



Location: City Hall – Council Chambers  
Date: February 22, 2022  
Time: 6:00 PM

## City Council Meeting Agenda

Mayor Jason Beebe, Council Members Steve Uffelman, Janet Hutchison, Patricia Jungmann, Gail Merritt, Jeff Papke, Raymond Law and City Manager Steve Forrester  
**ATTEND TELEPHONICALLY BY CALLING 346-248-7799 Meeting ID: 947 5839 2608 Passcode: 123456**

### Call to Order

### Flag Salute

### Additions to Agenda

### Consent Agenda

1. Regular Meeting Brief 2-8-2022

### Visitors, Appearances and Requests

### Council Presentations

2. Crook County Justice Center Update - Brian Barney

### Council Business

3. Virtual Council Meetings Discussion - Steve Forrester

### Staff Reports and Requests

4. City Manager's Report - Steve Forrester

### Committee Reports

### Ordinances

5. Ordinance No. 1274 - Amending Section 7 of Ordinance No. 1142 **(FIRST PRESENTATION)** - Jered Reid

### Resolutions

6. Resolution No. 1512 Approving a Personal Services Agreement with Anderson Perry for an Updated Water System Master Plan and Wastewater Facilities Plan - Eric Klann
7. Resolution No. 1513 - Authorizing City to Enter Into an Amendment to Solar Lease Agreement with Westlake Solar Panels, LLC - Eric Klann
8. Resolution No. 1514 - Authorizing the Lease of Real Property **(PUBLIC HEARING)** - Eric Klann

### Adjourn

*Agenda items maybe added or removed as necessary after publication deadline*



**CITY OF PRINEVILLE**  
**Regular Meeting Brief**  
387 NE Third Street – Prineville, OR 97754  
541.447.5627 ph 541-447-5628 fax

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Full Meeting Recordings Available at:  
<http://cityofprineville.com/meetings/>

City Council Meeting Brief  
February 8, 2022

**Council Members Present:**

Patricia Jungmann  
Steve Uffelman  
Janet Hutchison

Jason Beebe  
Ray Law

**Council Members Absent**

Jeff Papke  
Gail Merritt

**Additions to the Agenda**

None.

**Consent Agenda**

1. Special Meeting Brief 1-21-2022
2. Regular Meeting Brief 1-25-2022

**Councilor Jungmann made a motion to approve consent agenda as presented. Motion seconded. No discussion on motion. Motion carried.**

**Visitors, Appearances and Requests:**

No written comments were received for the record.

**Council Presentations**

None.

**Council Business**

None.

**Staff Reports and Requests:****3. City Manager's Report– Steve Forrester**

Mr. Forrester covered the department highlights in the staff report and added that Matt Wiederholt, Railroad Manager will give an update following his report.

Mr. Wiederholt gave a bridge update and is happy to say we are done. Contractors gave an exit report and they pulled some pics from it to share. They used laser levels while doing jog and leveled it within 1/16". They did an absolutely amazing job. The bolts on bridge are now 18" deep. Pillars were the biggest concern and took the longest to assess the damage. There was exposed rebar in one of the concrete pillars. The engineer was on site the entire time through the job. Staff time was submitted to insurance company and when all is said and done, will be approximately \$115,000. The project was extremely positive, fast and smooth.

Councilor Hutchison asked about inspections. Mr. Wiederholt explained that the engineer was on site the entire time supervising and was able to immediately remove restrictions and get us back to full swing.

Councilor Uffelman talked about the golf course and that all the carts have been delivered. The parking lot was completely full and that we need to add additional parking areas.

There were no questions or comments.

**4. Barnes Butte Recreation Area (BBRA) Development Update – Eric Klann / Casey Kaiser**

Eric Klann, City Engineer explained that Casey Kaiser, Senior Planner has done a wonderful job seeking grants.

Mr. Kaiser talked about the BBRA (Echo of the Butte) plan adopted about a year ago.

Mr. Kaiser went through a power point presentation explaining that the community honed in on race track area as the hub. Mr. Kaiser stated that staff just wanted to give an update on what has happened since the plan was adopted and the phases of proposed development and public safety access.

ADA parking area was high on priority list. A pedestrian bridge was acquired through a property transaction a couple of years ago and was planned to be very important for leveraging future grants. The pedestrian bridge is now coming along and they are doing a good job. There is a 5k path that will go all the way up when completed and will be paved. Federal Lands Access Program (FLAP) has some funding and Caroline Ervin, Capital Program Manager has put together some applications. Mr. Kaiser just wanted to talk about how everything ties together and how everything leverages together.

Mr. Klann said this project is special to him and it would include several organizations coming together to make it happen. The Sunriver Nature Center & Observatory would like to donate telescopes to see solar storms on Mars, etc. The School District has Storyline education and is currently studying outer space and of the other opportunities to work with the community on.

Mr. Kaiser continued with the Combs Flat extension for improved traffic flow, the visitor's center, and the chamber currently leases from the city. There are other grants that could potentially come into play for a visitor's center. There are also potential opportunities for possibly another school in between.

Mr. Kaiser went through the refined design plans. There could be an event hall and events could spill out into open space and went through proposed structures designs.

Mr. Kaiser summarized how all elements fit together and about grants. He added that hopefully we can just chip away at all of the features that the council and community wanted.

Mr. Klann explained that of course any of these future opportunities would come before council.

Discussions continued regarding lining the pond, when the paved trail will start, if there is enough money to pave, when additional funding could come through, at the very minimum the 5k path would be paved now, timing of the FLAP grant and when it could be funded, Combs Flat extension, possibility of a pathway underpass, access coming across Peters Road, beaver dams, and elevated waterways.

Council agreed that they like the concept. Mayor Beebe explained he is happy to see this come to fruition and how staff and Council have worked on this for years.

Mr. Kaiser concluded with how it took over two years of gathering community input and coming together to make this happen up to this point.

No further questions.

### **Committee Reports**

None.

### **Ordinances:**

None.

### **Resolutions:**

None.

**Adjourn**

**Councilor Jungmann made a motion to adjourn the meeting. Motion seconded. No discussion on motion. All in favor, motion carried.**

Meeting adjourned at 6:39 P.M.

**Motions and Outcomes:**

Motion:	Outcome	Beebe	Hutchison	Jungmann	Law	Merritt	Papke	Uffelman
Consent Agenda	PASSED	Y	Y	Y	Y	-	-	Y
Adjourn Meeting	PASSED	Y	Y	Y	Y	-	-	Y

Public Records Disclosure

Under the Oregon public records law, all meeting information, agenda packets, ordinances, resolutions, audio and meeting briefs are available at the following URL:

<https://www.cityofprineville.com/meetings> .



NORTHEAST CORNER

pinnacle  
architecture, inc.



SOUTHEAST CORNER

pinnacle  
architecture, inc.



NORTHWEST CORNER

pinnacle  
architecture, inc.



SOUTHWEST CORNER

pinnacle  
architecture, inc.



pinnacle  
architecture, inc.



NORTHEAST CORNER



SOUTHEAST CORNER



NORTHWEST CORNER



SOUTHWEST CORNER





LIGHTING CONCEPTUAL RENDERING

- Accent | Signage, Flag
- Brightest | Main Entry, Maintenance
- Medium | Secondary Entries
- Calm | Uniform Lighting at Parking
- Dark | Vegetation



LUMA  
2022-01-14

LIGHTING HIERARCHY

- Accent | Signage, Flag
- Brightest | Main Entry, Maintenance
- Medium | Secondary Entries
- Calm | Uniform Lighting at Parking
- Dark | Vegetation



LUMA  
2022-01-14





# CROOK COUNTY JUSTICE CENTER





 GOVERNMENT - COUNTY

 GOVERNMENT - CITY

 LAW ENFORCEMENT

 POINTS OF INTEREST

## Project Location

The project is located in the Downtown District of Prineville, Oregon. It is situated between NW 2nd Street, NW 1st Street, and Claypool Street, and Beaver Street. This location is within walking distance from the main arterials of Downtown Prineville, Main Street, and NW 3rd Street.

To the northeast of the site is the existing Crook County Courthouse, which will remain. Surrounding the entire site are amazing views of the nature that encompasses Prineville.





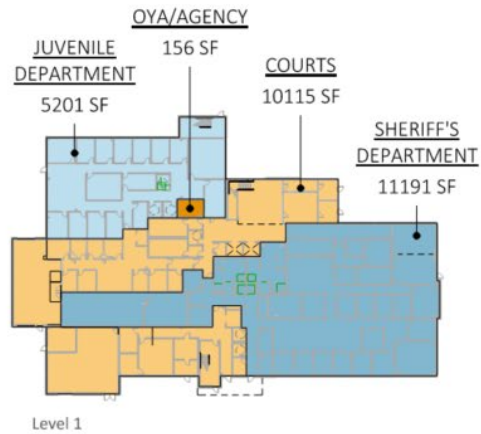
### Overall Building Program

The new Crook County Justice Center is an all-encompassing programmatic building for Crook County. It will include:

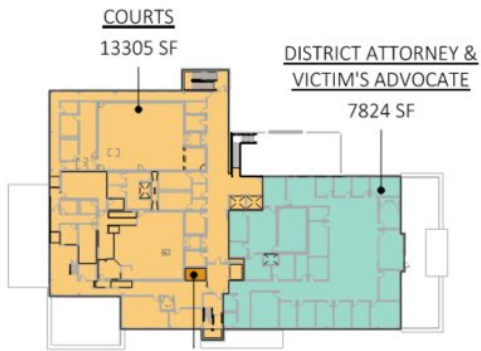
- Three new courtrooms (two medium, one large)
- Supporting courtroom administration space
- Offices for the District Attorney, Victim's Advocate, and the Juvenile Department
- Space for the Sheriff's Department

Through multiple meetings with the County, the project stakeholders, and representatives from each group, the program's organization on-site came to fruition. The diagram on the left showcases where each of the programs will be situated within the building design.



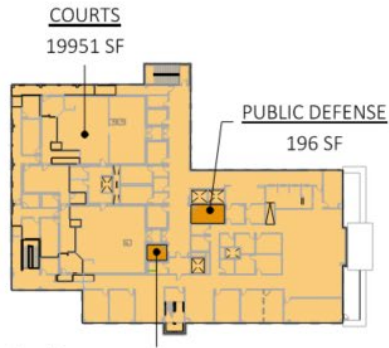


Level 1



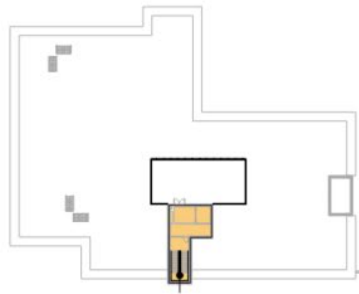
Level 2

**PUBLIC DEFENSE**  
80 SF



Level 3

**PUBLIC DEFENSE**  
96 SF



Roof

**COURTS**  
735 SF

## Program Take-Offs

This exhibit quantifies the square footage for each program. Below is an outline of each program's square footage and the overall building square footage.

### COURTS

Level 01	10,270 SF (OYA/AGENCY: 156 SF)
Level 02	13,385 SF (PUBLIC DEFENSE: 80 SF)
Level 03	20,244 SF (PUBLIC DEFENSE: 292 SF)
<u>Roof</u>	<u>735 SF</u>
<b>Total Courts</b>	<b>44,634 SF (65%)</b>

### District Attorney & Victim's Advocate

Level 02	7,824 SF (11%)
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### Juvenile Department

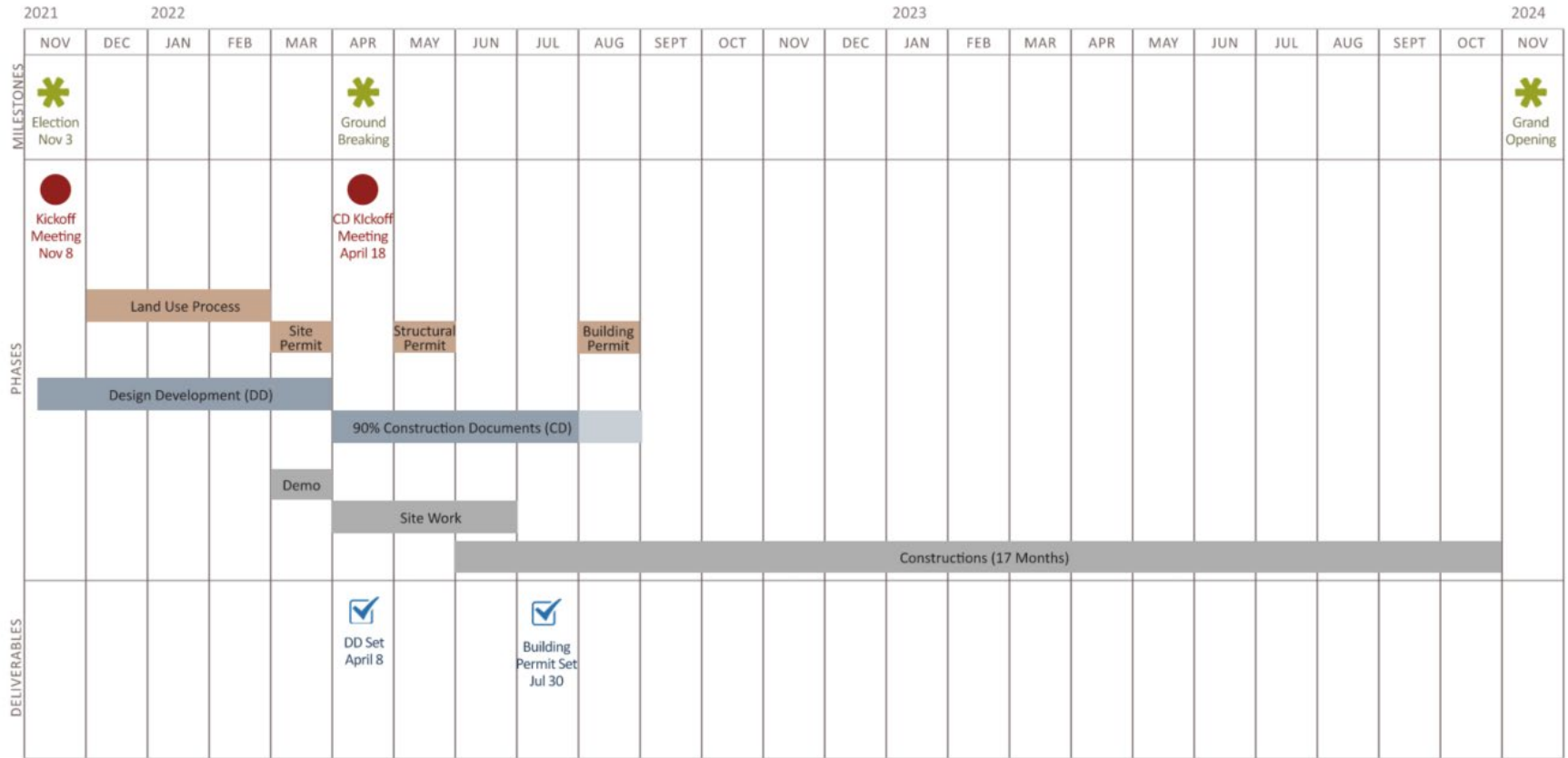
Level 01	5,201 SF (8%)
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### Sheriff's Department

Level 01	11,191 SF (16%)
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**GRAND TOTAL 68,850 SF**

# Phase II Schedule





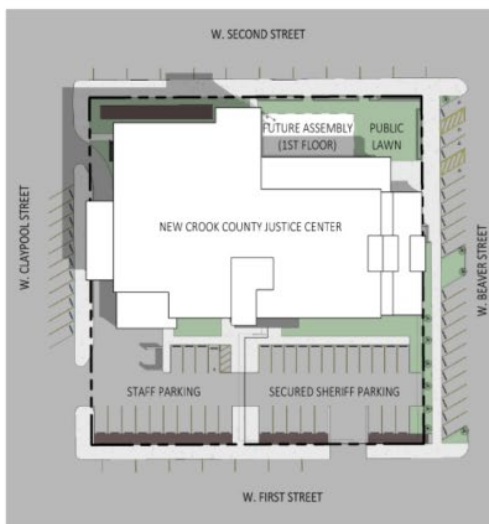
## Site Design

The building is situated tightly to the North along W. Second Street and the East and West between West Claypool Street and West Beaver Street. The main public lawn and entrance are at the North-East corner of the site, physically linking to the historic Crook County Courthouse and providing a reference to a historic "courthouse on the public green."

The main public parking will be situated on West Beaver Street and will be one-way traffic and diagonal parking. Staff parking will occur predominantly to the south, adjacent to the main staff entrance. There will be gated, secured parking for the Sheriff's Department on the South-Eastern portion of the site, with a secure separate entrance.

The South-Western portion of the building is the in-custody vehicle sally-port, a highly secure entrance for incarcerated persons. This area also contains the main mechanical zone and trash enclosure, which are intended to be situated outside the central public zone.

The site is surrounded by landscaping that will also function to protect the building. For instance, at the main public lawn, there will be low-height planters. Along the northern and southern property lines will be swales with boulders.



## Future Plans

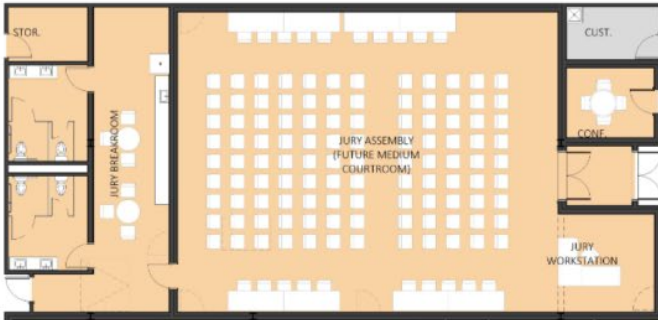
The building and site design also accommodate the possible future needs of adding another courtroom to the facility. The accommodations are achieved by converting the current Jury Assembly space to a fourth courtroom and locating the new Jury Assembly on the ground floor with an addition near the main entry.

The public lawn would exist on the northeast corner between the main entry and the future Jury Assembly. The main entrance would still be the focal point to the entrance, and the future assembly structure would help step the scale of the building down to the street.

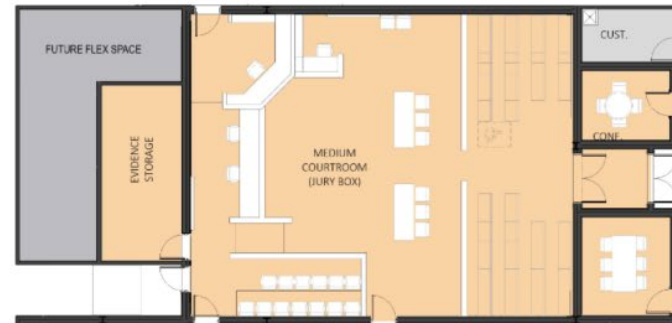
## Flexible Spaces

The project plans for the future. The Jury assembly room has been design to be easily converted to a 4th courtroom by planning for it to be the same size as the medium courtroom and considering future access points and flow.

JURY ASSEMBLY



FUTURE COURTROOM





## Ground Floor Plan

On the ground floor, the main program pieces are the Sheriff's Department and the Juvenile Offices. The main public entry is also located on the ground floor (in the northeast corner) and the judicial holding and secure elevator. The circulation path for the public, staff and in-custody persons is all separated, with no overlap.



### Program Legend

- Courts
- State Agency (Part of Courts)
- Victim's Advocate
- District Attorney
- Juvenile
- Sheriff's Department
- Building Services/Public



SCALE: 1" = 20'-0"



## Second Floor Plan

On the second floor, the key program spaces are the Jury Assembly and the first Medium Courtroom, and the District Attorney and Victim's Advocate offices. The main public lobby is a double-height space, making it very easy for the public to orient themselves to see the courtrooms and the DA's office entrances. Additionally, a public conveyance stair is provided for connection of the first and second-floor programs lessening the demand on the public elevators.



### Program Legend

- Courts
- State Agency (Part of Courts)
- Victim's Advocate
- District Attorney
- Juvenile
- Sheriff's Department
- Building Services/Public



SCALE: 1" = 20'-0"



### Third Floor Plan

The third floor is nearly entirely for the Superior Courts program. There are two more courtrooms, a large courtroom, the second medium courtroom, and the judicial chambers and courts administration offices.



#### Program Legend

- Courts
- State Agency (Part of Courts)
- Victim's Advocate
- District Attorney
- Juvenile
- Sheriff's Department
- Building Services/Public



SCALE: 1" = 20'-0"





East Elevation

## Exterior Design

The exterior design finds a balance between traditional and contemporary. It complements the historic Crook County Courthouse without replicating the design. Historical references include the cornice capping the roof, and the east-facing waterfall stepped porches, which are in reference to the porte-cochere entries into the North and East faces of the Historic Crook County courthouse. The main facade materials are stone and concrete, which will be durable and give the building a judicial feeling.



North Elevation



West Elevation

## Exterior Design

The colonnade element carries throughout the facade with the vertical pilasters that frame the vertical windows. This assists in helping to break down the vast scale of this building. On the ground floor, all of the windows at the offices have a taller sill height to create privacy between the building occupants and the public.



South Elevation



New Crook County Justice Center



Vertical Thin-Stone Limestone



Rough-Cut Basalt Stone



Linear Wood Ceiling



Exposed Concrete

## Exterior Renderings & Materials

In the exterior rendering, you can begin to see all of the design elements come to life. The public lawn with the surrounding landscaping helps to frame the public outdoor space. The main colonnade that invites the public in has full-height windows to help visually connect the interior and the exterior. At night, the main public staircase in the building will be illuminated and visible from the exterior.

The eastern facade of the building features a “waterfall” stepping effect, which helps to bring the scale of the building further down and add visual interest to the facade. The two main facade elements provide a wealth of contrast that lets each other shine: the flat panels of the facade are a thin-veneer limestone panel which contrasts greatly with the rough-cut basalt stone. The rough-cut basalt stone is also serving as a visual connection to the existing historic Crook County Courthouse.

The linear wood soffit at the main entrance canopy carries the exterior feel into the interior. Solidifying the space is intended for the public, who are welcomed into the building.

These building materials were all selected not only for their aesthetics but also for their durability. This building is designed to last well into the future to serve Crook County and Prineville.

## Exterior Renderings

In this first rendering to the left, you can begin to see the human scale of the building and its materiality. While the double-height canopy is large in scale, the human-scale building materials help bring the scale down to the human level while keeping the monumentality of the moment.

Similar to the existing Courthouse, the public lawn can be used for public gatherings and events. Easily accessed from the street and sidewalk, this public lawn is surrounded by landscaping to add visual appeal and encompass the space.

You can see the facade treatment carrying throughout the rest of the building in the less-public zones in the bottom two renderings. Because this building will be very prominent throughout Downtown Prineville, each facade must be carefully considered and given detail and definition. The design is achieved by carrying the rough-cut basalt pilasters throughout, which frame the vertical windows.



Main Public Entrance of New Crook County Justice Center



South-Eastern Corner of New Crook County Justice Center



Existing Crook County Courthouse

## Interior Design, Lobby

When you enter the building, the main lobby space is intended to feel like an exterior extension. The linear wood soffit carries through, as well as the materiality of the exterior facade. The rough-cut Basalt stone becomes the main accent feature of the lobby, and the columns of the exterior colonnade carry into the interior.

The wood features compliment the basalt stone. There is wood paneling at the elevators and courtrooms, and with the double-height space of the atrium, this will help the public for way-finding to these significant spaces. The flooring continues the wood-look but is achieved with a wood-look porcelain tile for durability and maintenance.

The motif of the historic windows is brought into the railing design in the lobby space, and the palette of the interiors is warm and natural, which will help the space feel similar to the historic Crook County Courthouse.



New Crook County Justice Center - Main Public Lobby



Linear Wood Ceiling



Rough-Cut Basalt Stone  
(Match Exterior)



Dark Wood Panels at Elevators,  
Soft Grain



Wood-Look Porcelain Tile at Stair  
Treads, and Lobby



Porcelain Tile Flooring



## Interior Design, Courtrooms



New Crook County Justice Center - Typical Courtroom

The interior design goal at the new Courtrooms is to merge design elements of the historic Crook County Courthouse with the new design. For instance, the rough-cut basalt stone is the feature material at the Judge's Bench, which connects to the key materiality of the exterior and the historic Courthouse. Like the lobby, wood accents are throughout, and the historical windows' motif is brought into the courtrooms' railing design.

The materials for the spaces are chosen to be functional and durable while evoking a civic presence. The design elements provide natural barriers that protect the proceedings but don't feel institutional. The wood veneer wainscot will protect the wall surfaces, and the carpet tiling will improve the room's acoustics and soften the space.

This space will have state-of-the-art lighting, with a perimeter cove light that light-washes the entire room. At the third-level courtrooms, there is a skylight feature at the Judge's Bench to bring in natural light and further emphasize the corner bench of the Judge.



Wood Coffered Ceiling



Rough-Cut Stone



Dark Wood Casework, Wainscot & Trim, Soft Grain



Carpet Tile



Existing Crook County Courtroom

**City Manager Update to Council**  
**Council Meeting February 22, 2022**

**Public Safety - No Update**

**Dispatch**

Dispatch has held interviews and have made a couple of offers to two strong candidates, one of which is a lateral and is from a similar operation that serves multiple agencies.

**Public Works**

Public Works is gearing up for upcoming spring/summer projects and the moving around of team members recently due to retirements, etc. is working well in the department.

**Rail Road**

Car loads are moving on the railroad and continues to have interest for increased railroad traffic due to the trucking industry challenges.

**Meadow Lakes Golf**

With the warmer weather, the golf course remains very busy. The new golf carts are working out great and keeping the players moving.

**Airport**

Erickson Air Crane has started arriving as of February 15<sup>th</sup> and will be here for the next couple of weeks which will be an increase in activity at the airport, and fuel sales.

**Planning**

The Planning Department has been busy working through the details for moving toward with two multi-family developments, one on the east side of Prineville and the other off of Madras Highway. The Planning Commission approved a 149 lot subdivision located east of Ochoco Pointe subdivision that will be developed in phases.

**Human Resources**

HR has been actively recruiting for public safety positions and a Golf Course Supervisor.

**Information Technology – No Update**

**Finance**

The Finance Department has once again been awarded the “Distinguished Budget Presentation” award this year from the Government Finance Officers Association (GFOA), which is a national organization. Staff continues to track numbers as always and Zach C has been transitioning into his new position at the Wastewater Treatment Plant lab.

### **City Recorder**

Reminder that emails will be coming soon from Oregon Government Ethics Commission (OGEC) to remind Council and Planning Commissioners to file their annual Statement of Economic Interest (SEI's) which have to be filed by April.

### **General – No Update**

### **City Legal – No Update**

### **EDCO**

- Multiple high technology and spec development inquires continue.
- Helping plan Oregon Economic Development Week, May 9-13, 2022, and theme will be Infrastructure projects around the State. Will be a great opportunity to highlight our innovative water/wastewater projects and future PREP biomass plans
- EDCO held interviews recently for our regional Venture Catalyst and regional Marketing Director position that went well.
- EDCO and the Chamber has businesses looking for student interns. High school and college students can talk with their counselors and faculty on how to get connected to industries of interest through the Chamber.

### **Public Relations**

The City of Prineville's Facebook page has hit 14,000 followers. We are still hoping to catch up with the Police Department Facebook page which has 18,000 followers.

### **Mayor/Council**

The Council Governance Committee meeting has been schedule for February 24<sup>th</sup> at 6:00 PM to review Chapter 32 amendments and revisit the Council Contributions policy. There will be an executive session scheduled after the regular Council meeting on March 8<sup>th</sup>.

## ORDINANCE 1274

### AN ORDINANCE AMENDING SECTION 7 OF ORDINANCE NO. 1142

**Whereas**, on January 9, 2007, the City Council awarded a Franchise Agreement (“Agreement”) to Holliday Enterprises, LLC (“Holliday”) for the exclusive franchise of providing the collection, transportation, or disposal of resource recovery from solid waste for the City of Prineville (“City”) pursuant to Ordinance 1142.

**Whereas**, on January 14, 2020, the City Council consented to the transfer of the Agreement from Holliday to Allied Waste Transfer Services of Oregon, LLC, dba Republic Services of Oregon (“Republic”) pursuant to Resolution 1421.

**Whereas**, Section 7 of the Agreement provides that a franchise fee shall be paid annually by May 1st of each year for the calendar year preceding January 1st through December 31st.

**Whereas**, Republic has requested that the franchise fee be paid monthly.

### **NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AS FOLLOWS:**

1. Section 7 of Ordinance 1142 is amended as follows:

**Section 7. Franchise Fee.** Franchisee shall pay to the City a franchise fee or charge equivalent to three percent of Franchisee’s gross operating revenue as the same is defined herein.

(1) “Gross operating revenue,” as used herein shall be defined as the gross revenue from solid waste collection services within the corporate limits of the City.

(2) The franchise fee due hereunder shall be paid monthly by the 15<sup>th</sup> of each month for the preceding month.

(3) The City acknowledges that under the terms of this new franchise, the City should pay for services provided to the City by Franchisee. In lieu of this, however, the City and Franchisee may reach a mutually agreed upon level of services to the City and mutually agreed upon level of charges for these services. This mutually agreed upon amount may then be deducted from the monthly franchise fee due to the City by Franchisee.

2. This Ordinance shall take effect as of January 1, 2022, and Republic shall pay the monthly Franchise Fee for January 2022 and February 2022 on or before March 20, 2022.

3. Republic’s 2021 annual Franchise Fee shall be paid prior to May 1, 2022.

Presented for the first time at a regular meeting of the City Council held on February 22, 2022 and for the second presentation on March 8, 2022.

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Rodney J. Beebe  
Mayor

ATTEST:

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Lisa Morgan, City Recorder

**RESOLUTION NO. 1512**

**A RESOLUTION OF THE CITY OF PRINEVILLE APPROVING A PERSONAL SERVICES AGREEMENT WITH ANDERSON PERRY FOR AN UPDATED TO CITY OF PRINEVILLE'S WATER SYSTEM MASTER PLAN AND WASTEWATER FACILITIES PLAN**

**Whereas**, the City of Prineville ("City") last updated its Water System Master Plan (WSMP) and Wastewater Facilities Plan (WWFP) in 2018; and

**Whereas**, since the last updates to the WSMP and WWFP, the City of Prineville has seen a significant increase in population; and

**Whereas**, the City requires an update to the WSMP and WWFP, water and wastewater system development charge methodology reports, and water system and wastewater system industrial user capacity charge reports; and

**Whereas**, City desires consultant and engineering services for both the WSMP and WWFP update; and

**Whereas**, City's Council serves as the Local Contract Review Board for the City and pursuant to City Resolution 1266 Section 8(C), may award personal services contracts according to specific criteria that are applicable to the services provided; and

**Whereas**, Engineering and consulting services are considered personal services pursuant to City Resolution 1266; and

**Whereas**, the City Council has made the following findings regarding the criteria set out in City Resolution 1266, Section 8(C):

- **Total cost to the City for the delivery of services.** \$305,000.00
  - a. Water system master plan update and associated reports- \$170,000.00
  - b. Wastewater facilities plan update and associated reports- \$135,000.00
- **Expertise of the contractor in the requires area of specialty.** Anderson Perry has been in business for more than 45 years and has completed hundreds of water/wastewater system improvements, transportation, and other projects. Anderson Perry is a full-service firm that provides engineering solutions.
- **References regarding prior work done by the Contractor.** The City of Prineville has contracted with Anderson Perry on a variety of past projects including the prior WSMP and WWFP updates in 2018 and 2010 and design of the wastewater treatment plant.
- **Capacity and capability to perform the work, including any specialized services within the time limitations for the work.** Anderson Perry has both the capacity to perform the work in a timeframe acceptable to the City and the capability to perform the work as evidenced by prior plan updates.

- **Educational and professional records, including past records of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability in schedules, and contract administration, where applicable.** Anderson Perry completed the WSMP and WWFP updates in 2010 and 2018, as well as a system development charge methodology report in 2018, and designed the expansion at the wastewater treatment plant. Anderson Perry has always provided quality work at reasonable cost.
- **Availability to perform the assignment and familiarity with the area in which the specific work is located.** Anderson Perry is available to perform the work within a timeframe acceptable to the City and is familiar with the area due to prior work with the City.
- **Timeliness of delivery of service.** In the past, Anderson Perry has delivered services in a timely manner and this project is expected to be delivered in a timeframe acceptable to the City.
- **Experience in working with the City.** The City has contracted with Anderson Perry for prior WSMP and WWFP updates in 2018 and 2010 as well as multiple other projects.
- **Knowledge of City’s needs and desires related to the Contract.** Anderson Perry is aware of the City’s needs and desires and has submitted two scopes of work, one for the WSMP and one for the WWFP, that all include all desired components.

**Now, Therefore, the City of Prineville Resolves as follows:**

1. That the City Council, serving in its role as the Local Contract Review Board for the City, hereby approves the City entering into a personal services contract with Anderson Perry to provided consulting and engineering services relating to the update of the Water System Master Plan and Wastewater Facilities Plan.

Approved by the City Council this \_\_\_\_ day of February, 2022.

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

ATTEST:

\_\_\_\_\_  
Lisa Morgan, City Recorder



## STAFF REPORT

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**MEETING DATE:** 2/22/2022      **PREPARED BY:** Eric Klann  
**SECTION:** Council Business      **DEPARTMENT:** Public Works  
**CITY GOAL(S):** Fiscal Responsibility, Position the City for the future  
**SUBJECT:** **Intent to direct award Anderson Perry for water and wastewater plan updates, SDC methodology reports, and capacity charge reports**

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**REASON FOR CONSIDERATION:** Consideration for a direct award to Anderson Perry (AP) for water and wastewater plan updates, SDC methodology reports, and capacity charge reports. AP completed the past two plan updates in 2018 and 2010 and has a track record of delivering a quality product at a reasonable price.

**BACKGROUND:** Since 2018 when the water system master plan (WSMP) and wastewater facilities plan (WWFP) were last updated, the City of Prineville has experienced significant population growth and a large increase in industrial user demand. In response, the WSMP and WWFP and SDC methodology reports for both water and wastewater now need updated. Additionally, water and wastewater industrial user capacity charge reports need to be developed to address the costs associated with maintaining large amounts of capacity for industrial users that are not utilizing the capacity year round.

**FISCAL IMPACT:**

\$170,000 Water system master plan update, water system development charge methodology report, and water system industrial user capacity charge report

\$135,000 Wastewater facilities plan update, wastewater system development charge methodology report, and wastewater system industrial user capacity charge report

\$305,000 Total

**RECOMMENDATION:** Staff recommend council approve a direct award in the amount of \$305,000 to Anderson Perry to complete the updates and reports as outlined.

**RELATED DOCUMENT(S):** Scopes of work from Anderson Perry are included for review.





**SCOPE OF WORK  
DECEMBER 2021**

**PROJECT UNDERSTANDING**

This Scope of Work (SOW) describes the work that will be performed by Anderson Perry & Associates, Inc. (Engineer) for the Water System Master Plan (WSMP) Update for the City of Prineville, Oregon (Owner). The Owner completed a WSMP in 2018. Since completion of the 2018 WSMP, the Owner has seen a significant increase in population as well as large increases in industrial user demand. The Owner has been approached by a large industrial user, proposing large-scale improvements to the Owner’s water system, to provide additional supply, storage, and redundancy for the industrial user’s facilities. A memorandum developed by Parametrix titled “Water Resiliency - City of Prineville,” dated October 21, 2021 (Water Resiliency memo), outlines specific proposed improvements to the Owner’s water supply, storage, and distribution systems for the purpose of increasing capacity and redundancy at the large industrial user’s facility.

The Owner has requested this SOW to complete a WSMP Update to evaluate the Owner’s existing water system as well as the potential impacts of the proposed improvements. In general, the 2018 WSMP will be referenced and utilized as much as practical.

In addition to the WSMP Update, the Owner has requested an update to the City’s System Development Charge (SDC) Methodology be completed. The Owner is also considering implementing an Industrial User Capacity Charge. The Engineer has retained and will work with the Owner’s financial consultant, GEL Oregon, to complete this SOW related to the SDC Methodology update and the potential development of an Industrial User Capacity Charge, as outlined below.

The planning effort will include the following:

**WATER SYSTEM MASTER PLAN UPDATE**

**GENERAL**

The Engineer, in cooperation with the Owner, will develop a WSMP Update. The WSMP Update is intended to provide updated water system demand information to evaluate the Owner’s water supply capacity and availability, water storage capacity, overall system performance, and water usage. The existing distribution system hydraulic model will be updated to evaluate estimated future distribution system piping needs. The intent of completing the WSMP Update is to ensure the Owner has adequate capacity to serve the existing system as well as anticipated future growth in the residential, commercial, and industrial areas. Information presented in the 2018 WSMP will be utilized to provide a comprehensive overview of the system in accordance with the “Guidelines for the Preparation of Planning Documents for Developing Community Water System Projects,” as well as Oregon Administrative Rules Chapter 333, Division 061, Section 0060.



Based on these guidelines and rules, the WSMP Update will be developed for a 20-year planning period. The WSMP Update will include design criteria and service goals for the planning period. The design criteria developed for the WSMP Update will be clearly separated by ordinary City system demands (residential, commercial, etc.) and large industrial user demands. The WSMP Update will also identify present and anticipated future system deficiencies and evaluate future water supply, storage, and distribution system needs.

It is anticipated that the analysis of the City’s water system will be completed in segments to facilitate an expedited schedule. Each segment will cover the analysis of the individual elements listed below under “Scope of Work” and will be outlined in individual technical memorandums. Once the system analysis is complete, the information presented in the technical memorandums will be compiled to generate a complete WSMP Update.

The completed WSMP Update will provide the Owner with a comprehensive planning document that will identify and prioritize needed system improvements and allow the Owner to appropriately plan and budget for the selected improvements. The WSMP Update will provide the Owner with the required documents if state and/or federal funding assistance is sought to complete the selected improvements.

## SCOPE OF WORK

- 1. General.** The WSMP Update will provide a general description of the community and a general history of the existing water system. An overview of the 2018 WSMP will be provided. A summary of the updated planning objectives and goals will be outlined.
- 2. Existing System.** The 2018 WSMP outlined the status of the existing water system and described its current operation, recent system improvements, system strengths, and system deficiencies. A brief overview of the existing system and a description of any modifications to the system since 2018 will be provided in the WSMP Update.
- 3. Design Criteria.** Planning and design criteria will be established, including service area and boundaries; population growth projections; past, present, and future anticipated water usage patterns; fire flow requirements; federal and state standards; system pressure needs; and service goals. The design criteria will be separated into two categories: ordinary City system demands and large industrial user demands. The design criteria for the ordinary City system demands will be determined by utilizing past City demand records and methodology similar to the 2018 WSMP. Large industrial user design criteria will be incorporated into the WSMP Update utilizing information presented in the Water Resiliency memo.
- 4. Water Supply Facilities.** The 2018 WSMP evaluated the individual components of the existing water supply system considering capacity, compliance with current water quality standards, water rights, condition of components, operational dependability, and cost of operation. Since development of the 2018 WSMP, the Owner has completed additional water supply improvements. Alternatives for meeting current and long-term water supply needs for the City will be identified, including alternatives for correcting any existing system deficiencies. The proposed supply improvements outlined in the Water Resiliency memo will be



referenced and considered in the alternatives analysis. Estimated capital cost as well as ongoing operation and maintenance (O&M) costs associated with any proposed water supply improvements will be provided. Conceptual schematics depicting the preferred alternatives will be presented.

**Note: Detailed water rights analysis will not be completed as part of this effort. Water rights-related work is being completed by others. This WSMP Update will summarize water rights information and ongoing water rights work being completed by others.**

- 5. Water Storage Facilities.** The existing water storage facilities were analyzed during the 2018 WSMP considering capacity, condition of reservoirs, distribution system pressures, etc. Records from inspections performed by others, when available, were utilized to help evaluate existing reservoir conditions. Considering the increase in demands since completion of the 2018 WSMP, recommended storage capacity for each reservoir and its service area will be analyzed considering emergency storage, operational storage, equalization storage, and fire flow storage. Alternatives for meeting the storage requirements of the water system for the planning period will be identified. The recommended storage improvements outlined in the Water Resiliency memo will be referenced and considered in the alternatives analysis including preliminary conceptual schematics and estimated capital and O&M costs for the preferred alternatives.
- 6. Distribution System.** General system deficiencies as they relate to increased demands outside of the Owner’s current water service area will be identified and alternatives for meeting current and future anticipated system deficiencies will be outlined. Anticipated extensions of the existing distribution system piping to these currently unserved areas will be presented on updated maps and figures. Proposed distribution system improvements outlined in the Water Resiliency memo will also be referenced and considered in the potential improvements. Estimated costs for implementation of recommended improvements will be provided.
- 7. Planning and Implementation Recommendations.** A summary will be prepared identifying current and future water system needs with their associated estimated cost and conceptual schematics. Recommendations will be made for the needed improvements to meet the water system needs for the planning period.

## TYPICAL REPORT DELIVERY/COORDINATION TASKS

- 1. Report Development-Related Meetings.** The Engineer and GEL Oregon, as appropriate, will attend regular progress meetings with the Owner to review progress of the work, present alternatives, and assist the Owner in making key decisions relative to implementation and adoption of the WSMP Update.
- 2. Written Report.** A digital copy of the draft written WSMP Update summarizing the results of the planning effort will be presented to the Owner for review and comment. A copy of the draft WSMP Update will also be submitted to the Oregon Health Authority - Drinking Water Services (DWS). After comments are received



regarding the draft WSMP Update from the Owner and DWS, ten copies of the final WSMP Update will be prepared and presented to the Owner, and a copy will be sent to the DWS.

## WATER SYSTEM DEVELOPMENT CHARGE METHODOLOGY REPORT

### GENERAL

GEL Oregon, in cooperation with the Owner and acting as a subconsultant to the Engineer, will prepare an SDC Methodology Report for the water system outlining SDC methodology. The report will be completed in accordance with Oregon Revised Statutes Chapter 223. The specific scope of services is summarized as follows:

### SCOPE OF WORK

The Engineer, in cooperation with the Owner and GEL Oregon, if appropriate, will:

1. Identify any of the capital improvement projects that may have SDC-eligible costs (e.g., a portion of various projects may be allocated between maintenance and SDC eligible, such as a water line replacement that increases capacity). The segregated schedules will be incorporated into the financial forecasting as well as the Capacity Rate analysis and SDC analysis.
2. Prepare the report assuming each required cost component will be evaluated, specifically the reimbursement fee and improvement fee.
3. Utilize information from the draft WSMP Update effort to provide the basis for the various charges.
4. Calculate the SDC components to determine the maximum amount the City may charge for SDCs.
5. Work closely with Owner's staff and the finance committee to review policy issues related to charging less than the maximum amount, including the impact on water rates should less than the maximum SDCs be charged.
6. Compare calculated SDCs with other similar Oregon communities. The comparison will help inform decision makers as they consider the policy issues associated with the amount of the SDCs they may choose to impose on new development. Additionally, the comparison will help validate the amount of the SDCs for reasonableness.

### TYPICAL REPORT DELIVERY/COORDINATION TASKS

1. **Report Development-Related Meetings.** GEL Oregon and the Engineer will attend meetings with the Owner to review progress of the work, present alternatives, and assist the Owner in making key decisions relative to implementation and adoption of the SDC analysis, reports, and ordinances.



- 2. Written Report.** A digital copy of the draft written SDC Report, summarizing the results of the planning effort, will be presented to the Owner for review and comment. After comments are received regarding the draft SDC Report from the Owner, the final SDC Report will be prepared and presented to the Owner in digital format and hard copy (10 copies).
- 3. Ordinances/Resolutions.** GEL Oregon will help prepare necessary SDC ordinances and/or resolutions for the Owner’s consideration and action.

## WATER SYSTEM INDUSTRIAL USER CAPACITY CHARGE REPORT

### GENERAL

GEL Oregon, in cooperation with the Owner and in consultation with the Engineer, will prepare methodology and a report for the water system outlining a proposed Industrial User Capacity Charge. The specific scope of services is summarized as follows:

### SCOPE OF WORK

1. Conduct research to identify and document capacity charges utilized to address similar situations for other cities.
2. Create a financial model to evaluate three capacity charge alternatives to include information derived from the research above and the WSMP Update. In addition, evaluate the facilities needed specifically to provide water services to meet specific customer demands above normal system capacity, such as potential impacts to personnel requirements, operating costs, infrastructure capital, and equipment replacement.
3. Utilize information from the draft WSMP Update effort and other documents provided by the City to provide the basis for the various industrial user capacity charges.
4. Consider potential debt issues when preparing the financial model.
5. Work closely with Owner’s staff and the finance committee to review policy issues related to charging less than the maximum amount, including the impact on water rates should less than the maximum capacity charges be charged.

### TYPICAL REPORT DELIVERY/COORDINATION TASKS

- 1. Report Development-Related Meetings.** GEL Oregon and the Engineer will attend meetings with the Owner to review progress of the work, present alternatives, and assist the Owner in making key decisions relative to implementation and adoption of the Industrial User Capacity Charge analysis, reports, and ordinances/resolutions.



- 2. Written Report.** A digital copy of the draft written Industrial User Capacity Charge Report, summarizing the results of the planning effort, will be presented to the Owner for review and comment. After comments are received regarding the draft report from the Owner, the final report will be prepared and presented to the Owner in digital format and hard copy (10 copies).
- 3. Ordinances/Resolutions.** GEL Oregon will help prepare the necessary rate ordinances and/or resolutions for the Owner’s consideration and action.

### ESTIMATED FEES

The estimated fee for completion of the WSMP Update is \$125,000. The estimated fee to complete the SDC Methodology Report and related tasks outlined herein is \$20,000. The estimated fee to complete the Industrial User Capacity Charge Report and related tasks outlined herein is \$25,000. The total fee to complete all SOW items identified herein is \$170,000. The estimated fees will be billed on a lump sum basis. These amounts shall not be exceeded without notification to and approval from the Owner.

### RESPONSIBILITIES OF THE OWNER

For this effort to be a successful planning process, the Engineer will work closely with the Owner during development of the planning documents to review the work and provide the Owner with the opportunity to make decisions relative to key planning issues, selection of the population growth rate used for the study period, selection of improvement alternatives, etc. The Owner will be requested to provide data to the Engineer including maps, records, reports, correspondence, and any other information relative to the planning work that the Engineer does not already have on file. When required, the Owner shall provide equipment and personnel to allow the Engineer to assess field conditions related to the planning effort. The Owner shall pay for any agency plan review fees as may be required by local, state, or federal authorities.



**SCOPE OF WORK**  
**January 2022**

**PROJECT UNDERSTANDING**

This Scope of Work (SOW) describes the work that will be performed by Anderson Perry & Associates, Inc. (Engineer) for the Wastewater Facilities Plan (WWFP) Update project for the City of Prineville, Oregon (Owner). The Owner completed a WWFP in 2018. Since completion of the 2018 WWFP, the Owner has seen a significant increase in population as well as large increases in industrial user demand.

The Owner has requested the Engineer complete a WWFP Update to evaluate the Owner's existing wastewater system as well as the potential impacts of increased demand and the proposed improvements associated with this demand. In general, the 2018 WWFP will be referenced and utilized as much as practical.

In addition to the WWFP Update, the Owner has requested their System Development Charge (SDC) Methodology Report be updated. The Owner is also considering implementing an Industrial User Capacity Charge. The Engineer has retained and will work with the Owner's financial consultant, GEL Oregon, Inc., to complete the SDC Methodology Report update and the potential development of an Industrial User Capacity Charge, as outlined below.

The planning effort will include the following:

**WASTEWATER FACILITIES PLAN UPDATE**

**GENERAL**

The Engineer, in cooperation with the Owner, will prepare a WWFP Update for a 20-year planning period. The WWFP Update will include design criteria; evaluation of the existing wastewater lagoon treatment and effluent disposal systems (treatment wetlands); development of improvement alternatives and estimated project costs; a determination of the needed improvements for a long-term solution; and a general financial analysis of selected improvement alternatives. The WWFP Update will be prepared to meet the requirements set forth in the 2018 "Preparing Wastewater Planning Documents and Environmental Reports for Public Entities."

Based on these guidelines and rules, the WWFP Update will be developed for a 20-year planning period. The WWFP Update will include design criteria and service goals for the planning period. The design criteria developed for the WWFP Update will be clearly separated by ordinary City system demands (residential, commercial, etc.) and large industrial user demands. The WWFP Update will also identify present and anticipated future system deficiencies and evaluate future collection and treatment system needs.

The completed WWFP Update will provide the Owner with a comprehensive planning document that will identify and prioritize recommended system improvements and allow the Owner to appropriately plan and



budget the selected improvements. The WWFP Update will also provide the Owner with the required document to seek state and/or federal funding to complete selected improvements.

The analysis of the Owner's wastewater system is anticipated to be completed in segments to facilitate an expedited schedule. Each segment will cover the analysis of the individual elements listed below under "Scope of Work" and will be outlined in individual technical memorandums. Once the system analysis is complete, the information presented in the technical memorandums will be compiled to generate a complete WWFP Update.

## SCOPE OF WORK

- 1. Kick-off Meeting.** To begin the planning effort, the Engineer, along with the Owner, will conduct a kick-off meeting to discuss overall project planning as well as any improvements or changes to the collection and treatment systems completed since the 2018 WWFP.
- 2. General.** The WWFP Update will provide a description of the community with a general history of the existing wastewater system. A statement of purpose, background, planning objectives, and need for the WWFP Update will be outlined.
- 3. Design Criteria.** The WWFP Update will provide a review and update of current wastewater flows and loads as well as the 20-year projection of future population, wastewater flows, and waste loads. Additional data regarding large industrial users will be incorporated into this task, including overall flows, intermittent and periodic flows, future predicted flows, requested capacity, and influent chemical analyses. Design criteria will be developed based on this information.
- 4. Existing Lagoon Treatment and Effluent Disposal Systems.** The WWFP Update will provide a review of the Owner's existing wastewater planning documents, an evaluation of the existing wastewater lagoon treatment and effluent disposal systems (treatment wetlands), and an update of any identified deficiencies based on the review.
- 5. Wastewater Collection System.** Utilizing existing GIS collection system mapping and Owner records, a hydraulic capacity analysis of the main trunk and interceptor sewer lines will be completed, and a review of the condition and adequacy of the collection system piping, wastewater lift stations, and associated pressure sewers will occur. General system deficiencies will be identified, and alternatives for addressing current and future system deficiencies will be outlined. Anticipated extensions of the collection system to serve key areas of the City as well as upgrades to existing collection system piping will be presented on updated maps and figures. Estimated costs for implementation of recommended improvements will also be provided. Cleaning and television inspection of the Owner's collection system is not included in this SOW. Any cleaning and television inspection required will be completed by the Owner's staff utilizing Owner-supplied equipment or a contractor retained by the Owner. A computer model of the existing collection system is also not included in this SOW.





6. **Improvement Alternatives.** The WWFP Update will outline up to three lagoon treatment and effluent disposal improvement alternatives and will provide an evaluation of the feasibility of the improvement alternatives and a cost effectiveness analysis of the alternatives over a 20-year period. Treatment standards and cost estimates for each alternative will be identified.
7. **Selected Alternatives.** The WWFP Update will provide an evaluation and detailed description of the Owner's preferred improvement alternatives. Treatment, disposal, and regulatory standards will be identified, and estimated costs will be outlined.
8. **Capital Improvements Plan (CIP).** The Engineer, in cooperation with the Owner, will prepare a CIP for a 20-year planning period for the wastewater system. The CIP will include an implementation schedule for improvements identified in the WWFP Update. The implementation schedule will be outlined with improvements to be completed in zero to five years, five to ten years, ten to 15 years, and 15 to 20 years. The estimated project cost for each listed improvement will also be estimated, and a required annual budget to fund the improvements will be included. The completed CIP will provide the Owner with a comprehensive plan that will identify and prioritize recommended system improvements and allow the Owner to appropriately plan and budget for the selected improvements.

The Engineer will work with the Owner to determine the criteria for a qualifying capital improvement. These may include such criteria as a project cost limit (i.e., anything greater than \$10,000), determining the definition of a capital expense, and any other criterion the Owner might want to define as a capital improvement.

The CIP will be included in the WWFP Update, and a separate document will not be prepared.

9. **Wastewater System Funding.** The existing wastewater system financial condition will be reviewed considering historical wastewater system revenues, operation and maintenance (O&M) costs, and debt service, including the adequacy of existing wastewater user fees. Future O&M costs, capital improvement investments, and anticipated debt service for the wastewater system will be based on an Owner-approved improvements plan. A detailed funding plan will be developed to address the Owner's wastewater system requirements over a 20-year planning cycle, including general user rate charges, known outside funding assistance, and projected long-term financing. The primary objective of the funding plan will be to identify the revenue requirements necessary to adequately fund the wastewater system requirements, including compliance with the Owner's fiscal policies. Information will also be provided on potential state and federal grant and loan programs that may be available to assist the Owner in implementing wastewater system improvements. A strategy for implementation of any recommended wastewater system improvements will be developed in cooperation with the Owner.
10. **Environmental.** A brief, planning-level environmental review of the selected alternatives will be completed. This SOW does not include preparation of environmental reports for design and construction funding



applications, biological assessments, wetland delineations, cultural resource evaluations, mitigation plans, or other related environmental documents.

- 11. Wastewater Facilities Plan Update Exclusion.** The WWFP Update will not include a detailed collection system evaluation and an infiltration and inflow (I/I) study but will identify estimated system I/I flows using available flow records. Should a more detailed collection system evaluation be required by the Oregon Department of Environmental Quality (DEQ) Regional Administrator, a separate work order will be developed as an amendment to this agreement for completion of the detailed I/I study.

#### TYPICAL REPORT DELIVERY/COORDINATION TASKS

- 1. Written Report.** Five paper copies and an electronic (PDF) version of a draft WWFP Update summarizing the results of the planning effort will be presented to the Owner for review and comment. A draft copy of the WWFP Update will also be submitted to the DEQ. After review comments are received from the Owner and the DEQ, five paper copies and a PDF version of the final WWFP Update will be prepared and presented to the Owner, and a copy will be sent to the DEQ.
- 2. Report Development-Related Meetings.** The Engineer will attend regular monthly virtual progress meetings with the Owner and quarterly virtual progress meetings with the Owner's Public Works Advisory Board to review progress of the work, present alternatives, and assist the Owner in making key decisions relative to implementation and adoption of the WWFP Update. Two more formal work session-type meetings will be held with the City Council to present the findings and assist the Council with adoption of the WWFP Update. To be efficient, all meetings for the WWFP Update will be held concurrently with meetings associated with the Water System Master Plan (WSMP) Update.

### WASTEWATER SYSTEM DEVELOPMENT CHARGE METHODOLOGY REPORT

#### GENERAL

GEL Oregon, Inc., in cooperation with the Owner and acting as a subconsultant to the Engineer, will prepare an SDC Methodology Report for the wastewater system outlining SDC methodology. The report will be completed in accordance with Oregon Revised Statutes Chapter 223. The specific scope of services is summarized as follows:

#### SCOPE OF WORK

The Engineer, in cooperation with the Owner and GEL Oregon, Inc., if appropriate, will:

1. Prepare the report assuming each required cost component will be evaluated, specifically the reimbursement fee and improvement fee.



2. Utilize cost-related information from the draft WWFP Update effort to provide the basis for the various charges.
3. Calculate the SDC components to determine the maximum amount the Owner may charge for SDCs.
4. Work closely with the Owner's staff and the finance committee to review policy issues related to charging less than the maximum amount, including the impact on wastewater rates should less than the maximum SDCs be charged.
5. Compare calculated SDCs with other similar Oregon communities. The comparison will help inform decision makers as they consider the policy issues associated with the amount of the SDCs they may choose to impose on new development. Additionally, the comparison will help validate the amount of the SDCs for reasonableness.

### TYPICAL REPORT DELIVERY/COORDINATION TASKS

1. **Report Development-Related Meetings.** GEL Oregon, Inc., and the Engineer will attend meetings with the Owner to review progress of the work, present alternatives, and assist the Owner in making key decisions relative to implementation and adoption of the SDC analysis, reports, and ordinances.
2. **Written Report.** A digital copy of the draft written SDC Methodology Report, summarizing the results of the planning effort, will be presented to the Owner for review and comment. After comments are received regarding the draft SDC Methodology Report from the Owner, the final SDC Methodology Report will be prepared and presented to the Owner in digital format and hard copy (ten copies).
3. **Ordinances/Resolutions.** GEL Oregon, Inc., will help prepare necessary SDC ordinances and/or resolutions for the Owner's consideration and action.

## WASTEWATER SYSTEM INDUSTRIAL USER CAPACITY CHARGE REPORT

### GENERAL

GEL Oregon, Inc., in cooperation with the Owner and in consultation with the Engineer, will prepare methodology and a report for the wastewater system outlining a proposed Industrial User Capacity Charge. The specific scope of services is summarized as follows:

### SCOPE OF WORK

1. Conduct research to identify and document capacity charges utilized to address similar situations for other cities.



2. Create a financial model to evaluate three capacity charge alternatives to include information derived from the above-mentioned research and the WWFP Update. In addition, evaluate the facilities needed specifically to provide wastewater services to meet specific customer demands above normal system capacity, such as potential impacts to personnel requirements, operating costs, infrastructure capital, and equipment replacement.
3. Utilize information from the draft WWFP Update effort and other documents provided by the Owner to provide the basis for the various industrial user capacity charges.
4. Consider potential debt issues when preparing the financial model.
5. Work closely with the Owner's staff and the finance committee to review policy issues related to charging less than the maximum amount, including the impact on wastewater rates should less than the maximum SDCs be charged.

#### TYPICAL REPORT DELIVERY/COORDINATION TASKS

1. **Report Development-Related Meetings.** GEL Oregon, Inc., and the Engineer will attend meetings with the Owner to review progress of the work, present alternatives, and assist the Owner in making key decisions relative to implementation and adoption of the Industrial User Capacity Charge analysis, reports, and ordinances/resolutions.
2. **Written Report.** A digital copy of the draft written Industrial User Capacity Charge Report, summarizing the results of the planning effort, will be presented to the Owner for review and comment. After comments are received regarding the draft report from the Owner, the final report will be prepared and presented to the Owner in digital format and hard copy (ten copies).
3. **Ordinances/Resolutions.** GEL Oregon, Inc., will help prepare the necessary rate ordinances and/or resolutions for the Owner's consideration and action.

#### COMPENSATION FOR ENGINEERING SERVICES

The Owner will compensate the Engineer for "Wastewater Facilities Plan Update" on a time and materials basis, plus direct reimbursable expenses, in accordance with the attached Hourly Fee Schedule.

The estimated fee for completion of the WSMP Update is \$103,220. The estimated fee to complete the SDC Methodology Report and related tasks outlined herein is \$17,205. The estimated fee to complete the Industrial User Capacity Charge Report and related tasks outlined herein is \$14,565. The total fee to complete all SOW items identified herein is \$135,000. These amounts shall not be exceeded without notification to and approval from the Owner.



### RESPONSIBILITIES OF THE OWNER

For this to be a successful planning effort, the Engineer will work closely with the Owner during development of the planning documents to review the work and provide the Owner with the opportunity to make decisions relative to key planning issues, selection of improvement alternatives, etc. The Owner will be requested to provide data to the Engineer including maps, records, reports, correspondence, and any other information relative to the planning work. When required, the Owner will provide equipment and personnel to allow the Engineer to assess field conditions related to the planning effort. The Owner will pay for any agency plan review fees required by local, state, or federal authorities.

[https://andersonperry.sharepoint.com/sites/PrinevilleOR/Projects/1260-40 Wastewater Facilities Plan Update - 2022/000-014 General Files/22\\_01\\_14\\_WWFP\\_Scope of Work.docx](https://andersonperry.sharepoint.com/sites/PrinevilleOR/Projects/1260-40 Wastewater Facilities Plan Update - 2022/000-014 General Files/22_01_14_WWFP_Scope of Work.docx)



**CITY OF PRINEVILLE, OREGON  
WASTEWATER FACILITIES PLAN UPDATE  
FEE ESTIMATE**

**Client:** City of Prineville, Oregon  
**Project:** Wastewater Facilities Plan Update  
**Job No.:** 1260-40  
**Prepared by:** Kevin Isley  
**Date:** January 18, 2022

Task/Deliverable Description	Estimated Hours						Miscellaneous Charges	Mileage	Totals
	Senior Engineer BM	Senior Engineer QC Review	Staff Engineer BW	Engineering Technician ZM	Project Manager KI	Senior Technician (Drafting)			
Kick-off Meeting	4		4	4	4			40	\$ 2,543
Data Collection and Design Criteria Development	2		4	4					\$ 1,490
Evaluate Lagoon Treatment and Effluent Disposal Systems	16			30					\$ 7,340
Wastewater Collection System Evaluation	2		40		10	20			\$ 9,930
Develop Improvement Alternatives	6			30		20			\$ 7,790
Prepare Draft Wastewater Facilities Plan, including Capital Improvements Plan	20	10	20	100	20	50			\$ 31,550
Monthly Progress Meetings	15		15	16	20			200	\$ 10,446
Quarterly Progress Meetings with Public Works Advisory Board	8		8		8				\$ 4,000
City Council Workshop and Meeting	8		8		6				\$ 3,700
Internal Quality Assurance/Quality Control (QC) Reviews	16	8			8	8			\$ 7,320
Prepare Final Wastewater Facilities Plan Update	8	6	8	20	6	16			\$ 9,610
Project Management					50				\$ 7,500
<b>Total Estimated Hours</b>	<b>105</b>	<b>24</b>	<b>107</b>	<b>204</b>	<b>132</b>	<b>114</b>			
<b>Hourly Billing Rate</b>	<b>\$ 215</b>	<b>\$ 205</b>	<b>\$ 135</b>	<b>\$ 130</b>	<b>\$ 150</b>	<b>\$ 130</b>		<b>\$ 0.58</b>	
<b>Total Estimated Fee</b>	<b>\$ 22,575</b>	<b>\$ 4,920</b>	<b>\$ 14,445</b>	<b>\$ 26,520</b>	<b>\$ 19,800</b>	<b>\$ 14,820</b>	<b>\$ -</b>	<b>\$ 139</b>	<b>\$ 103,219</b>

## HOURLY FEE SCHEDULE

April 1, 2021

### PROFESSIONAL TECHNICAL STAFF

#### TECHNICIANS

Technician I .....	\$ 50.00
Technician II .....	\$ 60.00
Technician III .....	\$ 70.00
Technician IV .....	\$ 80.00
Technician V .....	\$ 85.00
Technician VI .....	\$ 90.00
Technician VII .....	\$ 95.00
Senior Technician I .....	\$100.00
Senior Technician II .....	\$110.00
Senior Technician III .....	\$115.00
Senior Technician IV .....	\$120.00
Senior Technician V .....	\$125.00
Senior Technician VI .....	\$130.00
Senior Technician VII .....	\$135.00
Senior Technician VIII .....	\$160.00
Senior Technician IX .....	\$175.00

#### ENGINEERING

Engineering Technician I .....	\$ 95.00
Engineering Technician II .....	\$100.00
Engineering Technician III .....	\$105.00
Engineering Technician IV .....	\$110.00
Engineering Technician V .....	\$115.00
Staff Engineer I .....	\$110.00
Staff Engineer II .....	\$120.00
Project Engineer I .....	\$125.00
Project Engineer II .....	\$130.00
Project Engineer III .....	\$135.00
Project Engineer IV .....	\$140.00
Project Engineer V .....	\$150.00
Project Engineer VI .....	\$155.00
Project Engineer VII .....	\$160.00
Senior Engineer I .....	\$165.00
Senior Engineer II .....	\$170.00
Senior Engineer III .....	\$175.00
Senior Engineer IV .....	\$185.00
Senior Engineer V .....	\$190.00
Senior Engineer VI .....	\$195.00
Senior Engineer VII .....	\$200.00
Senior Engineer VIII .....	\$215.00

#### ARCHAEOLOGY

Archaeological Technician I .....	\$ 50.00
Archaeological Technician II .....	\$ 55.00
Staff Archaeologist I .....	\$ 65.00
Staff Archaeologist II .....	\$ 70.00
Project Archaeologist I .....	\$ 75.00
Senior Archaeologist I .....	\$ 95.00
Senior Archaeologist II .....	\$115.00

#### PROJECT REPRESENTATIVES

Project Representative I .....	\$ 95.00
Project Representative II .....	\$100.00
Project Representative III .....	\$105.00
Project Representative IV .....	\$110.00

#### OVERTIME

Overtime Surcharge .....	\$ 35.00
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### SURVEYORS AND CREWS

Survey Technician I .....	\$ 65.00
Survey Technician II .....	\$ 80.00
Survey Technician III .....	\$ 85.00
Survey Crew Chief I .....	\$ 90.00
Survey Crew Chief II .....	\$ 95.00
Survey Crew Chief III .....	\$100.00

Professional Land Surveyor I .....	\$120.00
Professional Land Surveyor II .....	\$135.00
Professional Land Surveyor III .....	\$145.00
Professional Land Surveyor IV .....	\$165.00
Professional Land Surveyor V .....	\$175.00
GPS Total Station .....	\$ 40.00
Robotic Survey Station .....	\$ 30.00

Total Station .....	\$ 23.00
ATV (4-hour minimum) .....	\$ 30.00
Resource Grade GPS .....	\$ 20.00
Electrofischer .....	\$ 25.00
Unmanned Aircraft System (UAS/Drone) .....	\$ 45.00
GIS RTK GPS/GNSS Unit .....	\$ 30.00

### OUT OF TOWN WORK

Mileage will be charged at the applicable IRS rate for vehicles, which is \$0.56 per mile for standard highway vehicles as of January 1, 2021. Mileage will be charged at \$0.75 per mile for vans and pickup trucks. Subsistence will be charged either per diem or actual cost, per contract. Lodging will be billed at actual cost.

### OTHER

Other miscellaneous, direct, and outside expenses, including special Consultants, will be charged at actual cost plus 10%.

Expert Witness will be charged at two times the standard hourly rate.

All accounts unpaid 30 days after date of invoice may be charged a service fee of 1.0% per month.

**RESOLUTION NO. 1513  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING THE CITY OF PRINEVILLE TO ENTER INTO AN  
AMENDMENT TO SOLAR LEASE AGREEMENT WITH WESTLAKE SOLAR  
PANELS, LLC**

**Whereas**, on April 1, 2020, City of Prineville (“Prineville”) and Westlake Solar Panels, LLC (“Westlake”) entered into a Solar Site Lease Agreement (“Agreement”) regarding the leasing of certain real property within the City of Prineville; and

**Whereas**, City has prepared an Amendment to Solar Lease (“Amendment”) for City’s consideration; and

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

**Now, Therefore**, the City of Prineville resolves that the Amendment to Solar Lease Agreement attached to this Resolution between the City and Westlake is hereby approved and that the Mayor and the City Manager are authorized and instructed to sign such Agreement on behalf of the City.

Approved by the City Council this \_\_\_\_ day of February, 2022.

---

Rodney J. Beebe, Mayor

ATTEST:

---

Lisa Morgan, City Recorder



## AMENDMENT TO SOLAR SITE LEASE AGREEMENT

THIS AMENDMENT to Solar Site Lease Agreement (“Amendment”) effective on the date last written below, is entered between City of Prineville, an Oregon municipal corporation (“Owner”) and Westlake Solar Panels, LLC, a Washington limited liability company (“Lessee”). Both Owner and Lessee shall be known as “Party” and collectively “Parties.”

### RECITALS

- A. The Parties executed a Solar Site Lease Agreement effective April 1, 2020, (“Agreement”) which is attached as Exhibit A and incorporated herein.
- B. Pursuant to the Agreement, Lessee was responsible for all signs and fences on the Property.
- C. A fence is required per rules and regulations regarding solar sites. A design of that fence is set forth on the attached B, which is incorporated herein, hereinafter “Fence.”
- D. Lessee is unable to install the fence because of financial burdens as a result of the COVID-19 pandemic.
- E. Owner is willing to install the fence because it feels that the project is an asset to the community.

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

- 1. Owner shall install the fence as depicted on Exhibit B at Owner’s sole costs and expense. Owner and/or its agents shall be allowed full access to the Demised Premises for the purpose of construction.
- 2. After installation, Owner shall retain ownership of the improvements within this Amendment; however, during the Term of the Lease, Lessee shall be fully responsible for the maintenance and repair of the improvement at Lessee’s sole costs and expense. At the conclusion of the Lease, Lessee shall remove the fence along with other facilities if Owner does not exercise its option to purchase.
- 3. Except as modified by this Amendment, all terms and conditions of the Agreement are reaffirmed and remain unmodified and in full force and effect.
- 4. This Amendment may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Amendment, it shall not be necessary to produce or account for more than one such counterpart. Copies

(whether facsimile, photostatic or otherwise) of signatures to this Agreement shall be deemed originals and may be relied on to the same extent as the originals.

5. Each of the individuals signing this Agreement represents and warrants that he or she has been properly authorized to enter into this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year last written below.

**City of Prineville (“Owner”)**

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**Westlake Solar Panels, LLC (“Lessee”)**

By: \_\_\_\_\_  
Peter Parker  
Its CFO/COO

\_\_\_\_\_  
Date

## SOLAR SITE LEASE AGREEMENT

This SOLAR SITE LEASE AGREEMENT (this “**Agreement**”) is made, dated and effective as of April 1, 2020 (the “**Effective Date**”), between City of Prineville, Oregon (“**Owner**”), and Westlake Solar Panels LLC, a limited liability company formed under the laws of the State of Washington (“**Lessee**”), in light of the following facts and circumstances.

### RECITALS

WHEREAS, Lessee is in the business of developing, erecting and operating photovoltaic solar generating facilities for the production of electrical energy for sale to utility companies, power marketers, power exchanges and other users;

WHEREAS, Owner owns certain real property located in Prineville, Oregon, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the “**Property**”); and

WHEREAS, Lessee desires to lease the Property and to obtain other rights over the adjoining property owned by Owner (the “**Adjoining Property**”), and Owner desires to grant such lease and rights, on the terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Owner and Lessee (each, a “**Party**” and together, the “**Parties**”) hereby agree as follows:

1. **Demise of Leasehold Estate.**

(a) **Demise.** Owner hereby leases, demises, lets and warrants to Lessee and Lessee hereby leases, hires and takes from Owner, the Property for the purposes described in this Agreement, together with the right to all rents, royalties, credits and profits derived from solar and other energy generation upon, over and across the Property, on the terms provided herein.

(b) **Purpose.** The foregoing leasehold estate and grant of rents, royalties, credits and profits created by this Agreement (collectively, the “**Leasehold Estate**”) is for the production of energy, including solar energy, and for any and all related or ancillary purposes, and not for any other purpose, and Lessee shall have the exclusive right to use the Property and the unobstructed receipt of and access to sunlight across the Property for solar energy purposes, to convert all of the solar resources of the Property and to derive all profits therefrom. For purposes of this Agreement, “**solar energy**” includes evaluating solar resources, developing solar energy, converting solar energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto (“**Development Activities**”), including, without limitation:

(i) determining the feasibility of solar energy conversion and power generation on the Property, including, without limitation, conducting inspections, tests, surveys, engineering, environmental, market and economic feasibility studies, studies of available sunlight and other data, and/or soil studies, and due diligence matters related to any of the foregoing;

(ii) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, repairing, using and operating, any of the following new, existing, additional or repowered improvements, facilities, machinery and equipment (collectively, "Power Facilities"): (i) buildings, parking areas, evaporation ponds, cooling towers, water tanks, steam turbine generators, power blocks, and chimney stacks; (ii) solar power generating equipment, solar collectors, solar energy conversion systems and other power generation facilities, of any type or technology (collectively, the "Solar Equipment"); (iii) transmission facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, conduits, foundations, footings, towers, poles, crossarms, guy lines, anchors and wires; (iv) overhead and underground control, communications and radio relay systems; (v) substations, interconnection and/or switching facilities and electric transformers; (vi) energy storage facilities; (vii) sunlight measurement, research or development equipment; (viii) water pipelines and pumping facilities; (ix) control, maintenance and administration buildings; (x) utility installations; (xi) safety protection facilities; (xii) laydown areas and maintenance yards; (xiii) roads, road-related structures and erosion control facilities; (xiv) signs and fences; and (xv) other improvements, facilities, machinery and equipment in any way related to or associated with any of the foregoing, on the Property;

(iii) exercising rights of vehicular and pedestrian ingress and egress upon, over and across the Property, for purposes of conducting Development Activities and accessing Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee shall determine, including the right to construct, reconstruct, install, improve, replace, relocate and remove from time to time, and maintain, repair, use and operate, new, existing or additional routes, including roads, road-related structures and erosion control facilities, on the Property;

(iv) making free use of or otherwise developing any water resources (whether or not potable) or water rights in, on, under, produced from or appurtenant to the Property for use in connection with the Power Facilities, without payment therefor to Owner; provided, however, that (i) Lessee shall not be entitled to use water which is being purchased by Owner unless Lessee reimburses Owner for the actual price paid by Owner therefor and (ii) Lessee's right to appropriate and take water shall be subject to any applicable state regulations; and

(v) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing purposes.

Without limiting the generality of the foregoing, the Parties recognize that power generation technologies are improving at a rapid rate and that it is possible that Lessee may (although Lessee is not required to) from time to time replace existing Power Facilities on the Property with newer (and potentially larger) Power Facilities which have increased energy capture and efficiency, and Owner hereby consents to any such replacement. Lessee may conduct Development Activities on the Property for the benefit of other projects and property.

(c) Included Rights and Easements. In addition to any and all rights normally afforded a lessee in a commercial land lease circumstance, or as otherwise described herein, the following rights and easements shall be included within the Leaschold Estate. Upon Lessee's request, Owner shall execute and deliver to Lessee one (1) or more documents in recordable form, satisfactory in form and substance to Owner and Lessee, evidencing the rights and easements granted pursuant to this Section 1(c), and Lessee may cause such documents to be recorded in the official real estate records of the county in which the Property is located.

(i) Sunlight Easement. An exclusive easement for receipt of and access to sunlight and to convert all of the solar resources above the Property to electricity. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited, whether such obstruction is on the Property or on the Adjoining Property. The Parties intend that the easement granted herein shall be construed as a "solar easement," the terms of such easement being more particularly described in Exhibit B attached hereto and made a part hereof by this reference.

(ii) Power Facility Effects. An easement for any audio, visual, view, light, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from any Development Activities conducted, or Power Facilities installed, upon the Property or the Adjoining Property, including but not limited to rights to cast shadows and reflect glare onto the Adjoining Property, from the Solar Equipment and/or any and all other Power Facilities, wherever located.

(iii) Clearance Rights. An easement to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Power Facilities or Lessee's Development Activities, as determined by Lessee.

(iv) Subjacent and Lateral Support. An easement for subjacent and lateral support on the Adjoining Property for Power Facilities located on or in the vicinity of the Property to whatever extent is necessary for the safe construction operation and maintenance of such Power Facilities, as reasonably determined by Lessee. Owner shall not excavate, nor permit excavation, so near the sides of or underneath the Power Facilities as to undermine or otherwise adversely affect their stability.

(v) Utility Lines. An easement over, across and through the Adjoining Property for the installation, maintenance, repair and use of utility lines and equipment, including, without limitation, for water, natural gas and electrical transmission (the "Utility Easement"), together with an easement for vehicular and pedestrian ingress and egress upon, over and across the Adjoining Property, for purposes of conducting Development Activities and accessing Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee shall determine, including the right to construct, reconstruct, install, improve, replace, relocate and remove from time to time, and maintain, repair, use and operate, new, existing or additional routes, including roads, road-related structures and erosion control facilities, on the Adjoining Property.

(vi) Signage. An easement to place signs or advertising related to solar energy on or proximate to Lessee's Power Facilities.

(d) Lease and Easements Run with the Land. Owner agrees that this Agreement and the easements and rights granted in this Agreement shall constitute covenants running with the Property and shall be binding upon any successor owner of all or any part of the Property and survive any transfer of the Property.

## 2. Term.

(a) Term. This Agreement shall be for a term (the "Term") commencing on the Effective Date and continuing until the date occurring twenty and one half (20.5) years after the Operations Date. Notwithstanding the foregoing, this Agreement will terminate prior to the end of the Term in the event of a termination under Section 9 of that certain Power Purchase Agreement, dated as of the date hereof, by and between Owner and Lessee.

(b) Operations Date. For purposes of this Agreement, “**Operations Date**” shall mean the date the Power Facilities are installed on the Property and begin delivering electricity to a third-party power purchaser.

(c) Extensions. Twenty-four (24) months prior to the end of the Term, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

3. Payments to Owner. In consideration of the rights granted hereunder, Lessee will pay Owner the amounts set forth in this Section 3.

(a) Annual Rent. For each year during the period commencing on the Effective Date and continuing until the expiration or sooner termination of this Agreement, Lessee shall pay Owner an annual rental payment equal to one thousand dollars (\$1,000) (the “**Annual Rent**”). The Annual Rent for each such year shall be payable annually, with such payment due on the first day of each year; provided, however, that the Annual Rent shall be prorated for any year which is a partial year due to the expiration or any earlier termination of this Agreement.

(b) Late Payments. If Lessee fails to make any payment to Owner required of it hereunder when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the lesser of (i) three percent (3%) per annum plus the prime lending rate as may be published from time to time by *The Wall Street Journal* under the “Money Rates” section, and (ii) the maximum rate permitted by law.

4. Ownership of Power Facilities.

(a) Ownership. Owner acknowledges and agrees that despite that portions of the Power Facilities may be affixed to the Property, (i) Lessee is and at all times will be the exclusive owner and operator of the Power Facilities, (ii) the Power Facilities shall not be construed to be a fixture and shall be and remain personal property and not real property, (iii) Lessee is the exclusive owner of the electricity generated by the Power Facilities and the Environmental Attributes (as hereinafter defined) and Environmental Incentives (as hereinafter defined) of the Power Facilities, (iv) Lessee will have the sole right to claim any depreciation expense or other tax benefits relating to the Power Facilities, (v) except for the payments described in Section 3 above, Owner shall not be entitled to any compensation, payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Power Facilities or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Lessee and (vi) the Power Facilities shall not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered (collectively, a “**Transfer**”) with the fee interest or leasehold rights to the Property or otherwise by Owner or any other person; provided, however, that Lessee may sell, lease, mortgage, pledge, otherwise alienate or encumber, or remove any or all Power Facilities at any time. Owner shall give Lessee at least fifteen (15) days’ written notice prior to any Transfer of all or a portion of the Property identifying the transferee, the portion of Property to be transferred and the proposed date of Transfer. Owner shall require any transferee to acknowledge and consent to the terms of this Agreement and to assume Owner’s obligations under this Agreement in a written agreement in favor of and reasonably acceptable to Lessee.

(b) Environmental Attributes and Environmental Incentives. As used herein, “**Environmental Attributes**” means the characteristics of electric power generation at the Power Facilities that have intrinsic value, separate and apart from the generated energy, arising from the perceived environmental benefits of the Power Facilities or energy generated at the Power Facilities, including, without limitation, (i) all

environmental and other attributes that differentiate the Power Facilities or energy generated at the Power Facilities from energy generated by fossil-fuel based generation units, fuels or resources, (ii) characteristics of the Power Facilities that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the Power Facilities or (iii) the compliance of the Power Facilities or energy generated at the Power Facilities with the law, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or any successor laws, rules or standards or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Environmental Protection Agency or successor administration or any state or federal entity having jurisdiction over a program involving transferability of rights arising from Environmental Attributes. As used herein, "Environmental Incentives" means all rights, grants, credits (including tax credits), rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under existing or future federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the Power Facilities or the energy generated at the Power Facilities or otherwise from the development or installation of the Power Facilities or the production, sale, purchase, consumption or use of the energy generated at the Power Facilities. Without limiting the foregoing, "Environmental Incentives" includes accelerated depreciation rights, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any demand-side management or energy efficiency programs offered by a utility company, a third-party provider, or other incentive programs offered by the state and the right to claim federal income tax credits, if applicable.

5. Taxes.

(a) Lessee shall be responsible for and shall timely pay before the same become delinquent, any taxes, assessments or other governmental charges that shall or may during the Term be imposed on the Power Facilities.

(b) Owner shall be responsible for and shall timely pay before the same become delinquent, all real estate taxes, assessments or other governmental charges that shall or may, prior to the Operations Date, be imposed on, or arise in connection with the Property itself. Except as expressly provided in this Section 5, Lessee shall not be responsible for any real estate taxes, assessments or other governmental charges or fees levied against the Property. If Owner should fail to timely pay any taxes, assessments or other governmental charges for which Owner is responsible under this Agreement, then, without limiting Lessee's other remedies under this Agreement or otherwise, Lessee may (but shall not be obligated to) pay the same, and Owner shall reimburse Lessee, or Lessee may set off against amounts due from Lessee to Owner under this Agreement, all such amounts paid, including any late fees or interest, together with any court costs and reasonable attorneys' fees incurred by Lessee in connection therewith.

(c) Lessee shall be responsible for and shall timely pay before the same become delinquent, all real estate taxes, assessments or other governmental charges that shall or may, from and after the Operations Date until the expiration or earlier termination of this Agreement, be imposed on, or arise in connection with the Property itself; provided, however, that in no event shall Lessee be responsible for any increase in such real estate taxes, assessments or other governmental charges to the extent arising (by reassessment or otherwise) from a sale of all or any portion of Landlord's interest in the Property after the Effective Date, and in all events Owner shall be responsible for all such increases and shall pay the same before they become delinquent.

(d) Owner and Lessee agree that all real estate taxes, assessments or other governmental charges applicable with respect to the tax year in which the Operations Date occurs shall be prorated between them in a manner consistent with the Parties obligations under Sections 5(b) and 5(c).

(e) Lessee may contest the legal validity or amount of any taxes, assessments, or other charges for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary. Lessee shall bear all expenses in pursuing such contest or proceeding. With respect to any taxes for which Lessee is responsible that may constitute a lien on the Property, Lessee shall promptly pay such taxes unless the proceeding in which it contests such tax shall operate to prevent or stay the collection of the taxes so contested or unless Lessee removes any such lien by bonding or otherwise. Owner agrees to render to Lessee all reasonable assistance, at no material cost or expense to Owner, in contesting the validity or amount of any taxes, assessments or charges, including joining in the signing of any reasonable protests or pleadings which Lessee may reasonably deem advisable to file.

6. Lessee's Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants as follows:

(a) Insurance. Lessee shall, at its expense, maintain the insurance required pursuant to that certain Power Purchase Agreement, dated as of the date hereof, by and between Owner and Lessee. Certificates of such insurance shall be provided to Owner upon written request.

(b) Indemnity. Lessee shall indemnify Owner against liability for physical damage to property and for physical injuries to Owner or the public, to the extent directly caused by Lessee's construction, operation or removal of Power Facilities on the Property, except to the extent such damage or injury is caused by the negligence or willful misconduct of Owner. The foregoing indemnity shall not extend to property damage or personal injuries attributable to risks of known and unknown dangers associated with electrical generating facilities, such as electromagnetic fields, and Lessee shall in no case be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Lessee's Development Activities on the Property.

(c) Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Power Facilities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, the validity or applicability to the Property or Power Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, local or other governmental agency or entity. Owner shall not interfere with any such contests, and at Lessee's request (but at no out of pocket expense to Owner) shall cooperate with Lessee in every reasonable way with respect to each such contest. Each such contest or proceeding shall be controlled and directed by Lessee.

(d) Construction Liens. Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within ninety (90) days after it receives written notice of the filing of such lien, remove or bond over such lien pursuant to applicable law.

(e) Hazardous Substances. Lessee shall not violate, and shall indemnify Owner against any violation by Lessee or Lessee's agents or contractors of, any federal, state or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Substances (as hereinafter defined) on or under the Property; provided, however, that notwithstanding the foregoing or anything else in this



Agreement, in no event shall Lessee have any liability (i) in connection with the mere discovery of any condition existing on, under, over or about the Property, or (ii) for any matter arising from the negligence or willful misconduct of Owner or its agents.

(f) Lessee's Authority. Lessee has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Lessee is authorized to do so. When signed by Lessee, this Agreement constitutes a valid and binding agreement enforceable against Lessee in accordance with its terms.

(g) No Development Undertaking. Nothing expressly stated or implied in this Agreement or represented to Owner shall be construed as requiring Lessee to undertake construction, installation or operation of any Power Facilities on the Property or elsewhere or prohibit Lessee from removing Power Facilities from the Property, and Lessee makes no representation or warranty as to the likelihood that Power Facilities will be installed upon the Property.

7. Owner's Representations, Warranties and Covenants. Owner hereby represents, warrants, covenants and agrees as follows:

(a) Quiet Enjoyment. Lessee shall have the quiet use and enjoyment of the Property in accordance with the terms of this Agreement without any interference of any kind by Owner or any person claiming by, through or under Owner, subject, however, to the general rights herein reserved by Owner. Owner and its activities on the Property and any grant of rights Owner makes to any other person shall not interfere with any of Lessee's rights or activities pursuant to this Agreement.

(b) Title to Property. Except as disclosed on Exhibit C attached hereto and by this reference made a part hereof, Owner's fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase, claims and disputes (collectively, "Liens"), and there are no tenants on or other parties in possession of the Property. Owner shall fully cooperate with and assist Lessee in obtaining a subordination and/or non-disturbance agreement acceptable to Lessee in all respects from each party holding a Lien (recorded or unrecorded) or in possession of the Property that might interfere with Lessee's rights under this Agreement. A non-disturbance agreement is an agreement between Lessee and the holder of a Lien providing that the holder of the Lien shall not disturb Lessee's possession or rights under this Agreement or terminate this Agreement so long as Owner is not entitled to terminate this Agreement under the provisions of this Agreement. Owner shall not grant, create, allow or suffer any Lien or other encumbrance on title to the Premises, except those matters set forth on Exhibit C.

(c) Condition of Property. To the Owner's knowledge, there are no physical conditions of the Property, nor any other material adverse facts or conditions relating to the Property or any portion thereof, that could delay, interfere with or impair Lessee's operations or the exercise of any of Lessee's other rights under this Agreement, or which could, with the passage of time, the giving of notice or both, have such an effect. Owner has disclosed to Lessee in writing any and all improvements existing on, under, over or about the Property, and no improvements currently exist on, under, over or about the Property that have been constructed or installed without all necessary and proper permits, licenses and approvals.

(d) No Interference. Owner's activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with (i) the construction, installation, maintenance or operation of the Power Facilities, (ii) access over the Property to such Power Facilities, (iii) any Development Activities, or (iv) the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Owner may not place or plant any trees, structures or improvements on the Adjoining Property after the date of this Agreement which may,

in Lessee's sole judgment, impede or interfere with receipt of or access to sunlight to the Power Facilities, nor shall Owner engage in any other activity that might cause a decrease in the output or efficiency of the Power Facilities.

(e) Siting and Setbacks. Owner consents to Lessee's siting of Power Facilities at any location upon the Property. To the fullest extent applicable and permitted by law, Owner waives enforcement of, and any and all rights it may have to pursue any remedies under, any state, zoning or local rules, ordinances or requirements related to siting of Power Facilities upon the Property, including setback requirements applicable to the Power Facilities from lot lines and improvements, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Owner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and/or petition prepared by Lessee in connection with any modification or variance to an existing siting or setback requirement.

(f) Approvals. Lessee may apply for and process, and Owner shall cooperate with Lessee in Lessee's efforts to seek, governmental approvals desired by Lessee for Lessee's intended use of the Property including (i) the granting to Lessee of full authority to seek any and all authorizations, permits, licenses, and approvals necessary for the development of the Property for Lessee's intended use thereof (including, as necessary, rezoning, variance, and/or vacation applications), (ii) the granting to Lessee of full authority to seek any and all authorizations, permits, licenses, and approvals necessary for the division or adjustment (whether by certified survey map, lot line adjustment, or otherwise) of the Property so as to cause the Property to be recognized as a single lawfully subdivided and/or created lot or parcel that is separately conveyable and/or leaseable in accordance with applicable law, and (iii) the execution of consents and applications in connection with Lessee attempting to obtain such governmental permits, licenses, and approvals. Without limiting the generality of the foregoing, (y) Owner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval, or entitlement at any administrative, judicial, legislative, or other level, and (z) so long as this Agreement is in effect, Owner shall not, and shall not permit any other party (other than Lessee) to process any approvals, entitlements or other similar matters relating to the Property with the city or county in which the Property is located or with any other governmental agency without the written consent of Lessee. Without limiting the generality of the foregoing, Owner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Owner, in complying with or obtaining any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Power Facilities, including execution of applications for such approvals. Owner shall make available to Lessee copies of all field tiling surveys, plans and other geotechnical and other site assessments, surveys, plans, environmental assessments, reports, test results, correspondence to or from any governmental agency, and other such records of Owner relating to the Property. Without limiting the generality of the foregoing, Owner represents and warrants to Lessee that the Property is a single lawfully subdivided and/or created lot or parcel that is separately conveyable and/or leaseable in accordance with applicable law.

(g) Indemnity. Owner will indemnify Lessee against liability for physical damage to the Property and for physical injuries to Lessee or the public, to the extent caused by Owner's activities on the Property or the Adjoining Property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Lessee. Owner shall take reasonable safety measures to reduce the risk that Owner's activities will cause harm to Lessee or the public.

(h) No Brokers. No brokers' commission, finders' fees or other charges are due any broker, agent or other party in connection with Owner's execution of this Agreement, or if any are now due or shall become due in the future, then Owner shall promptly pay the same from its own funds and shall indemnify, protect, hold harmless and defend Lessee against any and all claims and demands therefor made by any

such broker, finder, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

(i) No Litigation, Violations, or Condemnation. No litigation is pending, and, to Owner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder, nor does Owner know of any basis for any such action. Owner has no knowledge, nor has Owner received any notice, of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Property (or any part thereof) or with respect to the use or occupancy of the Property nor does Owner know of any basis for such violations. No condemnation proceeding is pending or, to Owner's knowledge, threatened with respect to any part of the Property.

(j) No Conflicting Agreements. Neither the entering into nor the delivery of this Agreement nor the consummation by Owner or Lessor of the transaction contemplated by it will conflict with or constitute a default under or result in a violation of, or require a consent of anyone under (i) any of the provisions of the organizing documents of Owner, or (ii) any agreement, mortgage, encumbrance or any other instrument to which Owner is a party or by which Owner or the Property is bound. Owner is not in default under any contracts, leases, agreements, easements or any other documents or instruments relating to or affecting this Agreement or the Property.

(k) Hazardous Substances. Neither Owner nor any of Owner's predecessor's in interest to the Property, has used, generated, treated, stored, released, discharged, or disposed of (or permitted the use, generation, treatment, storage, release, discharge, or disposal of) Hazardous Substances (as defined below) in, on, over, under, about or at the Property at any time; nor has any such event occurred upon or within the Property. No notification of release of a Hazardous Substance has been filed as to the Property, nor is the Property listed or formally proposed for listing on the National Priority List promulgated pursuant to federal law or on any state list of hazardous substance sites requiring investigation or clean-up. Owner has complied with all reporting requirements under any applicable federal, state, or local environmental laws and there are no existing violations by Owner of any such environmental laws. There are no claims, actions, suits, proceedings, or investigations related to the presence, release, discharge, spillage, or disposal of any Hazardous Substance or contamination of soil or water by any Hazardous Substance pending or threatened with respect to the Property or otherwise against Owner in any court or before any state, federal, or other governmental agency or private arbitration tribunal. No PCB, PCB-contaminated, friable asbestos, or formaldehyde-based insulation items are present at the Property. Owner shall indemnify, protect, defend and hold harmless Lessee from and against any and all losses arising from or related to the breach by Owner of any warranties or representations contained in this subsection. Owner hereby assigns to Lessee, to the extent assignable, all claims, counterclaims, defenses or actions, whether at common law or pursuant to any other applicable federal or state or other laws, if any, that Owner may have against third parties to the extent relating to the existence of Hazardous Substances in, on, over, under, about or at the Property. "Hazardous Substance" shall refer to any chemical, compound, material, mixture, by-product, debris, waste, substance or other matter, whether solid, liquid or gas and whether new, used or recycled, now or in the future, defined, listed in, identified, classified pursuant to or otherwise regulated by, any state or federal laws or regulations (including, without limitation, the Comprehensive Environmental Recovery Compensation and Liability Act, 42 U.S.C. 9601 et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.) as a hazardous substance, hazardous material, hazardous waste, extremely hazardous waste, restricted hazardous waste, acutely hazardous waste, toxic air contaminant, infectious waste, medical waste, toxic substance, contaminant, pollutant or any other terms or provisions used to define, list, identify, characterize, classify or regulate substances by reason of any characteristics or properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity," including but not limited to any substance, material or waste that is hydrocarbon-based, petroleum, petroleum-related, or a petroleum by-product, fraction or residue therefrom, a volatile organic chemical, a solvent or other degreasing agent,

whether chlorinated or non-chlorinated, asbestos or asbestos containing material, lead or lead-based paints, flammable, explosive, radioactive, freon gas, methane gas, radon, or a pesticide, herbicide, or any other agricultural chemical, or polychlorinated biphenyls.

(l) Assessments. No assessments have been made against the Property (or any part thereof) that are unpaid (except for non-delinquent property taxes or special assessments), whether or not they have become liens.

(m) No Assumption of Existing Liabilities. Owner agrees that Lessee shall not and does not assume any of the following liabilities, and Owner shall promptly pay and perform, and indemnify, protect, defend and hold harmless Lessee from and against: any liability or obligation of Owner in respect of any state, local, federal, or foreign taxes (whether in the nature of income, transfer, sales, withholding, employee, excise, property, customs, gross receipts, or other taxes or other duties of any kind whatsoever), or penalties, interest, and fines in respect thereof, or any reporting requirement or estimated tax payable with respect thereto, relating to events or transactions occurring on or prior to Effective Date involving Owner or the transaction contemplated hereby; any litigation, investigation, or other proceeding pending or threatened with respect to Owner or the Property on or prior to the Effective Date, or subsequently asserted, which is attributable to facts existing, or events, or omissions occurring on or prior to the Effective Date; and all liabilities or claims of any nature relating directly or indirectly to the Property, whether accrued, absolute, contingent, or otherwise arising out of or relating to (or alleged to arise out of or relate to) any state of facts, omissions, or events existing or occurring on or before the Effective Date (whether known or unknown to Owner or Lessee).

(n) Bankruptcy. Owner has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy against it; (iii) received notice of the appointment of a receiver to take possession of all or substantially all of its assets; (iv) received notice of the attachment or other judicial seizure of all or substantially all of its assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

(o) Certain Notifications. Owner shall promptly notify Lessee in writing of, and shall deliver to Lessee, immediately upon receipt, copies of any notices or communications received by Owner relating to: (i) compliance with or violation of laws, ordinances, statutes, orders and regulations applicable to the Power Facilities, the Property or Lessee's Development Activities; (ii) compliance with or violation of laws, ordinances, statutes, orders and regulations relating to Hazardous Substances on the Property; (iii) the filing or threatened filing of any construction or mechanic's lien against the Power Facilities or any interest in the Property, whether or not arising through Lessee; and (iv) any litigation or other proceeding filed or threatened in relation to the Power Facilities, Lessee's Development Activities on the Property, this Agreement, the Property or any interest of Owner or Lessee in the Property or hereunder.

(p) Owner's Authority. Owner is the sole owner of the Property, holds marketable title to such Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. All persons having any ownership interest in the Property have signed this Agreement. Each person signing this Agreement on behalf of Owner is authorized to do so, and the execution and delivery of this Agreement and the consummation of the transactions in this Agreement contemplated have been duly authorized by all necessary action on the part of Owner. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms. Each spouse signing this Agreement agrees that any rights of community property, homestead, dower, contribution, and the like shall be subject and subordinate to the Leasehold Estate and this Agreement. Owner hereby releases and waives all rights under and by virtue of any applicable homestead exemption laws as to the Leasehold Estate and other rights granted hereunder. Owner is not the subject of any bankruptcy, insolvency or probate proceeding.

(q) Authorization. The execution and delivery of this Agreement by Owner and the performance of its obligations hereunder have been duly authorized by all necessary official action. This Agreement is a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms.

(r) Continuing Representations and Warranties. Each of Owner's representations, warranties, covenants and agreements set forth in this Agreement shall be true and correct as of the Effective Date, and at all times thereafter during the Term. Owner shall promptly notify Lessee of any change with respect to the Property and any information heretofore or hereinafter furnished to Lessee with respect to the Property, including, without limitation, any change which would make any portion of this Agreement untrue or misleading. Owner agrees to take such actions at its expense as may be necessary to cause the above representations, warranties, and covenants to be true, correct, and satisfied as of the Effective Date and at all times thereafter during the Term; provided, however, if an event or circumstance first occurs after the Effective Date which is neither caused by Owner nor within the reasonable control of Owner and causes any such representation, warranty, or covenant to be untrue, Owner shall be required upon discovery to disclose the same to Lessee in writing but shall not be required to take any other such actions with respect to such event or occurrence under this sentence; provided further, in the event such event or occurrence materially impairs Lessee's ability to conduct its business, Lessee shall have the option to terminate this Agreement by providing written notice of same to Owner within thirty (30) days of Lessee's receipt of Owner's written notice. Owner shall not enter into any transaction, take any action, or by inaction, permit any event to occur, which would result in any of the representations, warranties, and covenants of Owner herein contained not being true, correct, and satisfied at and as of the time immediately after the occurrence of such transaction or event.

#### 8. Assignment.

(a) Assignments by Lessee. Lessee shall at all times have the right to sell, assign, encumber, transfer or grant equal or subordinate rights and interests (including, without limitation, co-leases, separate leases, subleases, licenses or similar rights (however denominated)) in, the Leasehold Estate and/or any or all right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Power Facilities that Lessee may now or hereafter install on the Property, to one or more persons (an "Assignee"), in each case without Owner's consent; provided, however, that any and all such transfers shall be subject to all of the terms, covenants and conditions of this Agreement. Lessee shall notify Owner in writing of any such sale, assignment, transfer or grant. Upon Lessee's assignment of its entire interest hereunder as to all or any portion of the Property, or as may otherwise be provided in the applicable sale, assignment, transfer or grant document, Owner shall recognize the Assignee as Lessee's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Lessee under and pursuant to this Agreement, and Lessee shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions that occur or accrue following the effective date of such sale, assignment, transfer or grant.

(b) Assignments by Owner. The burdens of this Agreement and other rights contained herein shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Owner and its successors and assigns. Owner shall notify Lessee in writing of any sale, assignment or transfer of any of Owner's interest in the Property, or any part thereof. Until such notice is received, Lessee shall have no duty to any successor Owner, and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Owner before notice of sale, assignment or transfer is received. Owner agrees (i) it will not assign the rights to payments due to Owner under this Agreement except to a successor owner of the Property, (ii) in no case shall Owner sever or attempt to sever the Property's solar energy rights or interests from the Property's fee title, and (iii)

in no case shall Owner convey, assign or transfer or attempt to convey, assign or transfer this Agreement, except to a successor owner of the Property.

(c) Bifurcation of Agreement. If Lessee from time to time so requests (including, without limitation, in contemplation of or following a partial assignment under Section 8.1 above), Owner shall promptly bifurcate this Agreement by entering into two or more new lease agreements that provide Lessee with such lease rights as to such portions of the Property as may be designated by Lessee. Each of such new agreements shall (a) contain the same terms and conditions as this Agreement, (b) be for a term equal to the remaining term of this Agreement, and (c) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner. Further, in the event of an uncured default by Lessee under any such new agreement, such default shall not constitute a cross-default, or otherwise affect, or cause a termination of, any such other new agreement or any rights or interests granted to Lessee under such other new agreement. The portions of the Property covered by each new agreement may or may not be coextensive or contiguous with the other portions of the Property covered by the same agreement.

9. Mortgagee Protection. In the event that any mortgage, deed of trust or other security interest in this Agreement or any Power Facilities is entered into by Lessee or an Assignee, including, without limitation, a sale-leaseback (i.e., a transaction in which Lessee sells its interest in the Agreement and/or Power Facilities and then leases those interests back from the purchaser) (a "Leasehold Mortgage"), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 9. Lessee or any Leasehold Mortgagee shall send written notice to Owner of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

(a) Leasehold Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Leasehold Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the Leasehold Estate by any lawful means; (c) to take possession of and operate the Power Facilities, the Leasehold Estate or any portion thereof and to perform all obligations to be performed by Lessee hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the Leasehold Estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the Leasehold Estate to a third party. Owner's consent shall not be required for the acquisition of the encumbered leasehold or subleasehold estate by a third party who acquires the same by or subsequent to foreclosure or assignment in lieu of foreclosure.

(b) On or before the Operations Date, Lessee shall establish a reserve fund of twenty thousand dollars (\$20,000) to meet any unpaid obligations of Lessee (the "Reserve Fund"). The Reserve Fund shall be held in trust at a bank of Owner's choosing and shall only be used for payments by a Leasehold Mortgagee of any unpaid obligations of Lessee. Any funds remaining in the Reserve Fund, plus all interest, shall be released to Lessee upon termination of this Agreement.

(c) Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, Owner shall give written notice of the default to each Leasehold Mortgagee concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. In the event Owner gives such a written notice of default, the following provisions shall apply:

(i) A "monetary default" means failure to pay when due any fee, payment, real property taxes, insurance premiums or other monetary obligation of Lessee under this Agreement; any other event of default is a "non-monetary default."

(ii) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee's receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such one hundred twenty (120) day period shall be extended for the time reasonably required to complete such cure, including, without limitation, the time required for the Leasehold Mortgagee to obtain possession of the Property through foreclosure or otherwise, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Owner shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(iii) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all other monetary charges payable by Lessee hereunder which accrue during said period. Further, Lessee shall authorize any Leasehold Mortgagee, during any such period, to pay from the Reserve Fund any accrued and unpaid monetary charges payable by Lessee hereunder as of the commencement of said period. To the extent that the Reserve Fund is insufficient to meet all accrued and unpaid monetary charges of Lessee as of the commencement of said period, Lessee shall remain liable for those charges and Leasehold Mortgagee shall have no liability for those charges. Following acquisition of Lessee's Leasehold Estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Leasehold Mortgagee or party acquiring title to Lessee's Leasehold Estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee's Leasehold Estate shall not be required to cure those non-monetary defaults, if any, which are not reasonably susceptible of being cured or performed by such party ("Non-Curable Defaults"). Non-Curable Defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Lessee's interest in this Agreement by such party.

(iv) Any Leasehold Mortgagee or other party who acquires Lessee's Leasehold Estate pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Agreement incurred or accruing after such party no longer has ownership of the Leasehold Estate or possession of the Property.

(v) Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Agreement as long as the rent and all other obligations of Lessee hereunder are paid or performed by or on behalf of Lessee or the Leasehold Mortgagee in accordance with the terms of this Agreement.

(vi) Nothing herein shall be construed to extend this Agreement beyond the Term or to require a Leasehold Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Leasehold Mortgagee discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

(d) New Lease Agreement. If this Agreement terminates because of Lessee's default or if the Leasehold Estate is foreclosed, or if the Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Owner shall, upon written request from any Leasehold Mortgagee within ninety (90) days after such event, enter into a new lease agreement for the Property, on the following terms and conditions:

(i) The term of the new lease agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term of this Agreement, at the same fees and payments and subject to the same terms and conditions as set forth in this Agreement.

(ii) The new lease agreement shall be executed within thirty (30) days after receipt by Owner of written notice of the Leasehold Mortgagee's election to enter a new lease agreement, provided said Leasehold Mortgagee: (i) pays to Owner all fees and payments and other monetary charges payable by Lessee under the terms of this Agreement up to the date of execution of the new lease agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed, except that the Leasehold Mortgagee shall only be required to arrange for payment from the Reserve Fund of Lessee's unpaid monetary charges as of the commencement of Leasehold Mortgagee's possession of the Property, and the Leasehold Mortgagee shall not be liable to the extent that the Reserve Fund is insufficient for this purpose; and (ii) performs all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Leasehold Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee that are reasonably susceptible of being performed by the Leasehold Mortgagee and would have accrued under this Agreement up to the date of commencement of the new lease agreement. Any new lease agreement granted to the Leasehold Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Owner.

(iii) At the option of the Leasehold Mortgagee, the new lease agreement may be executed by a designee of such Leasehold Mortgagee without the Leasehold Mortgagee assuming the burdens and obligations of the Lessee thereunder.

(iv) If more than one Leasehold Mortgagee makes a written request for a new lease agreement pursuant hereto, the new lease agreement shall be delivered to the Leasehold Mortgagee requesting such new lease agreement whose Leasehold Mortgage is prior in lien, and the written request of any other Leasehold Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(v) The provisions of this Section 9 shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Lessee and such Leasehold Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new lease agreement, such Leasehold Mortgagee may use and enjoy said Property without hindrance by Owner or any person claiming by, through or under Owner, provided that all of the conditions for a new lease agreement as set forth herein are complied with.

(e) Leasehold Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of the Agreement to the contrary, the parties agree that so long as there exists an unpaid Leasehold Mortgage, this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation or release of this Agreement from Lessee prior to expiration of the Term without the prior written consent of the Leasehold Mortgagee. This provision is for the express benefit of and shall be enforceable by such Leasehold Mortgagee.



(f) No Waiver. No payment made to Owner by a Leasehold Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of the Agreement; and a Leasehold Mortgagee having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

(g) Further Amendments. At Lessee's request, Owner shall amend this Agreement to include any provision which may reasonably be requested by a proposed Leasehold Mortgagee; provided, however, that such amendment does not impair any of Owner's rights under this Agreement or materially increase the burdens or obligations of Owner hereunder. Upon request of any Leasehold Mortgagee, Owner shall execute any additional instruments reasonably required to evidence such Leasehold Mortgagee's rights under this Agreement.

#### 10. Default and Termination.

(a) Lessee's Right to Terminate. Notwithstanding anything to the contrary set forth in this Agreement, Lessee shall have the right to terminate this Agreement as to all or any part of the Property at any time, with or without cause, effective upon (i) thirty (30) days' prior written notice to Owner from Lessee, and (ii) payment to Owner of a termination fee of One Hundred Dollars (\$100). If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property, and the payments due to Owner pursuant to Section 3 hereof shall be reduced in a pro rata fashion based upon the number of acres within the portion of the Property as to which this Agreement is terminated. In the event this Agreement is terminated by Lessee in accordance with this paragraph, Owner authorizes Lessee to execute and record a notice of termination evidencing such termination.

(b) Performance Notice. Notwithstanding anything to the contrary set forth in this Agreement but subject to Section 9, if Lessee fails to (i) deliver funds or documents as required under this Agreement, (ii) make any payment in a timely manner; or (iii) fulfill any other obligation of any kind or nature of Lessee under this Agreement, such failure shall not be a default by Lessee or grounds for cancellation or termination of this Agreement unless Owner delivers written notice to Lessee of such failure (a "Performance Notice") and Lessee fails to cure such failure (A) with respect to a monetary failure, within sixty (60) days after receipt of a Performance Notice from Owner, or (B) with respect to a non-monetary failure, within sixty (60) days after receipt of a Performance Notice from Owner, or if such a cure cannot reasonably be accomplished within such sixty (60) day period, then within such additional time as reasonably necessary to accomplish such cure, provided that Lessee has commenced such cure within such sixty (60) day period and thereafter diligently prosecutes such cure to completion.

(c) Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, whether as to the entire Property or only as to part, Lessee shall, as soon as practicable thereafter, unless otherwise mutually agreed upon, (a) remove from the Property (or applicable portion thereof) all above surface grade Power Facilities and other personal property owned, located, installed or constructed by or on behalf of Lessee thereon, (b) remove from the Property (or applicable portion thereof) concrete footings, foundations and other fixtures of Lessee to a depth of two (2) feet below the surface grade, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Lessee on the Property (or applicable portion thereof), (d) leave the surface of the Property (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Lessee and (e) otherwise restore any portion of the Property (or applicable portion thereof) disturbed by Lessee to a condition reasonably similar to its original condition, consistent with the uses permitted by this Agreement. Owner shall provide Lessee with reasonable access and rights to the Property during the performance of such removal and other work by Lessee for a period of twelve (12) months following the termination or expiration of this Agreement in order to enable and facilitate the performance of Lessee's duties under this Section 10.3. During such period, Lessee shall not be required to pay the amounts set forth in Sections 3 or 5 or any other

rent. If Lessee fails to remove any Power Facilities within twelve (12) months following the termination or expiration of this Agreement, or such longer period as Owner may provide by extension, Owner may do so, in which case Lessee shall reimburse Owner for reasonable and documented costs of removal and restoration incurred by Owner, net of any amounts reasonably recoverable by Owner with respect to the salvage value of any such Power Facilities.

**11. Miscellaneous.**

(a) Force Majeure. If, after a good faith effort, Lessee is prevented, restricted or delayed from (i) complying with any express or implied covenant of this Agreement; (ii) constructing, or causing construction of, Power Facilities on the Property; (iii) producing or transmitting, or causing to be produced or transmitted, electricity; or (iv) performing any other activity reasonably related to and/or required by this Agreement by reason of war, weather, fire, casualty, terrorism, rebellion, riots, strikes, acts of God; inability to secure materials; any valid order, rule, or regulation of governmental authority (e.g., a third-party contest to any governmental approval or any legal action intended to prevent issuance of a permit or approval); or other events that are beyond the control of the Lessee (collectively referred to as a "**Force Majeure Condition**"), then, while so prevented, restricted or delayed, the Lessee's obligation to perform hereunder shall be suspended and excused to the extent of prevention, restriction or delay, and the Lessee shall not be liable for damages for failure to comply with such obligation. The term Force Majeure Condition shall also include repowering of the Power Facilities and the termination of any power purchase agreement with respect to the Property, even though such action may be deemed to be within the control of Lessee. For clarity, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent to the extent a Force Majeure Condition prevents, restricts or delays Lessee's ability to sell and be paid for electricity from the Premises.

(b) Condemnation. All payments made on account of any taking or threatened taking of the Property or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Owner, except that Lessee shall be entitled to, and Owner shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Power Facilities, (ii) any loss of or damage to any Power Facilities, (iii) the loss of use of any portion of the Property by Lessee (including impediments to or interference with the receipt of sunlight) and (iv) Lessee's lost profits, measured in each case with regard to the effect on the Lessee's use of the Property and any effect on Lessee's use of other property. If such condemning authority makes all payments to Owner, then Owner shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Owner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Should title to or possession of all of the Property be permanently taken, or should a partial taking render the remaining portion of the Property unsuitable for Lessee's use (as determined by Lessee), then Lessee may terminate this Agreement upon such vesting of title or taking of possession. If Lessee does not terminate this Agreement as provided in this Section 11(b), the rent and any other charges and other terms of this Agreement shall be equitably adjusted to reflect such taking.

(c) Confidentiality. To the fullest extent allowed by law, Owner shall maintain in the strictest confidence: (i) any information regarding Lessee's Development Activities and (ii) any other information that is proprietary or that Lessee requests be held confidential, in each such case whether disclosed by Lessee or discovered by Owner ("**Confidential Information**"). Excluded from the foregoing is any such information that is in the public domain by reason of prior publication through no act or omission of Owner. Owner shall not use Confidential Information for its own benefit or publish or otherwise disclose it to others; provided, however, that Owner may disclose Confidential Information to (a) Owner's personal advisors, (b) any prospective purchaser of the Property or (c) pursuant to lawful process, subpoena or court

order; so long as in making such disclosure Owner advises the person receiving the Confidential Information of the confidentiality thereof and endeavors in good faith to obtain the agreement of said person not to disclose such Confidential Information.

(d) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Owner and Lessee and, to the extent provided in any assignment or other transfer under Section 8.1 hereof, any Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them, and shall be deemed covenants running with the land and be binding upon the Property. References to Lessee in this Agreement shall be deemed to include Assignees that hold a direct ownership interest in this Agreement.

(e) Memorandum of Lease Agreement. Lessee shall have the right to record a memorandum of this Agreement. Owner shall cooperate with Lessee in such regard and shall execute any reasonable form of memorandum requested by Lessee. In addition, Owner hereby consents to the recordation of the interest of an Assignee in the Property.

(f) Notices. All notices or other communications required or permitted hereunder, including payments to Owner, shall, unless otherwise provided herein, be in writing, and shall be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to Owner:

City of Prineville  
387 NE Third Street  
Prineville, Oregon 97754  
Attention: Eric Klann  
Email: eklann@cityofprineville.com

And with a copy to:

Jered Reid  
35 SE C Street, Suite D  
Madras, OR 97741  
jeredwreid@gmail.com

If to Lessee:

Westlake Solar Panels LLC  
1000 2<sup>nd</sup> Ave. #1800  
Seattle, Washington 98104  
Attention: Peter Parker  
Email: [\_\_\_\_\_]

And with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices electronically mailed shall only be deemed delivered upon non-automated confirmation by the receiving Party. Any Party may change its address for purposes of this subsection by giving written notice of such change to the other Party in the manner provided in this subsection.

(g) Further Assurances: Cooperation. Without limiting any other obligations of Owner under this Agreement (including, without limitation, Owner's obligations under Section 7(f)), Owner shall fully support and cooperate with Lessee in the conduct of its Development Activities and the exercise of its rights hereunder (including, without limitation, Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights to sell, assign, transfer or finance any Power Facilities or interest in the Leasehold Estate or under this Agreement or obtain any financing), and Owner shall perform all such acts (including executing and delivering maps, instruments and documents within ten (10) days after receipt of a written request made

from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Without limiting the generality of the foregoing, within ten (10) days after receipt of a written request made from time to time by Lessee, Owner shall: (a) enter into any reasonable amendment hereto (i) to correct an error in this Agreement, (ii) to amend the legal description attached hereto (including by replacing said legal description with a revised description prepared or provided by Lessee's surveyor or title company), (iii) that may be required by any Leasehold Mortgagee or in connection with the transfer by Lessee of any Power Facilities or interest in the Leasehold Estate or under this Agreement or (iv) to cause this Agreement to comply with applicable law; (b) execute and deliver to Lessee any owner's affidavit reasonably requested by any title company or attorney reviewing title to the Property; (c) enter into any reasonable consent and nondisturbance agreement with any Leasehold Mortgagee, stating that Owner shall recognize the rights of the Leasehold Mortgagee and not disturb its possession of the Property so long as it is not in default under this Agreement, and stating such other things as such Leasehold Mortgagee may reasonably request; (d) join in any grants for rights-of-way and leases for electric and other public utilities and facilities and any other electric power purpose (including any power transmission line), together with access, ingress and egress rights, as Lessee may deem necessary or desirable for its development and use of the Property; (e) join with Lessee in the signing of any protest, petition, appeal or pleading that Lessee may deem advisable to file or in requesting any and all zoning changes or any waivers, variances, land use permits and/or approvals, in each case as Lessee may deem necessary or desirable for Lessee's development and use of the Property as contemplated by this Agreement; and (f) if because of the nature of this Agreement Lessee is unable to qualify for any tax credit, renewable energy credit, environmental credit or any other benefit or incentive for renewable energy established by any local, state or federal government associated with the Power Facilities or the Development Activities, amend this Agreement or convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such credit, benefit or incentive (but only if such amendment does not materially adversely affect Owner's rights or obligations hereunder); and Lessee agrees to pay Owner's reasonable out-of-pocket expenses incurred by Owner in connection with Owner's cooperation pursuant to the foregoing provisions of this Section 11(g). Without limiting the generality of the foregoing, Owner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

(h) Estoppel Certificates. Owner shall, within ten (10) days after a written request by Lessee, any Assignee or any Leasehold Mortgagee, execute, acknowledge and deliver to the requesting party such estoppel certificates (certifying as to such matters as may reasonably be requested, including, without limitation, that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that there are no defaults existing (or that defaults exist and stating the nature of such defaults)) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Lessee, any Assignee or any Leasehold Mortgagee may reasonably request from time to time during the term of this Agreement. At Lessee's option, such certificates, consents and agreements may be recorded and Owner consents to such recording.

(i) No Waiver; No Abandonment. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement. Further, (i) no act or failure to act on the part of Lessee shall be deemed to constitute an abandonment, surrender or termination of any interest under this Agreement, except upon recordation by Lessee of a quitclaim deed or release specifically conveying such Leasehold Estate or interest back to Owner, (ii) nonuse of the Agreement or any lease or interest hereunder shall not prevent the future use of the entire scope thereof; and (iii) no use of or improvement to the Property, and no assignment, transfer or grant under Section 8 or otherwise, or use resulting from any such transfer or grant, shall, separately or in the aggregate, constitute an overburdening of this Agreement or any lease or interest hereunder.

(j) No Merger. There shall be no merger of this Agreement, or of the Leasehold Estate created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the Leasehold Estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including, without limitation, each Leasehold Mortgagee) having an interest in this Agreement or in the estate of Owner and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

(k) Entire Agreement. This Agreement, together with its attached exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof, and any prior or contemporaneous agreements, discussions or understandings, written or oral (including any options or agreements for leases, confidentiality agreements, and/or access agreements previously entered into by the Parties with respect to the Property), are superseded by this Agreement and shall be of no force or effect. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by each of the Parties.

(l) Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the state of Oregon without reference to choice of law principles.

(m) Dispute Resolution. The Provisions of Section 23 of the Power Purchase Agreement signed by the Parties on the Effective Date are hereby incorporated by reference and shall have the same effect *mutatis mutandis* as if stated expressly herein.

(n) Interpretation. The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor of, or more strictly against, either Party.

(o) Partial Invalidity. Should any term or provision of this Agreement, or the application thereof to any person or circumstance, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of the Leasehold Estate or this Agreement be longer than the longest period permitted by applicable law; provided, however, that Lessee shall be entitled to record an instrument preserving the effectiveness or record notice of this Agreement.

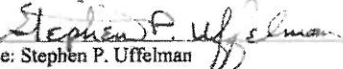
(p) Other General Provisions. Except with respect to the rights conferred hereunder upon Leasehold Mortgagees (which Leasehold Mortgagees and their respective successors and assigns are hereby expressly made third party beneficiaries hereof to the extent of their respective rights hereunder), the covenants contained herein are made solely for the benefit of the Parties and their respective successors and assigns, and shall not be construed as benefiting any person or entity who is not a Party to this Agreement. Neither this Agreement nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of landowner and lessee. Lessee's shareholders, directors, officers, partners and members shall not have any personal liability for any damages arising out of or in connection with this Agreement. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa, whenever the context so requires. The terms "include", "includes" and "including", as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and do not define, limit or otherwise affect the scope, meaning or intent hereof.


(q) Counterparts: Facsimiles or PDF. This Agreement may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each Party shall be entitled to rely upon executed copies of this Agreement transmitted by facsimile or electronic "PDF" to the same and full extent as the originals.

*[signature page follows]*

IN WITNESS WHEREOF, Owner and Lessee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

**OWNER:**

By:   
Name: Stephen P. Uffelman  
Title: Mayor

By:   
Name: Steve Forrester  
Title: City Manager

**LESSEE**

By:   
Name: Peter Parker  
Title: CFO/COO

**EXHIBIT A**

The Property

A leased area of approximately seven (7) acres on a portion of property within Crook County, Oregon located at 2101 NW O'Neil Highway, Prineville, Oregon and more particularly described as Parcel 3 of Partition Plat 2015-02 as recorded in the Crook County Clerks Office. The leased area is depicted on Exhibit D of the Power Purchase Agreement, more or less.



**EXHIBIT B**

Solar Easement

(1) The dimensions of the solar easement shall be coextensive with all space directly above all or any portion of the Property, and shall include, without limitation, all vertical or horizontal angles through which direct sunlight may be accessed or received on or above the Property by any Power Facilities erected thereon. The solar easement shall apply to all times of day and all dates of the year.

(2) No vegetation, structures, or other objects shall be permitted to impair or otherwise obstruct the passage of sunlight through the solar easement.

(3) Except with respect to a termination upon the termination or expiration of the Lease, the solar easement may be revised or terminated only with the written consent of Lessee.



150 NE Court St., Prineville, OR 97754  
PHONE (541)447-5181 FAX (541)447-3371

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To: Jered Reid, Attorney at Law  
545 NE 7th St.  
Prineville, OR 97754  
Attn: Jered Reid

Date: February 21, 2020  
Order No. 353846AM  
Reference: Parcel 3 of Partition Plat 2015-  
02  
Prineville, OR 97754

We have enclosed our Preliminary Title Report pertaining to order number 353846AM.

***Thank you for the opportunity to serve you. Your business is appreciated!***

If you have any questions or need further assistance, please do not hesitate to contact your Title Officer listed below.

Sincerely,

Elsie Ray, [elsie.ray@amerititle.com](mailto:elsie.ray@amerititle.com)  
Title Officer

**NOTICE:** Please be aware that, due to the conflict between federal and state laws concerning the legality of the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving land that is associated with these activities.

**AMERITITLE, INC.**  
**PRIVACY POLICY NOTICE**  
As of March 13, 2019

**PURPOSE OF THIS NOTICE**

AmeriTitle, Inc., (the "Company") shares your concerns about privacy. The Company is committed to respecting the privacy of our customers. Therefore, in accordance with Federal and State laws and regulations, we are providing you with this notice of how we might use the information about you which we gather in the process of issuing a policy of title insurance and closing your real estate transaction.

Title V of the Gramm-Leach-Bliley Act (GLBA) and the laws of the State in which you reside generally prohibit us from sharing non-public personal information about you with a third party unless we provide you with this notice of our privacy policies and practices, such as the type of information that we collect about you and the categories of persons or entities to whom that information might be disclosed. In compliance with GLBA and the laws of this State, we are providing you with this document, which notifies you of the privacy policies and practices of the Company.

**Our Privacy Policies and Practices**

**Information we collect and sources from which we collect it:**

We do not collect any nonpublic information about you other than the following:

- Information we receive from you or from your attorney or other representatives on applications or other forms, such as your name, address, telephone number, or social security number
- Information about your transactions with us, such as description, price, or term
- In addition, we may collect other nonpublic personal information about you from affiliated/nonaffiliated third parties, such as individuals and companies other than those proposed for coverage, which may include information in documents received from your lender

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional information will be collected about you.

**Information we disclose to third parties**

In the course of our general business practices, we may disclose the information that we collect (as described above) about you or others without your permission to the following types of institutions for the reasons described:

- Financial Service Providers:
  - To an insurance institution, agent, or credit reporting agency in order to detect or prevent criminal activity, fraud or misrepresentation in connection with an insurance transaction;
  - To an insurance institution, agent, or credit reporting agency for either this Company or the entity to which we disclose the information to perform a function in connection with an insurance transaction involving you.
- Others:
  - To an insurance regulatory authority, law enforcement, or other governmental authority in order to protect our interests in preventing or prosecuting fraud, or if we believe that you have conducted illegal activities;
  - To a third party such as a surveying, real estate tax research or municipal data firm if the disclosure will enable that party to perform a business, professional or insurance function for us;
  - To an actuarial or research organization for the purpose of conducting actuarial or research studies.

The disclosures described above are permitted by law. We require any third party who receives information from us to agree to not disclose or use the information provided other than to carry out the purpose(s) for which it was disclosed.

**WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH AFFILIATES OR NON-AFFILIATED THIRD PARTIES FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.**

**Your right to access and amend your personal information:**

You have the right to request access to the personal information that we record about you. Your right includes the right to know the source of the information and the identity of the persons, institutions or types of institutions to whom we have disclosed such information within 2 years prior to your request. Your right includes the right to view such information and copy it in person, or request that a copy of it be sent to you by mail (for which we may charge you a reasonable fee to cover our costs). Your right also includes the right to request corrections, amendments or deletions of any information in our possession. The procedures that you must follow to request access to or an amendment of your information are as follows:

To obtain access to your information from AmeriTitle: You should submit a request in writing to:

Compliance Officer  
AmeriTitle, Inc.  
15 NW Oregon Avenue  
Bend, OR 97703

The request should include your name, address, policy number, telephone number and the information to which you would like access. The request should state whether you would like access in person or a copy of the information sent to you by mail. Upon receipt of your request, we will contact you within 30 business days to arrange providing you with access in person or the copies that you have requested.

To correct amend or delete any of your information: You should submit a request in writing to the address referenced directly above. The request should include your name, address, policy number, telephone number, the specific information in dispute, and the identity of the document or record that contains the disputed information. Upon receipt of your request, we will contact you within 30 business days to notify you either that we have made the correction, amendment or deletion, or that we refuse to do so and the reasons for the refusal which you will have an opportunity to challenge.

**Our practices regarding information confidentiality and security:**

We restrict access to nonpublic information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**Our policy regarding dispute resolution:**

In the event you believe the Company has not complied with the Privacy Policies and Practices as set forth in this Notice, you must give the Company notice in writing addressed to the Compliance Officer at the above address setting forth the reasons for such non-compliance. The Company shall not be deemed to be in breach of the Privacy Policies and Practices unless it has not resolved or explained the issues set forth in such notice within thirty (30) days to your reasonable satisfaction. All claims arising under this Notice shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**Reservation of the right to disclose information in unforeseen circumstances:**

In connection with the potential sale or transfer of its interests, the Company reserves the right to sell or transfer your information (including but not limited to your address, name, age, sex, zip code, state and country of residency and other information that you provide through other communications) to a third party entity that (1) concentrates its business in a similar practice or service; (2) agrees to be a successor in interest of the Company with regard to the maintenance and protection of the information collected; and (3) agrees to the obligations of this privacy statement.

**Other Important Information:**

The Company's website may contain links to other websites or Internet resources. The Company does not endorse or otherwise accept responsibility for the content or privacy policies of those websites or Internet resources.

The Company reserves the right to modify this Privacy Policy at any time. We will promptly reflect any such modifications in this document and, when we do, we will revise the "effective as of" date noted above. Any updated version of this Privacy Policy will be effective as of that date.



150 NE Court St., Prineville, OR 97754  
PHONE (541)447-5181 FAX (541)447-3371

**STATUS OF RECORD TITLE**

Jered Reid  
Jered Reid, Attorney at Law  
545 NE 7th St.  
Prineville, OR 97754

February 21, 2020  
Title Number: 353846AM  
Title Officer: Elsie Ray  
Fee: \$200.00

**We have searched the status of record title as to the following described property:**

Parcel 3 of Partition Plat 2015-02, Recorded January 9, 2015 as Instrument No. 2015-266355, records of Crook County, Oregon

**Vestee:**

City of Prineville

and dated as of February 14, 2020 at 7:30 a.m.

**Said property is subject to the following on record matters:**

**Tax Information:**

Taxes assessed under Code No. 02 Account No. 19714 Map No. 1415360004702  
NOTE: The 2019-2020 Taxes: \$362.74, are Paid

Taxes assessed under Code No. 02 Account No. 19610 Map No. 1415360004702  
NOTE: The 2019-2020 Taxes: No Amount Assessed.

1. Taxes assessed under Code No. 02 Account No. 19610 Map No. 1415360004702, including the current fiscal year, not assessed because of City Exemption. If the exempt status is terminated an additional tax may be levied.
2. Taxes deferred, as disclosed by the tax roll, the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use the property will be subject to additional taxes or penalties and interest.
3. Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals of People's Irrigation District.  
(No inquiry has been made)
4. Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals of Ochoce Irrigation District.  
(No inquiry has been made)

5. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: William H. Simmons and Elsie M. Simmons, husband and wife  
Recorded: August 16, 1994  
Instrument No.: [116753](#)
6. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein and such other exceptions as may appear necessary upon recording thereof,  
Lessor: Henry C. Simmons and Susan J. Simmons, husband and wife  
Lessee: J.C. Van Voorhees and James F. Larson, Trustees for Van Voorhees and Larson 401 (k) Profit Sharing Plan and Trust (Trust ID # 93-0963348) for the benefit of J.C. Van Voorhees  
Disclosed by: Assignment of Lease by Lessee for Security  
Date: November 22, 1999  
Recorded: December 2, 1999  
Instrument No.: [152521](#)  
  
Assignment of Lessor's Interest in Lease  
Assignor: J.C. Van Voorhees and James F. Larson, Trustees for Van Voorhees and Larson 401 (k) Profit Sharing Plan and Trust (Trust ID # 93-0963348) for the benefit of J.C. Van Voorhees  
Assignee: Henry C. Simmons and Susan J. Simmons, husband and wife  
Recorded: June 27, 2001  
Instrument No.: [163417](#)
7. Terms and Provisions contained in Dedication and Declaration as shown on the Partition Plat No. [2015-02-02](#).
8. Dedicated 35' Public Access and Utility Easement as shown on the Partition Plat No. [2015-02](#).
9. Dedicated 25' Public Access and Utility Easement as shown on the Partition Plat No. [2015-02](#).
10. Right-of-Way of the People's Irrigation District Main Canal as shown on the Partition Plat No. [2015-02](#).
11. Affidavit of Correction recorded January 13, 2015 as Instrument No. [2015-266401](#).
12. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Recorded: January 20, 2015  
Instrument No.: [2015-266482](#)
13. Vacating Ordinance Order No. 2004-41 as disclosed in document,  
Recorded: March 25, 2016  
Instrument No.: [2016-273280](#)
14. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.  
Including, but not limited to, Westview Road.
15. Public Access and Public Utility Easement as shown on the Crook County [Assessor's Map](#).
16. Rights of tenants under existing leases or tenancies.
17. Delivery to and approval by the Company of documentation authorizing transaction and setting forth parties authorized to execute documents on behalf of City of Prineville.

NOTE: Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

NOTE: This report does not include a search for financing statements filed in the office of the Secretary of State in this or any other State, or in a county other than the county wherein the premises are situated, and no liability is assumed if a financing statement is filed in the office of the County Clerk (Recorder) covering growing crops or fixtures on the premises wherein the lands are described other than by metes and bounds or under the rectangular survey system.

THIS IS NOT A TITLE REPORT, A COMMITMENT TO ISSUE TITLE INSURANCE OR A GUARANTEE OF ANY KIND. No liability is assumed with this report. The fee charged for this service does not include supplemental reports or other services. Further dissemination of the information in this report in a form purporting to insure title to the herein described land is prohibited by law.

*"Superior Service with Commitment and Respect for Customers and Employees"*

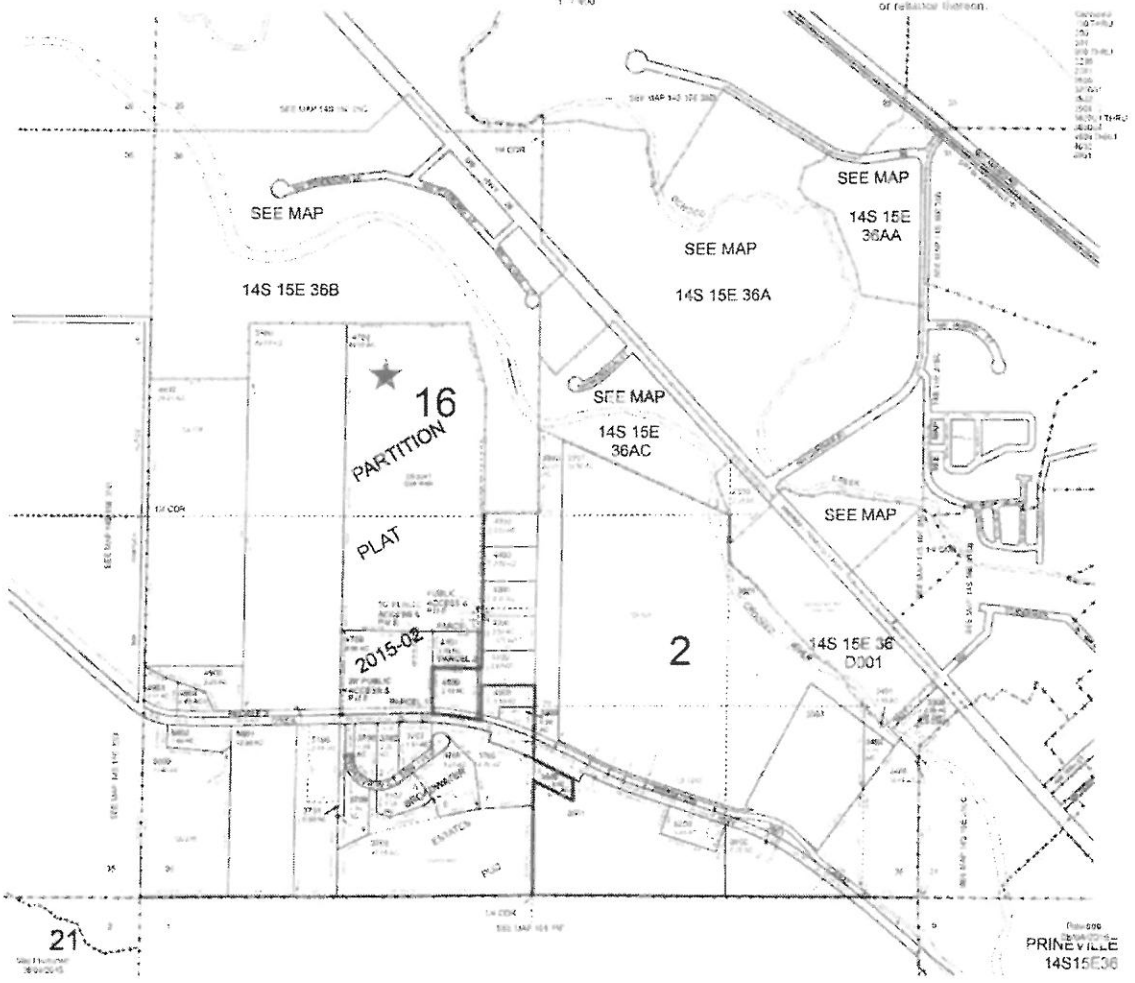
COMPLIMENTS OF  
AmerTitle

This sketch is furnished for information purposes only to assist in property location with reference to streets and other parcels. The representation is made as to accuracy and the Compiler assumes no liability for any loss, damage or expense by reason of reliance thereon.

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY.

SECTION 36 T.14S. R.15E. W.M.  
CROOK COUNTY  
1" = 400'

14S15E36  
PRINEVILLE

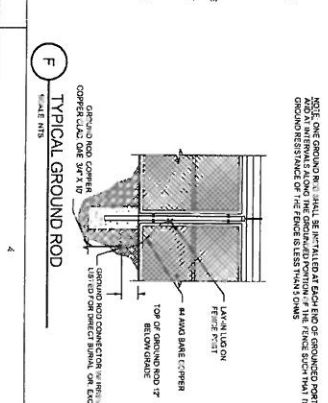
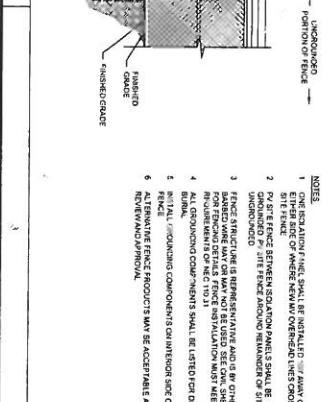
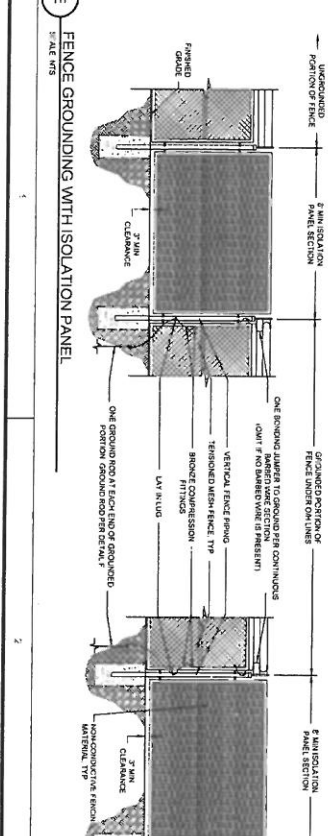
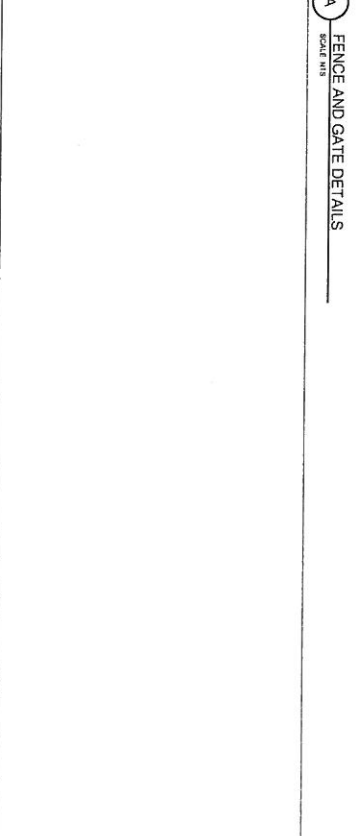
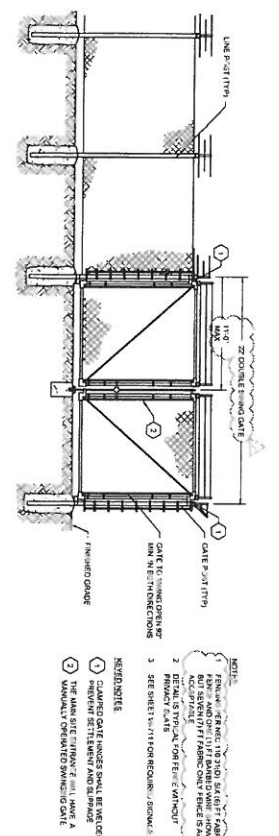
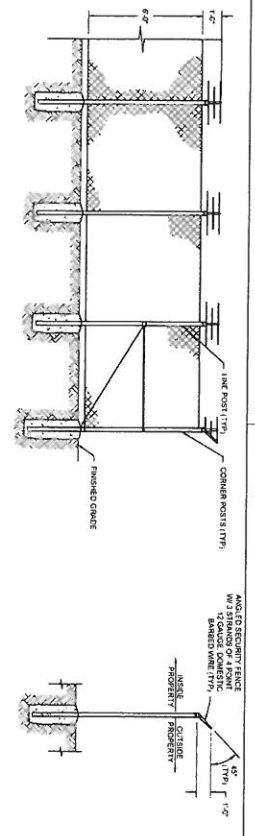












**NOTES**

- THE ISOLATION FENCE SHALL BE INSTALLED TO THE MAIN OR EITHER SIDE OF WHERE NEW OR EXISTING LINES CROSS BY UNDERGROUND.
- GROUNDING SHALL BE INSTALLED TO THE ISOLATION FENCE.
- FENCE HEIGHT SHALL BE 10' MINIMUM AND 12' MAXIMUM. FOR FENCING DETAILS FENCE INSTALLATION MUST MEET THE ABOVE.
- ALL GROUNDING COMPONENTS SHALL BE LISTED FOR DIRECT BURIAL.
- ALL MATERIALS INCLUDING COMPONENTS SHALL BE APPROVED BY THE DESIGNER.
- ALTERNATIVE FENCE PRODUCTS MAY BE ACCEPTABLE AFTER REVIEW AND APPROVAL.

PROJECT	PRINEVILLE PONDS PV SOLAR PROJECT
ADDRESS	2101 HWY 261 HWY. PRINEVILLE, OR 97754
DRAWING NO.	W-502
DATE	07/21/2020

INTERNAL USE ONLY	
DRAWN	CEK
CHECKED	DVA
DATE	07/21/2020
PROJECT #	CAPI 10001
SUB-PROJECT	001
DATE	07/21/2020
BY	CEK
PROJECT	PRINEVILLE
DESCRIPTION	ISOLATION FENCE

CITY OF PRINEVILLE COMMENTS	12-21-21	JT
ISSUE FOR PERMIT	08-21-21	JAK
DESCRIPTION	ISOLATION FENCE	

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## ISSUE FOR PERMIT

**BLUE OAK ENERGY**  
301 Lexington Drive, Suite 200  
Prineville, OR 97754  
www.blueoakenergy.com  
503.731.2000

**CITY OF PRINEVILLE**  
1000 N. Main Street  
Prineville, OR 97754



## STAFF REPORT

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**MEETING DATE:** 2/22/2022      **PREPARED BY:** Eric Klann  
**SECTION:** Council Business      **DEPARTMENT:** Public Works  
**CITY GOAL(S):** Fiscal Responsibility, Position the City for the future  
**SUBJECT:** **Amendment to Solar Field Lease Agreement**

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**REASON FOR CONSIDERATION:** Amendment to Solar Site Lease Agreement for City to install fence instead of solar developer.

**BACKGROUND:** The City is leasing land to a solar developer for a solar field which has been installed at the Wastewater Treatment Plant on O'Neil Hwy. per Resolution 1422.

General terms of the lease agreement for the solar field include:

- 1.2 MW project on a 7-acre site
- 20-year contract
- Compensation for the lease allows the City to purchase power for \$0.03/kwh (vs. current rate of \$0.09/kwh)
- Power cost savings for the City are anticipated to be approximately \$100,000 per year, totaling \$2 million over the duration of the lease period
- At the end of the 20-year period, the company will remove all facilities or the City may have it appraised by a third party and have an option to purchase the facilities

Conversations with the Developer about siting the solar field in Prineville started about four years ago after the group met Councilor Uffelman at a CREA meeting. The Developer owns office space in downtown Seattle where a new code enacted requires that any new building or significant remodel must create new renewable energy to offset its demands. Social unrest in downtown Seattle and the COVID pandemic have significantly delayed the project and negatively impacted funding. Due to these issues, installation of the fence by the Developer, as outlined in the contract, has created a financial hardship. The Developer has requested that the City pay for the fence installation to keep the project progressing.

Staff view this project as an asset to the community and the strong relationship with the Developer may provide additional benefits in the future. Staff recommend that Council approve an amendment to the solar site lease for the City to be responsible for costs to install the fence. The City would retain ownership over the improvements, however, the Developer would be responsible for maintenance and repair of the fence and associated costs during the term of the lease.

**FISCAL IMPACT:**

The estimated cost for the fence is \$118,800.00. If council chooses to modify the contract, bids associated with the construction of the fence will be considered at the next council meeting.

**RECOMMENDATION:** Staff recommends Council to approve the Amendment to Solar Site Lease Agreement.

**RELATED DOCUMENT(S):**

# SOLAR FIELD LEASE AGREEMENT AMENDMENT

February 22, 2022



# Solar Field Located at Wastewater Treatment Plant

- **1.2MW project on a 7-acre site**
- **20-year contract**
- **Lease compensation:**
  - City will purchase power for \$0.03/kwh
  - Current rate of \$0.09/kwh
  - \$100,000 per year estimated power cost savings
  - Expected total of \$2 million in savings over lease duration





# Request for City to Install Fence

- **Developer owns office space in downtown Seattle**
  - New code requires new buildings/remodels to develop new renewable energy resources to offset demands
  - COVID-19 pandemic and social unrest in downtown Seattle created financial hardship for Developer
  - Request for City to install fence with estimated cost of \$118,800
- **Project benefits:**
  - Asset to the community
  - Significant cost savings (\$100,000 per year)
  - Relationship with Developer may provide additional future benefits

# Future Opportunities

- **Example**
  - Water system uses approximately \$300,000 in power per year
  - Cost savings with additional solar fields?



# Amendment

- City to be responsible for the costs of fence installation
- City to maintain ownership of improvements
- Developer to be responsible for maintenance and repair of the fence and any associated costs during the term of the lease

**Staff recommend that  
Council approve  
amendment due to overall  
net benefit**



Questions?



**RESOLUTION NO. 1514**

**A RESOLUTION AUTHORIZING THE LEASE OF REAL PROPERTY**

**Whereas**, the City of Prineville (“City”) owns approximately 175 acres of irrigated property located on the O’Neil Highway and depicted on the attached map marked as Exhibit A (“Property”).

**Whereas**, the City considers it convenient to lease the Property.

**Whereas**, on January 26, 2022, the City of Prineville publicly requested bids for potential lessors of the Property. Said public notice is attached as Exhibit B and incorporated herein.

**Whereas**, the City received a high bid of \$60,025.00 from Abe Stills of Prineville, Oregon.

**Whereas**, on February 15, 2022, the City published in the Central Oregonian newspaper the notice required by ORS 221.725 that set February 22, 2022, at 6:00 p.m. as the date and time and provided the phone number and Meeting ID as the place for a public hearing concerning the lease of the Property. The notice also contained a description of the Property, the proposed uses of the Property and the reasons why the City Council considered it convenient to sell the Property.

WHEREAS, on February 22, 2022, as the City Council meeting beginning at 6:00 p.m. a public hearing concerning the lease of the Property was held and as part of such public hearing the nature of the proposed lease, the general terms of the lease, and the value of the lease were fully disclosed and residents of the City were given an opportunity to present written or oral testimony at the hearing.

NOW, THEREFORE, the City of Prineville resolves as follows:

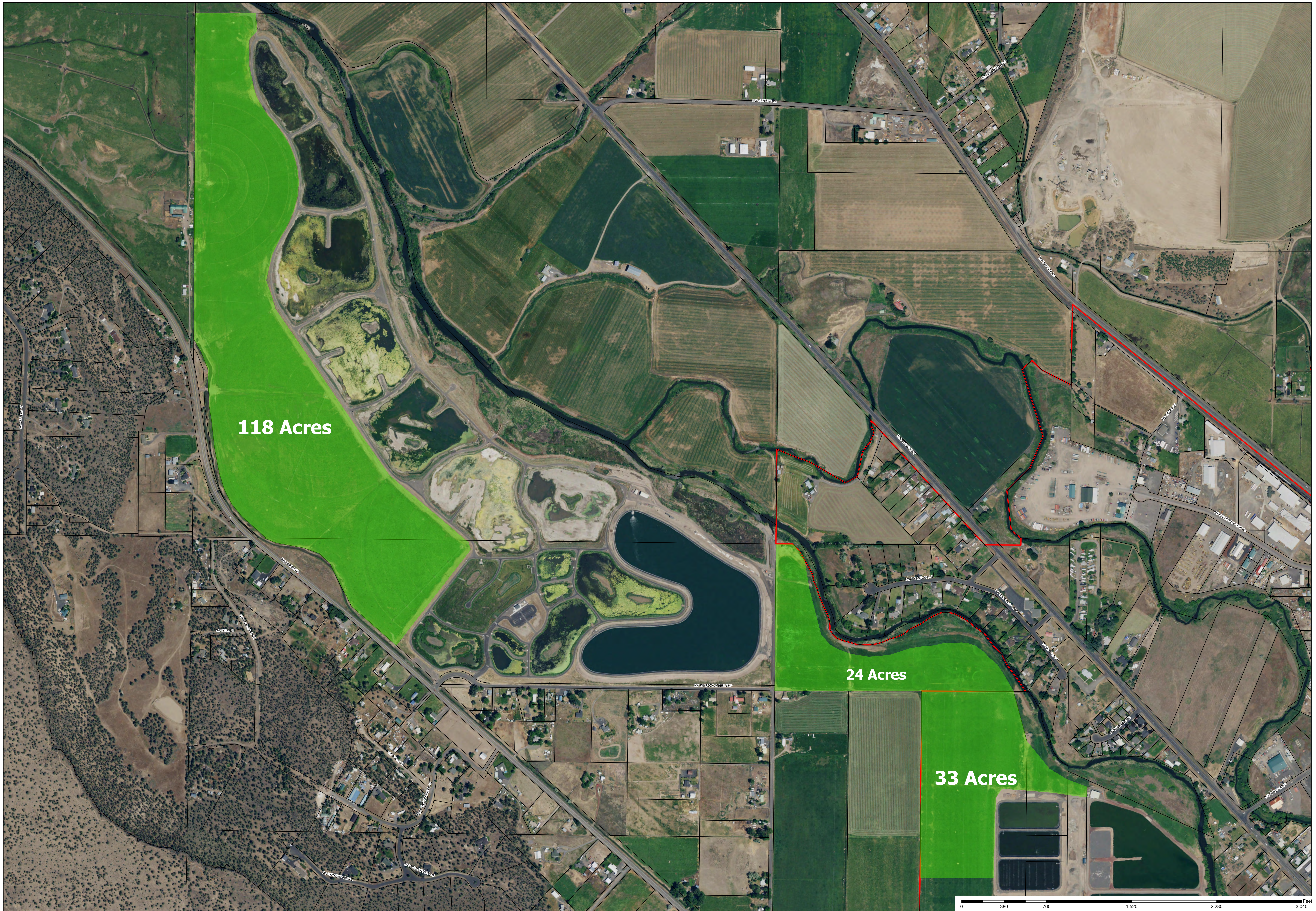
1. The City of Prineville shall lease the Property as described on Exhibit A to Abe Stills for the amount of \$60,025.00 for 2022, with the option of up to four (4) renewable terms of one year each.
2. The City Manager is authorized to execute the necessary documents to complete the Lease.

Approved by the City Council this \_\_\_\_ day of February, 2022.

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

ATTEST:

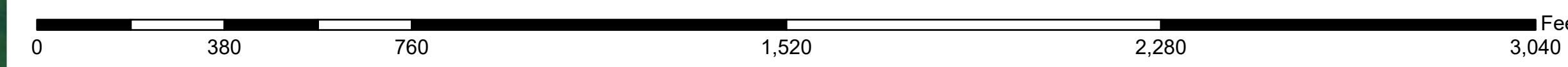
\_\_\_\_\_  
Lisa Morgan, City Recorder



118 Acres

24 Acres

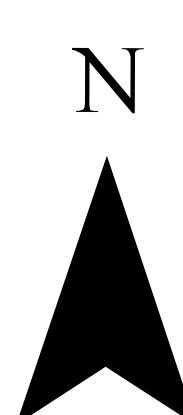
33 Acres



Disclaimer: CROOK COUNTY MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER. THE COUNTY IS NOT RESPONSIBLE FOR POSSIBLE ERRORS, OMISSIONS, MISUSE, OR MISINTERPRETATION. COUNTY DIGITAL INFORMATION IS PREPARED FOR REFERENCE PURPOSES ONLY AND SHOULD NOT BE USED, AND IS NOT INTENDED FOR, SURVEY OR ENGINEERING PURPOSES OR THE AUTHORITATIVE AND/OR PRECISE LOCATION OF BOUNDARIES, FIXED HUMAN WORKS, AND/OR THE SHAPE AND CONTOUR OF THE EARTH. NO REPRESENTATION IS MADE CONCERNING THE LEGAL STATUS OF ANY APPARENT ROUTE OF ACCESS IDENTIFIED IN DIGITAL OR HARD COPY MAPPING OF GEOSPATIAL INFORMATION OR DATA. DATA FROM THE CROOK COUNTY ASSESSOR'S OFFICE MAY NOT BE CURRENT. DATA IS UPDATED AS SCHEDULES AND RESOURCES PERMIT. PLEASE NOTIFY CROOK COUNTY GIS OF ANY ERRORS (541) 416-3930.

# Pasture Lease

Exhibit "A"





6605 SE Lake Road, Portland, OR 97222  
PO Box 22109 Portland, OR 97269-2169  
Phone: 503-684-0360 Fax: 503-620-3433  
E-mail: [legals@commnewspapers.com](mailto:legals@commnewspapers.com)

**AFFIDAVIT OF PUBLICATION**

State of Oregon, County of Crook, SS I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of the **Central Oregonian**, a newspaper of general circulation, serving Prineville in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

**City of Prineville**  
**The City of Prineville is seeking bids for the lease of irrigated pasture lands at its Wastewater Treatment Plant located at 2101 NW O'Neil Hwy.**

**Ad#: 230504**

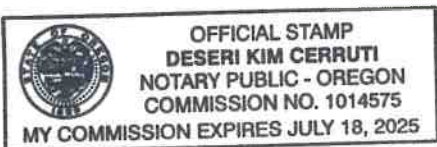
A copy of which is hereto annexed, was published in the entire issue of said newspaper(s) for 1 week(s) in the following issue(s):  
**02/01/2022**

  
Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this  
02/01/2022.

  
NOTARY PUBLIC FOR OREGON

Acct #: 103744  
**Attn:**  
PRINEVILLE, CITY OF  
387 NE 3RD ST  
PRINEVILLE, OR 97754



**PUBLIC NOTICE**

The City of Prineville is seeking bids for the lease of irrigated pasture lands at its Wastewater Treatment Plant located at 2101 NW O'Neil Hwy. The pasture lands consist of approximately 145 acres currently under irrigation, approximately 33 additional acres planted in the spring of 2022 and ready for use in the fall of 2022. This land is primarily used for the disposal of treated wastewater through irrigation. As such, the City of Prineville owns and is responsible to operate the irrigation system. The property shall be used for pasturing livestock and pasture cultivation only. The City will be responsible for all costs associated water rights, irrigation charges and electrical costs. The successful bidder will be responsible to maintain and repair all fencing on the property and exercise proper animal husbandry. It is important to note that there are no corrals or animal control facilities located on the site. None will be provided.

Maps of the property, bid proposal forms and to review the conditions of the lease agreement can be obtained by e-mailing [lontko@cityofprineville.com](mailto:lontko@cityofprineville.com), or calling 541-447-2340. Sealed bids will be received until 2:00 PM PDST on February 8, 2022, at City Hall, 387 NE Third Street, Prineville, OR 97754. Each proposal must be submitted the official bid proposal form and placed in a sealed envelope addressed as follows:

Attn: Lori Ontko, Procurement/Contact Administrator  
City of Prineville  
387 NE Third Street  
Prineville, OR 97754

The envelope shall be clearly marked:

Bid Proposal of (insert name)  
2022 Wastewater Treatment Plant Pasture Rental  
ITB 9000-22-23

For questions related to this project or to schedule a tour contact:  
Jason Wood, Wastewater Treatment Plant Supervisor  
[jwood@cityofprineville.com](mailto:jwood@cityofprineville.com)  
541-280-8656

Bids will be publicly opened at 2:00 PM PDST on the 8th day of February, 2022 and the apparent high bidder will be determined. Successful bidder must sign the lease within 10 days of award and at that time will be responsible to pay one-half of the annual lease payment at that time. If the successful bidder does not sign the lease and pay one-half of the annual lease payment within 10 days of award, the lease may be awarded to the next highest bidder.  
Publication Date: February 1, 2022 PC0230504



# STAFF REPORT

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**MEETING DATE:** 2/22/2022

**PREPARED BY:** Lori Ontko

**SECTION:** Council Business

**DEPARTMENT:** Public Works

**CITY GOAL:** Fiscal Responsibility, Provide Quality Municipal Service & Programs

**SUBJECT:** O'Neil Highway Pasture Lease

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## REASON FOR CONSIDERATION:

Updated Request For Proposals (RFP's) for Pasture Lease

## BACKGROUND:

In 2002 the city purchased property on O'Neil Highway to disperse wastewater from the wastewater treatment plant. In 2005, the City began renting the pasture for grazing, allowing the maximum quantity of wastewater to be utilized. The size of the pasture area was eventually decreased to allow for construction of the Crooked River Wetlands.

In the past, the pasture has been rented for as much as \$75,000.00 per year, however, the size was double what it is today. The pasture has been improved through the years allowing continuous seasonal irrigation from the treatment plant and continued revenue to the city.

## FISCAL IMPACT: Yearly revenue to the city.

Sealed bid opening was on Tuesday, February 8<sup>th</sup>, at City hall and the results are as follows:

Abe Stills	\$60,025.00
Sigman Ranch/John Riley	\$54,250.00
Durgan Ranch/Trent Smith	\$42,500.00
Galloway Cattle Co.	\$40,500.00
Greenbar Cattle/Tanner Brown	\$40,000.00



Mark Ferguson	\$40,000.00
Travis Severance	\$36,650.00
Triangle Outfit Inc.	\$35,000.00

Previous year revenue: \$36,605.00

**RECOMMENDATION:**

Staff recommends Council approve the 2022 O'Neil Highway Pasture Lease to Abe Stills in the amount of \$60,025.00 per year. The proposed lease agreement is attached.

FARM LEASE

DATE: \_\_\_\_\_

Parties: **City of Prineville**  
387 NE Third Street  
Prineville OR 97754

**(LANDLORD)**

**Abe Stills**  
5127 NW Grimes Road  
Prineville, OR. 97754

**(TENANT)**

**SECTION 1. LEASE OF REAL PROPERTY AND PERSONAL PROPERTY**

1.1 Real Property. Landlord lease to Tenant and Tenant leases from Landlord approximately 175 acres, more or less, of irrigated property. Said property is more particularly described on Exhibit A attached hereto and made a part hereof. The real property is hereinafter referred to as the “Property” or the “Premises”.

1.2 Exclusion from Lease. No personal property is being leased to Tenant.

1.3 Personal Property. All pump stations and pumping equipment including irrigation pipe, wells, main lines and manifolds are property of landlord and will only be used by landlord:

**SECTION 2: TERM**

2.1 The term shall commence upon the execution of this agreement and shall continue through April 1, 2022 – March 31, 2023. Provided the Tenant is not in default of this Agreement, Landlord may extend the Terms of this lease for additional term of one (1) year upon the same terms and conditions contained in this Lease. Beginning January 1<sup>st</sup> of each of the next four (4) years, the duration of this agreement will extend for an additional period of one (1) year, unless either party, prior to the January 1<sup>st</sup> automatic extension date, has given notice of its intent to terminate. Notwithstanding the above, this agreement may be terminated at any time upon an agreement between the parties.

**SECTION 3: RENT**

Such rent shall be required regardless of whether or not livestock are actually being pastured. The Lessee agrees to pay the total rent of **\$60,025.00 per year.**

Rent shall be paid in advance as follows:

½ annual payment within ten (10) days of contract award.

½ payment September 1<sup>st</sup>

In the future, rent will be due on March 31<sup>st</sup> and September 1<sup>st</sup> of the current rental year.

**SECTION 4: USE OF THE PREMISES**

The Premises shall be used for pasturing livestock, cultivating is allowed but renter must be in communication with staff for removal of pipes, lines, etc. before any farming, plowing, cultivating or seeding begins. The pasturelands may be used for overwintering of cattle.

**SECTION 5: TAXES**

Landlord shall pay all real property taxes levied against the Premises or improvements presently located on the Premises.

**SECTION 6: WATER RENTS AND IRRIGATION CHARGES**

The Property subject to this lease is served by People’s Irrigation District, and is subject to charges for irrigation service. Landlord shall pay as due all charge for irrigation service used upon the Property subject to this lease.

**SECTION 7: MAINTENANCE OF WATER RIGHTS AND IRRIGATION RIGHTS**

The Property subject to this lease has certain irrigation rights which may be forfeited if they are not used. Tenant is aware of these rights and of the minimum use that is required to maintain these rights. Tenant shall maintain grazing of livestock so such irrigation rights are not jeopardized for nonuse.

**SECTION 8: MAINTENANCE OF THE PROPERTY; WASTE**

- 8.1 Tenant shall farm the Property in accordance with the principals of good husbandry, shall conserve its resources and shall maintain it in a high state of cultivation.
- 8.2 Landlord shall perform plowing, seeding, cultivating of existing crops present. Tenant shall harvest in an efficient manner consistent with the conservation of the Property.
- 8.3 Tenant may cultivate the Property if approved by Landlord in a manner which will avoid erosion and will not interfere with any existing subsurface drainage.
- 8.4 Tenant shall not make use of herbicides, pesticides, or practices upon the Property unless approved by the landlord by written notice.
- 8.5 Landlord shall maintain all ditches, culverts, rivers, creeks, watercourses, roads, and roadways in as good a condition as at the commencement of this lease.
- 8.6 Tenant and landlord shall review the existing irrigation system and tenant shall make recommendations on potential needs for protection of said system. In the event that modified system sustains damage by tenant’s activity, tenant agrees to compensate landlord 50 percent of the cost of repairing said system.
- 8.7 Tenant shall not suffer or commit any waste to the Property, this includes expired animals. The city will help load onto tenant’s equipment the expired animals for removal from the property.
- 8.8 Landlord shall pay for all power utilities in connection with the operation of the irrigation equipment.
- 8.9 Tenant shall maintain and repair fencing on and surrounding the Property and shall replace any fencing as necessary. \_\_\_\_\_, tenant initials.**
- 8.10 Tenant, and Tenant’s expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities pertaining to Tenant’s use of the Property. These include, without limitation, all applicable federal, state, local laws, regulations, or ordinances pertaining to air and water quality, hazardous materials, waste disposal, air emissions and other environmental matters, and all zoning and other land use matters. As herein, the term “hazardous materials” means any hazardous or toxic substances, materials, or waste, including, but not limited to, those substances, materials and waste listed in the United States Department of Transportation hazardous materials table (49CFR Section 172.101), or by the United States Environmental Protection Agency as hazardous substances, materialism and wastes that are or become regulated under any applicable local, state, or federal law.

8.11 Tenant shall utilize good husbandry practices common to the Prineville area and shall not over or under graze the Property. Tenant shall not run on the Premises a carrying capacity of livestock which would cause harm to grass and field conditions, and shall not exceed the carrying capacity determined under the Natural Resources Conservation Service Conservation Plan. \_\_\_\_\_ **tenant initials.**

8.12 Tenant shall control soil erosion as completely as practicable by use of accepted conservation practices recognized as effective in the area.

**If terms are not upheld by lease agreement the City has the right to terminate the contract.**

**The city will be spraying the property for thistles.**

### **SECTION 9: INSURANCE**

9.1 Liability Insurance. Before going into possession of the Property, Tenant shall procure, and during the term of the lease shall continue to carry, public liability and property damage insurance, naming Landlord as an additional insured, with liability limits of not less than \$2,000,000 for injury to persons or property in one occurrence. Such insurance shall be provided by an insurance carrier reasonably accepted to Landlord. Tenant shall deliver to Landlord certificates evidencing such insurance with an endorsement requiring ten (10) days' notice to Landlord before the cancellation of such insurance coverage.

### **SECTION 10: INDEMNITY AND LIENS**

10.1 Indemnity. Tenant shall indemnify and defend Landlord from, and reimburse Landlord for, any cost claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of Tenant on the Property or any condition of the Property in the possession or under the control of Tenant, except those resulting from Landlord's own negligence."

10.2 Liens. Tenant shall pay when due all claims for work done on the Property, and for services rendered or material furnished to Tenant to grow Tenant's crops on the Property or incurred for Tenant's repair responsibilities for the Property and improvements; and Tenant shall keep the Property and the crops free of any liens arising out of the failure to pay such claims, or arising out of any other activity of Tenant.

### **SECTION 11: ASSIGNABILITY**

This lease is entered into in part because of the mutual respect and trust the parties have with each other. Tenant shall not, without Landlord's written consent, assign this Lease or any part thereof, sublet the Property or any portion thereof, or permit any other person or persons to occupy or use the Property.

### **SECTION 12: DEFAULT**

12.1 Should the Tenant fail to do anything required by this agreement, the Landlord may terminate this lease by giving Tenant in writing specifying the Tenant's default. If the Tenant shall not cure that default within 10 days, the lease shall automatically be terminated and the Landlord may reenter the Property and take possession of it and remove all persons and things from the Property.

12.2 The right of termination and reentry given Landlord by this agreement shall be in

addition to all other rights the Landlord may have by law, including Landlord's right to sue for specific performance of the terms of this agreement. The Landlord may proceed with more than one remedy at the same time and if Landlord selects one remedy it shall not preclude the choice if another remedy.

**SECTION 13: LANDLORDS RIGHT OF ENTRY**

Landlord may go on the Property at any time to inspect the Property, or for the purpose of performing topographical and other surveying, geotechnical exploration (reconnaissance, test pits, and borings); environmental, biological, and archeological reconnaissance and exploration (possible test pits); wet lands analysis; and ergonomic studies. To the extent that Landlord or its agents or independent contractors elect to exercise their right to access the Property for the purposes set forth above, Landlord shall do such work in a manner to minimize interference with Tenant to the greatest extent reasonably practicable.

**SECTION 14: MISCELLANEOUS**

14.1 If suit or action is filed concerning this lease, the prevailing party shall be entitled to recover from the losing party such attorney fees and costs as may be awarded by the court. This award will include any attorney fees and costs awarded on any appeal.

14.2 Waiver by the Landlord or Tenant of the strict performance of any term or covenant of this agreement, or of the timely payment of any rent due, or any right under this agreement, shall not be a continuing waiver.

14.3 Except for the notice described in Section 13 above, and Section 14.6 below, any notice under this Lease shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the address stated in this Lease, or to such other addresses either party.

14.4 Tenant shall use Tenant's best effort to keep Tenant's livestock on the Property and immediately return to the Property any of the Tenant's livestock found outside the Property.

**SECTION 15: TERMINATION**

Tenant shall peaceably surrender, quit, and give up the Property at the termination or earlier expiration of this Lease. The City has the right to terminate the lease if terms of the lease are not being met.

Landlord:

Tenant:

City of Prineville

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

\_\_\_\_\_