner~~ Owner, the CMGC, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

~~§ 3.1.3~~ As soon as practicable after the date of this Agreement, the Architect shall submit for the CMGC's review and Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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~~§ 3.1.5~~ The Architect-Architect, in coordination with the CMGC, shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

~~§ 3.1.6~~ The Architect shall assist the Owner and CMGC in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

~~§ 3.1.7~~ The Architect shall submit information to the CMGC and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action, upon the portion of the Project schedule relating to the performance of Architect's services.

~~§ 3.1.8~~ At a time to be mutually agreed upon by the Owner and the CMGC, the CMGC shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the CMGC's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption or any responsibility for the CMGC's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and CMGC.

~~§ 3.1.9~~ Upon authorization by the Owner, and subject to Section 4.2.1, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

...

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and CMGC and shall discuss with the Owner and CMGC alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and ~~present, present to the Owner and CMGC,~~ for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the CMGC's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. ~~The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.~~

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~~§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.~~

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the ~~Owner, and request the Owner's approval.~~ Owner and CMGC. The Architect shall meet with the Owner and the CMGC to review the Schematic Design Documents.

§ 3.2.8 Upon receipt of the CMGC's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.3, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.9 In the further development of the Drawings and Specification during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the CMGC under the CMGC's agreement with Owner.

...

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the CMGC's review and the Owner's approval. The Design Development Documents shall be based upon information provided and estimates prepared by the CMGC and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

~~§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3. Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and CMGC. The Architect shall meet with the Owner and CMGC to review the Design Development Documents.~~

~~§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Upon receipt of the CMGC's~~

information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.4 and 6.5 and request the Owner's approval of the Design Development Documents.

...

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the CMGC's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the ~~Contractor~~ CMGC will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

...

**§ 3.4.3** During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and CMGC in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also ~~compile Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.~~

**§ 3.4.4** The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3. Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and CMGC. The Architect shall meet with the Owner and CMGC to review the Construction Documents.

**§ 3.4.5** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. Upon receipt of the CMGC's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

## **§ 3.5 Procurement Phase Services**

### **§ 3.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

### **§ 3.5.2 Competitive Bidding**

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 3.5.2.2** The Architect shall assist the Owner in bidding the Project by:

- .1 — facilitating the distribution of Bidding Documents to prospective bidders;
- .2 — organizing and conducting a pre-bid conference for prospective bidders;
- .3 — preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 — organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 3.5.2.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### **§ 3.5.3 Negotiated Proposals**

**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 — facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 — organizing and participating in selection interviews with prospective contractors;
- .3 — preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 — participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

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§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor ~~CMGC~~ as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor ~~CMGC~~ modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in said AIA Document shall mean the "CMGC." The Architect shall consent to any reasonable amendment necessary to incorporate changes to AIA 201-2017 provided that such change does not materially increase the Architect's obligations under this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's ~~CMGC's~~ failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor ~~CMGC~~ or of any other persons or entities performing portions of the Work. The Architect is not responsible for the construction cost of reasonable AE errors and omissions.

§ 3.6.1.3 Subject to Section 4.2-4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the CMGC's Guaranteed Maximum Price (GMP) proposal, the Owner's approval of the CMGC's Control Estimate, or by a written agreement between the Owner and CMGC which set forth a description of the Work to be performed by the CMGC prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

...

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, ~~CMGC~~, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 ~~The Architect~~ Architect, in consultation with the Owner, has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall

have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the ~~Contractor, CMGC~~, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or ~~Contractor, CMGC~~. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Notwithstanding the above or anything herein, the final decision on all construction matters is that of the Owner.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and ~~Contractor, CMGC~~, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and ~~Contractor, CMGC~~ designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and ~~Contractor, CMGC~~ as provided in the Contract Documents.

**§ 3.6.3 Certificates for Payment to Contractor CMGC**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the ~~Contractor, CMGC~~ and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the ~~Contractor's, CMGC's~~ Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the ~~Contractor, CMGC~~ is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the ~~Contractor's, CMGC's~~ right to payment, or (4) ascertained how or for what purpose the ~~Contractor, CMGC~~ has used money previously paid on account of the Contract Sum.

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**§ 3.6.4.1** The Architect shall review the ~~Contractor's, CMGC's~~ submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect will inform the Owner and CMGC if the CMGC's submittal schedule contains insufficient time for the Architect to adequately review submittals. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

**§ 3.6.4.2** ~~The~~ In accordance with the Architect-approved submittal schedule, the Architect shall review and approve, or take other appropriate action upon, the ~~Contractor's, CMGC's~~ submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are ~~the Contractor's responsibility, the~~ the CMGC's responsibility, provided the Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, inconsistency, or other discrepancy between the CMGC's submittals and the Contract Documents. The Architect's review shall not constitute



approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the ~~Contractor~~-CMGC to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the ~~Contractor's~~-CMGC's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the ~~Contractor~~-CMGC in accordance with the requirements of the Contract Documents.

...

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ~~Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.~~

...

- 3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the ~~Contractor~~-CMGC; and,

...

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the ~~Contractor~~-CMGC of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the ~~Contractor~~-CMGC, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the ~~Contractor~~-CMGC:  
 (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment;  
 (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the ~~Contractor~~-CMGC under the Contract Documents.

...

#### § 4.1 Supplemental and Additional Services

§ 4.1.1 ~~The services listed below are not included in Supplemental and Additional Services are services not included in Article 1 and Article 3 Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services such services only if specifically designated in the table below by the Owner as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.~~

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25 Fast-track design services	
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

**§ 4.1.2.2** A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.  
(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section ~~11.3~~ 11.2 and an appropriate adjustment in the Architect's schedule.

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- .4 Services necessitated by decisions of the Owner or CMGC not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- ...
- .7 Preparation for, and attendance at, a ~~public presentation, meeting or hearing;~~
- ~~.8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;~~
- ~~.9 Evaluation of the qualifications of entities providing bids or proposals;~~
- ~~.10 .8 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,~~
- ~~.11 .9 Assistance to the Initial Decision Maker, if other than the Architect.~~ Architect;
- .10 Services necessitated by the Owner's unreasonable delay in engaging the CMGC; or
- .11 Services necessitated by replacement of the CMGC or conversion of the CMGC as constructor project delivery method to an alternative project delivery method.

**§ 4.2.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's ~~determination~~ determination and the Owner shall have no further obligation to compensate the Architect for those services. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a ~~Contractor's~~ CMGC's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the ~~Contractor's~~ CMGC's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the ~~Contractor~~ CMGC from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, ~~Contractor-prepared~~ CMGC-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing ~~Change Orders and~~ Construction Change Directives that require evaluation of ~~Contractor's~~ CMGC's proposals and supporting data, or the preparation or revision of Instruments of Service;
- ...
- .5 Evaluating substitutions proposed by the Owner or ~~Contractor~~ CMGC and making subsequent revisions to Instruments of Service resulting therefrom.

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- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the ~~Contractor~~CMGC
- .2 ~~(—) visits to the site by the Architect during construction~~One ( 1 ) visits to the site every two weeks by the Architect for the anticipated construction duration of 8 months.
- .3 ~~(—) inspections for any portion of the Work to determine whether such portion of the~~Two ( 2 ) inspections to determine whether Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~(—) inspections for any portion of the Work~~Two ( 2 ) inspections to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and ~~Contractor, CMGC,~~ whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within eighteen ( 18 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

§ 5.2 The Owner shall ~~establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.~~ retain a CMGC to provide services, duties, and responsibilities described in Section 1.1.5.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and CMGC. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private,

above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1-furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™ – 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided-furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests-provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.include the Architect in all communications with the CMGC that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the CMGC otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and CMGC, including the General Conditions of the Contract for Construction.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the

~~General Conditions of the Contract for Construction access to the Project site prior to commencement of the Work and shall obligate the CMGC to provide the Architect access to the Work wherever it is in preparation or progress.~~

~~§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.~~

~~§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.~~

~~§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. Agreement the CMGC will work with the Owner in providing Cost of the Work services. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.~~

~~§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated Owner shall require the CMGC to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect. Work the CMGC prepares as the Architect progresses with its Basic Services. The Architect shall prepare revisions to the Drawings, Specifications, or other documents required due to the CMGC's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the CMGC's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.~~

~~§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service. If, prior to the conclusion of the Design Development Phase, the CMGC's estimate of the Cost of Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the CMGC, shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.~~

~~§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's If the CMGC's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall:~~

~~.1 give written approval of an increase in the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market. Work;~~

~~.2 terminate in accordance with Section 9.5[];~~

.3 in consultation with the Architect and CMGC, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or

.4 implement any other mutually acceptable alternative.

~~§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner chooses to proceed under Section 6.4.3, the Architect, without additional compensation, shall incorporate the revision in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments. Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.4.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.~~

~~§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall~~

~~.1 give written approval of an increase in the budget for the Cost of the Work;~~

~~.2 authorize rebidding or renegotiating of the Project within a reasonable time;~~

~~.3 terminate in accordance with Section 9.5;~~

~~.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,~~

~~.5 implement any other mutually acceptable alternative. After incorporation of modifications under Section 6.5, the Architect shall make any required revisions to the Drawings, Specifications, or other documents necessitated by the CMGC's subsequent cost estimates, the GMP proposal, or control estimate that exceeds the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes, or equipment.~~

~~§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.~~

~~§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on record drawings, plans, designs, and all Project associated instruments of service, which are limited to final project drawings, models, presentation drawings and specifications (collectively, the "Documents"), are owned jointly by the Owner and Architect. The ownership interest for each party is limited to a license to use electronic media and copies of the Documents for the Project covered by this Agreement. Ownership of Documents by Owner is for the purpose of building maintenance, repairing, expanding and remodeling the Project and is subject to payment of all architectural fees and costs. Owner acknowledges that the final project drawings and specifications contain standard details and specifications, which are not unique to the Project and are commonly used by Architects and other design/construction professionals. Owner acknowledges that Architect is the owner of its original documents. However, any proprietary details and specifications of Owner are solely owned by the Owner, and Architect is granted a license to use these proprietary details and specifications solely for the purpose of the Project.~~

~~§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. If the Owner subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents created by the Architect, where permitted or required by law, the Owner shall remove or completely obliterate the original professional seal, logos, and other indications on the documents of the identity of the Architect. However, if required~~

by law, such identification with appropriate qualifying language or other statutorily required information identifying the original Architect may remain or be applied by Owner or Owner's designee.

**§ 7.3** The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Except as provided in Section 7.1, the Architect shall maintain the confidentiality of all Project documents and shall not publish or in any way disseminate or distribute any Project documents, including but not limited to correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written permission of Owner.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. In the event Owner requests that Architect provide "As-Built" plans, specifications, and other documents in electronic media or CADD/Revit form (CADD Files), Architect shall do so. However, Owner recognizes that CADD Files are not intended to be used for construction, are not "Contract Documents" under the terms of the Construction Contract, and may be revised by others without the knowledge or consent of the Architect or, when plotted, may result in variances. The electronic media disks may be write-protected by the Architect such that no data on such disk can be manipulated. Architect will provide, to the Owner only, a working copy electronic media disk, drive, or electronically transmitted file (the "File"). The File shall have all indices of the Architect's ownership, professional name, and/or involvement in the Project removed from the electronic display. Any use of any kind and/or change to the CADD Files will be at the user's sole risk and without liability, risk or legal exposure to the Architect, the Owner, and any other person or entity using the CADD Files agrees to release and to the fullest extent of the law defend, indemnify, and hold harmless Architect from and against any and all claims, demands, losses, expenses, damages, penalties, and liabilities of any kind, including attorney fees and costs. Owner acknowledges that the CADD Files are not intended for construction. Owner agrees, as a condition of forwarding the CADD Files to its CMGC or other person or entity, to require such third party to agree in writing to the terms and conditions of this Agreement concerning use of CADD Files.

**§ 7.5** Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

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**§ 8.1.3** The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

**§ 8.1.3** The Architect shall indemnify and hold the Owner and the Owner's officials, officers, and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this



Agreement. The Architect's obligation to indemnify and hold harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this section shall be limited to the available proceeds of the insurance coverage required this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

## **§ 8.2 MediationInformal Dispute Resolution**

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation-informal dispute resolution (IDR) as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation-IDR or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation-IDR, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation-parties. A request for IDR shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Specifically detail the circumstances and facts justifying IDR, with that party's desired resolution. Upon receipt of request for IDR, the other party shall respond in writing in no more than ten business days. IDR, as used in this Agreement, means a convening of the Owner, Architect, and their respective representatives or designees, in addition to any parties that would qualify for consolidation or joinder under Section 8.3.4, to discuss and amicably resolve the claim, dispute, or matter in question. The parties will convene for IDR not fewer than three times before proceeding to the method of binding dispute resolution selected in Section 8.2.4.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation-IDR shall be held in the place where the Project is located, located or remotely, unless another location is mutually agreed upon. Agreements reached in mediation-The parties shall cooperate in good faith to agree on a time for IDR not more than two weeks following receipt of written response to the request for IDR. Agreements reached in IDR shall be enforceable as settlement agreements in any court having jurisdiction thereof, and any conduct or statements made in IDR shall be inadmissible in court as provided in ORS 40.190.

§ 8.2.4 If the parties do not resolve a dispute through mediation-IDR pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

...

[  ] Arbitration pursuant to Section 8.3 of this Agreement  
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If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

## **§ 8.3 ArbitrationArbitration.**

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any Any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation-by IDR shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be

administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. A demand for arbitration shall not be made prior to the conclusion of IDR, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

...

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s) arbitrators.~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Whether by joinder or consolidation, the Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, section the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

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~~§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:~~

~~(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)~~

~~.1 — Termination Fee:~~

~~.2 — Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:~~

Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.8 ~~Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion. Copyrights and licenses in the event of a termination of this Agreement are set forth in Article 7.~~

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern ~~Section 8.3. Oregon law.~~

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction. The term "Contractor" as used in A201-2017 shall mean the CMGC.  
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§ 11.1 For the Architect's Basic Services described under Article 1 and 3, the Owner shall compensate the Architect as follows:

- .1 ~~Stipulated Sum~~ Architectural Schematic Design: \$10,824  
~~(Insert amount)~~ Architectural Design Development: \$10,824  
 Architectural Construction Documents: \$10,824  
 Architectural Permitting: \$5,412  
 Architectural Construction Admin: \$16,236
- .2 ~~Percentage Basis~~ Civil On-Site Improvement (HWA): \$19,500  
~~(Insert percentage value)~~ Civil Off-Site Public Infrastructure (HWA): \$7,600\*  
 Structural (A&V): \$7,500  
 ( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6. Landscape Architecture (JBD): \$7,875
- .3 ~~Other~~  
~~(Describe the method of compensation)~~  
*\*off-site improvements may not be required and scope for this service will be eliminated if not*

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, and Additional Services designated in Section 4 the Owner shall compensate the Architect by the work performed and the employee performing the work, by the hour, as follows:

President/Managing Principal	\$200
Principal	\$180
Project Manager	155
Project Architect	135
Designer 4	135
Designer 3	125
Designer 2	110
Designer 1	100
Interior Designer	120
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.) Administration	75

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
~~(Insert amount of, or basis for, compensation.)~~

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~percent (—%),~~ or as follows:  
*(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)*

ten percent ( 10%).

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)
Procurement Phase	percent (	%)
Construction Phase	percent (	%)
<hr/>		
Total Basic Compensation	one hundred percent (	100 %)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

<b>Employee or Category</b>	<b>Rate (\$0.00)</b>
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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus ten percent ( 10 %) of the expenses incurred.

§ 11.9 **Architect’s Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:  
*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

**§ 11.10.1 Initial Payments**

§ 11.10.1.1 An initial payment of ~~(\$ —)~~ shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner’s account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ~~(\$ —)~~ shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect’s payments to the Certifying Authority shall be credited to the Owner’s account at the time the expense is incurred.

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty-one (31) days after the invoice date ~~shall bear interest at the rate entered below, or in the absence thereof are subject to interest~~ at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

—%

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None at time of agreement

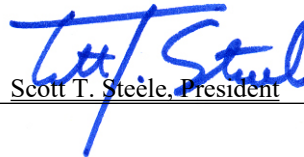
.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: Other documents:  
*(Insert the date of the E203-2013 incorporated into this agreement.)*

~~.3~~ Exhibits:  
*(Check the appropriate box for any exhibits incorporated into this Agreement.)* A. Required Terms for All Public Contracts  
B. Independent Contractor Status  
 AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below: C. Protected Information  
*(Insert the date of the E204-2017 incorporated into this agreement.)*

~~Other Exhibits incorporated into this Agreement:~~  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

~~.4~~ Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

...  
\_\_\_\_\_  
Brian Barney County Commissioner

  
\_\_\_\_\_  
Scott T. Steele, President

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Scott Steele, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:09:45 ET on 01/24/2022 under Order No. 1224326181 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

---

*(Title)*

---

*(Dated)*

**EXHIBIT A**  
**REQUIRED TERMS FOR ALL PUBLIC CONTRACTS**

**1. PAYMENTS AND DEBTS:**

- 1.1. Contractor shall promptly, as due, make payment to:
  - 1.1.1. Any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services;
  - 1.1.2. All persons supplying to Contractor labor or material for the performance of the work provided for in the Agreement;
  - 1.1.3. All contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Agreement; and
  - 1.1.4. The Department of Revenue all sums withheld from employees under ORS 316.167.
- 1.2. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished under this Agreement.

**2. EMPLOYEES:**

- 2.1. Contractor and subcontractors shall either be employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 2.2. Contractor shall comply with the prohibition on wage discrimination of ORS 652.220; failure to do so is a material element of the contract and a breach that entitles County to terminate this Agreement for cause.
- 2.3. For all work under this Agreement, Contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires otherwise, and in such cases, Contractor shall pay the employee at least time-and-a-half pay for:
  - (a) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and
  - (b) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020;
- 2.3.1. If this Agreement is for services, Contractor shall pay employees at least time-and-a-half pay for work the employees perform under this Agreement on the legal holidays specified in a collective bargaining agreement or in 279B.020 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;
- 2.3.2. If this Agreement is for personal services, as described in ORS 279A.055, Contractor shall pay its employees who work under this Agreement at least time-and-a-half for all overtime the employees work in excess of 40 hours in any one week, unless said employees are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;
- 2.3.3. If this Agreement is for services at a county fair, or for another event that Crook County Fair Board authorizes, Contractor shall pay employees who work under this Agreement at least time-and-a-half for work in excess of 10 hours in any one day or 40 hours in any one week.
- 2.4. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- 2.5. Contractor shall give notice in writing to employees who work under this Agreement, either at the time of hire or before work begins on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that Contractor may require the employees to work.

**3. OTHER PROVISIONS:**

- 3.1. By executing this Agreement, Contractor represents and warrants that it has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318; Contractor further covenants to continue with said compliance during the term of this Agreement. Noncompliance with this provision is a default for which County may terminate the Agreement, in whole or part, and seek damages under the terms of this Agreement or applicable law.
- 3.2. If this Agreement involves lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.



**EXHIBIT B**  
**INDEPENDENT CONTRACTOR STATUS**

Contractor states and represents that contractor is an Independent Contractor as that term is defined in Oregon Revised Statute 670.600 and more specifically represents, states and agrees that in providing the services and scope of work specified in this Agreement:

1. Contractor provides services for remuneration; and
2. Contractor is free from direction and control over the means and manner of providing the services and scope of work subject only to the right of County to specify the desired results; and
3. Contractor is customarily engaged in an independently established business; and
4. Contractor is licensed within the state of Oregon to provide any services for which a license is required under ORS Chapter 671 or 701 and is responsible for obtaining other licenses or certificates necessary to provide the service or scope of work; and
5. Contractor complies with at least three of the following requirements:
  - (a) A business location is maintained that is separate from the business or work location of County; or is in a portion of the Contractor's residence and that portion is used primarily for the business.
  - (b) The Contractor bears the risk of loss related to the provision of services or scope of work such as entering into a fixed price contract, defective work is required to be corrected, the services provided are warranted or indemnification agreements, liability insurance and performance bonds and errors and omissions insurance are provided.
  - (c) Contracted services for two or more different persons or entities within a twelve month period have been obtained, or routinely engaged in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  - (d) Significant investment in the business has been made such as purchasing tools or equipment, paying for premises or facilities where services are provided, paying for licenses, certificates or specialized training.
  - (e) Possesses authority to hire other persons to assist in providing their services and has the authority to fire those persons.
6. Contractor will immediately inform County in the event that it fails to conduct its services in one or more particulars as represented in 1 through 5 above.

## EXHIBIT C

### PROTECTED INFORMATION

If Contractor obtains any personal information as defined in ORS 646A.602(11) related to this Agreement or concerning any County employee, Contractor agrees to provide appropriate safeguards to protect the security of this information. Contractor shall have provided appropriate safeguards by meeting or exceeding the requirements stated in ORS 646A.622. Furthermore:

1. **“Protected Information”** shall be defined as *data or information* that has been designated as private or confidential by law or by the County. Protected Information includes, but is not limited to, employment records, medical records, personal financial records (or other personally identifiable information), trade secrets, and classified government information. To the extent there is any uncertainty as to whether any data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the County or proper legal authority.
2. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action of unauthorized disclosure that could result in substantial harm to the County or an individual identified with the data or information in Contractor’s custody or access.

To the extent that Contractor may have access to County protected health information (as the same is defined in the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the implementing regulations known and referred to as Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule, referred to herein collectively as “HIPAA”), Contractor agrees to protect such information in compliance with HIPAA and represents that it has the processes, systems and training to assure compliance with the same.

3. **Data and Network Security.** Contractor agrees at all times to maintain commercially reasonable network security that, at a minimum, includes: network firewall provisioning, intrusion detection/prevention and periodic third party penetration testing. Likewise Contractor agrees to maintain network security that at a minimum conforms to current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://checklists.nist.gov/repository>. Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority.
4. **Security Breach.** In the unlikely event of a security breach or issue, Contractor will notify the appropriate County contact no later than one hour after they are aware of the breach. Contractor will be responsible for all remedial action necessary to correct the breach; provided however, that Contractor will not undertake litigation on behalf of the County without prior written consent.

5. **Data Storage and Backup.** Contractor agrees that any and all County data will be stored, processed, and maintained solely on designated servers and that no County data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by a County officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the County Information Security Officer for any general or specific case.

Contractor agrees to store all County backup data stored as part of its backup and recovery processes in encrypted form, using no less than AES 256.

6. **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor further agrees that no County data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other Contractor or interested parties except on a case-by-case basis as specifically agreed to in writing by a County officer with designated data, security, or signature authority.
7. **PCI Compliance.** Contractor agrees to comply with PCI DSS (Payment Card Industry Data Security Standard). As evidence of compliance, Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).
8. **End of Agreement Data Handling.** Contractor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all County data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of County whichever shall come first.
9. **Mandatory Disclosure of Protected Information.** If Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Protected Information, Contractor will provide County with prompt written notice so that County may seek an appropriate protective order or other remedy. If a remedy acceptable to County is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and the Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
10. **Remedies for Disclosure of Confidential Information.** Contractor and County acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage County in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give County the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants County the right, but not the obligation, to enforce these provisions in

Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.

11. **Non-Disclosure.** Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants and auditors on a need-to-know basis only, provided that all such subcontractors, agents, consultants and auditors have written confidentiality obligations to both Contractor and County.
12. **Criminal Background Check.** County shall perform criminal background checks on all talent assigned to this project before a person is allowed to work on any of the County's Criminal Justice Information System (CJIS) protected data, software systems or facilities.
13. **Survival.** The confidentiality obligations shall survive termination of any agreement with Contractor for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of County.

# Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 301 NE 3<sup>rd</sup> St., Ste 200, Prineville, OR 97754

• Fax: 541-447-6705



## MEMO

TO: Crook County Court

FROM: John Eisler, Asst. County Counsel

DATE: January 26, 2022

RE: Purchase of Property for Justice Center  
Our File No.: Court RE 291

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Enclosed is a Purchase and Sale Agreement (PSA) for the site of the future Justice Center at 260 SW 2<sup>nd</sup> Street. The County recently exercised its option to purchase. The purchase price is the previously agreed \$1.5 million, less the almost \$10,000 the County paid in property taxes. The PSA envisions a quick close (enough time to cure any title exception concerns), as the County is familiar with the property and the current structure will be demolished. Escrow will be at AmeriTitle.

The purchase price will be paid for or reimbursed through the bond proceeds. Please let me know if you have any questions.

**Please place this memo and the attached document(s) on the Wednesday, February 2nd, 2022 County Court Agenda as a DISCUSSION ITEM.**

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_ 2022, by and between Gregory P. Lynch and Leslie Lynch, husband and wife (collectively, “Seller”), and Crook County, a political subdivision of the State of Oregon (“Purchaser”).

### RECITALS

- A. Seller owns certain real and personal property located at 260 SW 2<sup>nd</sup> Street in Crook County, Oregon, as more particularly described in section 1 below (collectively, the “Property”).
- B. Purchaser and Seller are parties to a lease agreement, as amended (“Lease Agreement”), concerning the Property, the memorandum of which is recorded in the official deed records of Crook County as document number 2020-305149.
- C. Pursuant to the Lease Agreement, Purchaser has exercised its option to purchase the Property.
- D. Purchaser desires to acquire all of the Property from Seller, and Seller is willing to sell and convey all of the Property to Purchaser, on and subject to the terms of this agreement (the “Agreement”).

### AGREEMENT

#### 1. PURCHASE AND SALE OF THE PROPERTY.

Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. The “Property” consists of the land described in attached Exhibit A, incorporated herein, along with all easements, rights, and interests appurtenant thereto and all improvements on the Land (the “Improvements”).

##### *A. Purchase Price.*

The total purchase price (“Purchase Price”) for the Property is \$1,490,593.63. The Purchase Price represents the \$1,500,000 Option Price less taxes paid by Seller as Tenant of \$9,406.37. The purchase price must be paid by Purchaser in all cash on the Closing Date (as defined below), subject to the adjustments and credits as provided in this Agreement.

##### *B. Earnest-Money Deposit.*

There is no earnest money as part of this purchase. Should this transaction fail to be consummated, Purchaser and Seller retain their rights from this Agreement under contract law and will revert to their roles as Tenant and Landlord, respectively.

#### 2. TITLE TO THE PROPERTY.

##### *A. Title Report.*

Within three days after the Effective Date, Seller must order a preliminary title report from the Escrow Agent with respect to the Land (the “Title Report”). The Title Report must be accompanied by legible copies of all special exceptions listed therein. Purchaser will have until five days after its receipt of the Title Report to notify Seller in writing of Purchaser’s disapproval of any exceptions shown in the Title Report. Any special assessments shown on the Title Report objected to by

Purchaser must be included in Purchaser's notice. In the event of any disapproval, Seller will notify Purchaser in writing within three days after Purchaser's notification as to whether Seller agrees to remove any of the disapproved exceptions, and upon delivering that notice, Seller may have until the Closing Date to cause the disapproved exceptions that Seller has agreed to remove to be removed of record and from the Title Report.

***B. Rescission of Agreement—Title Defects.***

If Seller elects not to eliminate any title exception disapproved by Purchaser, Purchaser may elect to cancel this Agreement by written notice to Seller given on or before five days after Seller's notification of its election. In that event, this Agreement will terminate. The foregoing notwithstanding, Seller must cause all trust-deed liens against the Property to be released of record by the Closing Date.

**3. SELLER'S REPRESENTATIONS.**

***A. Content of Representations.***

Seller represents, warrants, and covenants to Purchaser as follows:

- (i) *No Litigation.* To Seller's knowledge, there is no pending or threatened litigation or administrative action with respect to the Property.
- (ii) *No Additional Assessments.* To Seller's knowledge, there are no special or general assessments, which are in addition to those which will be disclosed in the Title Report, that have been levied against or are proposed for the Property.
- (iii) *No Seller Contamination.* To Seller's knowledge, Seller has not caused any hazardous substance, waste, or material to be used, generated, stored, or disposed of on or transported to or from the Land or Improvements in violation of any applicable law prior to or during the period in which the Seller has owned the Property. For the purposes of this section, "hazardous substance, waste, or material" means all petroleum-based products, radon, asbestos, PCBs, and all substances, wastes, and materials that are so defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, and the Hazardous Materials Transportation Act.
- (iv) *No Breach of Agreements.* This Agreement does not violate any other agreement to which Seller is a party.
- (v) *Nonforeign Status.* Seller is not a "foreign person" as defined in IRC section 1445 (1954).

***B. Seller's Knowledge.***

In each event in which any representation of Seller is limited "to Seller's knowledge" or similar phrase, that knowledge includes only the actual, personal knowledge (and not the implied, imputed, or constructive knowledge) of Seller, without any investigation or inquiry whatsoever, except for a general review of Seller's files.

***C. Effect of Purchaser's Knowledge.***

Purchaser agrees that in the absence of an intent on the part of Seller to fraudulently conceal information about the Property or fraudulently mislead Purchaser, Purchaser does not have the right to rely upon any warranty or representation of Seller, and Seller will not be liable for any breach of a warranty or misrepresentation, if and to the extent Purchaser knows or has reason to know prior to

the Closing Date of any information that reveals the warranty or representation is incorrect, and Purchaser nevertheless elects to close this purchase.

***D. Survival of Warranties.***

All of Seller's warranties in this Agreement will be deemed given only as of the date of this Agreement. Seller's liability for any misrepresentation or the breach of any warranty under this Agreement will survive the closing of this transaction; provided, however, that any claim for any misrepresentation or breach of any covenant will be deemed to have been waived unless Purchaser files and serves a complaint for damages or other remedies based on such alleged misrepresentation or breach within three months after the Closing Date or, if this transaction fails to close, within two months after the date this Agreement is canceled or terminates.

**4. PURCHASER'S REPRESENTATIONS.**

***A. Purchaser's Existence and Authority.***

Purchaser is a validly existing and duly organized county under the laws of the State of Oregon and has the full right and authority to conduct its business therein.

***B. No Breach of Agreements.***

This Agreement does not breach or violate any term or provision of any other agreement or contract to which Purchaser is a party.

**5. CLOSING.**

***A. Conditions Precedent.***

Each party's respective obligation to close this transaction is subject to the satisfaction of (1) the other party's fulfillment of each of its obligations under this Agreement in all material respects and (2) the continuing accuracy of all of the other party's warranties and representations in this Agreement in all material respects.

***B. Closing Date.***

This transaction will be closed within ten days following the end of the Review Period (the date this transaction does so close, as evidenced by the recordation of Seller's deed to Purchaser, being herein referred to as the "Closing Date"). Each party may extend the Closing Date one time by up to two days if that extension is required by illness, transportation delays, the unavailability of the Escrow Agent, or other causes beyond the party's reasonable control.

***C. Manner and Place of Closing.***

This transaction will be closed by the escrow agent of AmeriTitle in Prineville, Oregon ("Escrow Agent"), or any other place as the parties may mutually agree to in writing. Closing must take place in the manner and in accordance with the provisions set forth in this Agreement.

***D. Prorations, Adjustments.***

- (i) Purchaser, as Lessor, is currently responsible for all taxes and utilities. Thus, no prorations are necessary.
- (ii) Seller and Purchaser will each pay one-half of all fees in connection with this sale, and Purchaser will pay the recording fees for Seller's deed.
- (iii) Seller will pay the premium for a standard owner's title insurance policy in favor of Purchaser in the amount of the Purchase Price. Any additional title insurance coverages or endorsements requested by Purchaser, or its lender will be paid by Purchaser.



- (iv) Seller and Purchaser will each pay one-half of the escrow and closing fees charged by the Escrow Agent.
- (v) Each party will pay its own attorney fees.

***E. Events of Closing.***

Provided the Escrow Agent has received the sums and is in a position to cause the title insurance policy to be issued as described below, this transaction will be closed on the Closing Date as follows:

- (i) Seller will convey the real property to Purchaser by statutory special warranty deed, subject to the matters accepted or deemed accepted by Purchaser pursuant to this Agreement, in the form attached hereto as Exhibit B.
- (ii) Seller will provide Purchaser with the Certificate of Nonforeign Status as provided in IRC section 1445.
- (iii) Any liens to be paid by Seller at closing will be paid and satisfied of record at Seller's expense.
- (iv) Purchaser will pay the entire purchase price to Seller in cash, as adjusted for the charges and credits set forth in this Agreement.
- (v) The Escrow Agent will be committed to issuing the policy described in section 5 upon recordation of the closing documents.
- (vi) Upon compliance with the parties' closing instructions, the Escrow Agent will deliver the deed to Purchaser or record the deed to Purchaser at Purchaser's expense.

***F. Title Insurance.***

As soon as possible after the Closing Date, Escrow Agent will furnish Purchaser a standard American Land Title Association (ALTA) form of owner's policy of title insurance in the amount of the purchase price for the Property, subject only to the Escrow Agent's standard preprinted exceptions and exclusions for that form and except for the matters accepted or deemed accepted by Purchaser pursuant to this Agreement. The costs of additional or extended title insurance beyond standard coverage will be paid by Purchaser, and the availability of that coverage will not be a condition of closing.

***G. Possession.***

Seller must deliver possession of the Property to Purchaser on the Closing Date.

***H. As-Is Sale.***

Purchaser acknowledges that Purchaser has assessed, or has had the opportunity to assess, all material aspects of the Property and, except as specifically stated herein, Purchaser is not relying on, nor has Purchaser been influenced by, any statement or representation of Seller or any agent or representative of Seller regarding any of these items. Except for any actionable breaches of Seller's representations and warranties contained herein, Purchaser's acceptance of the Property and the satisfaction or waiver of all of Purchaser's conditions to closing will be evidenced solely by the closing of this transaction and without any other act or confirmation by Purchaser. Purchaser will not have the option to close this transaction without accepting the Property in its then-current condition, and Purchaser acknowledges that except for any Seller's breach of an express warranty stated in this Agreement, Purchaser is acquiring the Property "AS IS, WHERE IS" in its current condition existing as of the Closing Date, without any representation or warranty of any kind or nature by Seller.

## **6. DEFAULTS AND FAILURE TO CLOSE.**

### ***A. Seller's Remedies.***

If this transaction fails to close on account of a default by Purchaser under this Agreement, Seller retains all rights under contract law, if any.

### ***B. Purchaser's Remedies.***

If this transaction fails to close on account of a default by Seller under this Agreement, Purchaser will be entitled to any remedies for breach of contract as may be available under applicable law, including, without limitation, the remedy of specific performance and the right to recover its actual damages.

### ***C. Defaults.***

Except for either parties' wrongful failure to close or satisfy a condition to closing by the required Closing Date, neither party will be deemed in default under this Agreement unless the party is given written notice of its failure to comply with this Agreement and such failure continues for a period of seven days following the date such notice is given. This section will not be construed as extending the time by which any notice or contingency waiver must be given.

### ***D. Costs and Attorney Fees.***

In the event that a suit, an action, an arbitration, or a mediation is instituted to interpret or enforce the terms of this Agreement or with respect to any dispute under this Agreement, each party will pay its own attorney fees and costs.

### ***E. Waiver of Jury Trial.***

As part of the consideration for this Agreement, each of the parties hereto waives the right to trial by jury in connection with any dispute or action under this Agreement.

## **7. LEGAL RELATIONSHIPS.**

### ***A. Relationship of Parties.***

This Agreement creates only the relationship of seller and buyer and no joint venture, partnership, or other joint undertaking is intended hereby, and neither party hereto will have any rights to make any representations or incur any obligations on behalf of the other. Neither party has authorized any agent to make any representations, admit any liability, or undertake any obligation on its behalf. Neither party is executing this Agreement on behalf of an undisclosed principal.

### ***B. No Third-Party Beneficiaries.***

No third party is intended to be benefitted or afforded any legal rights under or by virtue of this Agreement.

### ***C. Real Estate Brokers.***

Each party warrants that no real estate brokers were involved in this Agreement and no real estate brokers are entitled to a commission herein.

### ***D. Indemnified Parties.***

Any indemnification contained in this Agreement for the benefit of a party will extend to that party's members, directors, shareholders, officers, employees, and agents.

### ***E. Assignments and Successors.***

Purchaser may not assign or otherwise transfer this Agreement or any interest herein, voluntarily, involuntarily, or by operation of law.

## 8. GENERAL PROVISIONS.

### *A. Notices.*

Notices under this Agreement must be in writing and sent by email to the addresses in the Lease Agreement, effective when received.

### *B. Time of Essence.*

Except as otherwise specifically provided in this Agreement, time is of the essence of each and every provision of this Agreement.

### *C. Invalidity of Provisions.*

If any provision of this Agreement is declared invalid or is unenforceable for any reason, that provision will be deleted from the document and will not invalidate any other provision contained in the document.

### *D. Waiver.*

The failure of either party at any time to require performance of any provision of this Agreement will not limit the party's right to enforce that provision. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

### *E. Subsequent Modifications.*

This Agreement may only be altered or modified by written agreement.

### *F. Saturday, Sunday and Legal Holidays.*

If the time for performance of any of the terms, conditions, and provisions hereof fall on a Saturday, Sunday, or legal holiday, then the time of performance will be extended to the next business day thereafter.

### *G. Venue and Applicable Law.*

In any action brought to interpret or enforce any of the provisions of this Agreement, the venue of same will be laid in Crook County, Oregon. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. All sums referred to in this Agreement will be calculated by and payable in the lawful currency of the United States.

### *H. Entire Agreement.*

This Agreement constitutes the entire agreement of the parties with respect to the Property and supersedes and replaces all written and oral agreements previously made or existing between the parties.

### *I. No Recording.*

Neither this Agreement nor any memorandum or short form thereof may be recorded.

### *J. Counterparts.*

This Agreement may be executed simultaneously or in counterparts, including electronically submitted counterparts, each of which will be deemed an original, but all of which together will constitute one and the same contract.

### *K. Statutory Warning (ORS 93.040(2)).*

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930,

IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

**For Seller**  
GREGORY P. LYNCH AND LESLIE LYNCH

**For Purchaser**  
CROOK COUNTY COURT

\_\_\_\_\_  
Gregory P. Lynch

\_\_\_\_\_  
Seth Crawford, County Judge

\_\_\_\_\_  
Leslie Lynch

\_\_\_\_\_  
Jerry Brummer, County Commissioner

Date: \_\_\_\_\_

\_\_\_\_\_  
Brian Barney, County Commissioner

Date: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF LAND

Parcel 1:

Lots 1, 2, 3, 4, 5 and the West Thirteen (13) feet of Lot 6, Block 4, Prineville, Oregon, according to the MONROE HODGES PLAT thereof on file and of record in the office of the County Clerk for Crook County, Oregon.

Parcel 2:

The East 67 feet of Lot Six (6) in Block Four (4) in Prineville, Oregon, according to the MONROE HODGES PLAT thereof on file and of record in the office of the County Clerk for Crook County, Oregon. Also, beginning at the Southeast corner of said Lot 6 in Block 4, thence West 67 feet, thence South 10 feet, thence East 67 feet, thence North 10 feet to the point of beginning.

REF 8542, 8545 Code 2	15166AA TL 900, 1200
REF 8547 Code 2	15166AA TL 1400

EXHIBIT B  
FORM OF STATUTORY WARRANTY DEED

Until a change is requested, all tax statements shall be sent to:

John Eisler  
Crook County Counsel  
300 NE Third Street  
Prineville, OR 97764

After Recording Return To:

John Eisler  
Crook County Counsel  
300 NE Third Street  
Prineville, OR 97764

## Statutory Special Warranty Deed

Gregory P. Lynch and Leslie Lynch, husband and wife, Grantor, conveys and specially warrants to Crook County, a political subdivision of the State of Oregon, Grantee, the following described real property located in Crook County, Oregon free of encumbrances created or suffered by the grantor except as specifically set forth herein:

**Parcel 1:**

Lots 1, 2, 3, 4, 5 and the West Thirteen (13) feet of Lot 6, Block 4, Prineville, Oregon, according to the MONROE HODGES PLAT thereof on file and of record in the office of the County Clerk for Crook County, Oregon.

**Parcel 2:**

The East 67 feet of Lot Six (6) in Block Four (4) in Prineville, Oregon, according to the MONROE HODGES PLAT thereof on file and of record in the office of the County Clerk for Crook County, Oregon. Also, beginning at the Southeast corner of said Lot 6 in Block 4, thence West 67 feet, thence South 10 feet, thence East 67 feet, thence North 10 feet to the point of beginning.

REF 8542, 8545 Code 2	15166AA TL 900, 1200
REF 8547 Code 2	15166AA TL 1400

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300 (Definitions for ORS 195.300 to 195.336), 195.301 (Legislative findings) AND 195.305 (Compensation for restriction of use of real property due to land use regulation) TO 195.336 (Compensation and Conservation Fund) AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 (Definitions for ORS 92.010 to 92.192) OR 215.010 (Definitions), TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED

IN ORS 30.930 (Definitions for ORS 30.930 to 30.947), AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300 (Definitions for ORS 195.300 to 195.336), 195.301 (Legislative findings) AND 195.305 (Compensation for restriction of use of real property due to land use regulation) TO 195.336 (Compensation and Conservation Fund) AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The true consideration for this conveyance is \$\_\_\_\_\_.

Dated: \_\_\_\_\_, 2022.

**For Grantor**  
GREGORY P. LYNCH AND LESLIE LYNCH

**For Grantee**  
CROOK COUNTY COURT

\_\_\_\_\_  
Gregory P. Lynch

\_\_\_\_\_  
Seth Crawford, County Judge

\_\_\_\_\_  
Leslie Lynch

\_\_\_\_\_  
Jerry Brummer, County Commissioner

\_\_\_\_\_  
Brian Barney, County Commissioner

STATE OF OREGON        )  
  ) ss:  
COUNTY OF CROOK     )

This instrument was acknowledged before me on \_\_\_\_\_, 2022 by Seth Crawford in his capacity as Crook County Judge, and Jerry Brummer and Brian Barney in their capacities as Crook County Commissioners of Crook County, Oregon.

\_\_\_\_\_  
Notary Public for Oregon

STATE OF OREGON        )  
  ) ss:  
COUNTY OF CROOK     )

This instrument was acknowledged before me on \_\_\_\_\_, 2022 by Gregory P. Lynch and Leslie Lynch, husband and wife.

\_\_\_\_\_  
Notary Public for Oregon