

## GREENHOUSE PURCHASE AGREEMENT

This Greenhouse Purchase Agreement (this "Agreement") is dated on \_\_\_\_\_, 2018 but made effective for all purposes as of the Effective Date (as defined below), between \_\_\_\_\_ ("Seller"), whose address is \_\_\_\_\_, and City of John Day ("Buyer"), an Oregon municipal corporation, whose address is whose address is 450 East Main Street, John Day, Oregon 97845.

### RECITAL:

Subject to the terms and conditions contained in this Agreement, Buyer desires to purchase from Seller and Seller desires to sell to Buyer a greenhouse structure and related equipment.

### AGREEMENT:

NOW, THEREFORE, in consideration for the mutual covenants and obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. For purposes of this Agreement, unless the context clearly requires otherwise, the following terms have the meanings assigned to them below:

"Effective Date" means the date of the parties' mutual execution of this Agreement.

"Buyer" has the meaning assigned to such term in the preamble.

"City Manager" means the City of John city manager or his or her designee.

"Delivery Address" means 450 East Main Street, John Day, Oregon 97845 or such other place designated in writing by Buyer.

"Due Date" has the meaning assigned to such term in Section 5.1.

"Goods" has the meaning assigned to such term in Section 2.1.

"Law(s)" means all applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning, whether directly or indirectly, Seller, this Agreement, and/or the Goods, including, without limitation, all applicable City of John Day ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

"Purchase Price" has the meaning assigned to such term in Section 2.2.

"Seller" has the meaning assigned to such term in the preamble.

"Specification(s)" includes any plans, drawings, data, instructions, and/or other information relating to the Goods.

2. Purchase; Purchase Price.

2.1 Purchase. Subject to the terms and conditions of this Agreement, Buyer hereby agrees to purchase from Seller and Seller hereby agrees to manufacture for, sell, and deliver to Buyer the greenhouse structure and related products described on the attached Schedule 2.1 (the "Goods").

2.2 Purchase Price. The purchase price for the Goods is the all-inclusive fixed amount of \_\_\_\_\_ (\$\_\_\_\_\_.00) (the "Purchase Price"). Unless expressly stated otherwise, the Purchase Price is inclusive of all charges and costs for packaging, packing, transportation, shipping, handling, carriage, insurance, and delivery of the Goods to the Delivery Address, warranties for the Goods, and any duties, imposts, and/or levies. Seller will be responsible for all taxes, assessments, permits and/or fees, however designated, that are levied upon the Goods (excluding any tax based upon the income of the Buyer). No taxes of any type will be added to invoices without Buyer's prior written approval.

2.3 No Increases; Discounts. Seller may not increase the Purchase Price (whether on account of increased material, labor, and/or transport costs, fluctuation in rates of exchange, and/or otherwise) without the prior written consent of Buyer. Seller will give Buyer the benefit of any Purchase Price reduction occurring before the specified delivery date or the actual delivery date, whichever is later. Seller warrants that the Purchase Price for the Goods is not less favorable than the price currently extended to any other customer of Seller for the same or similar articles in similar quantities. Buyer will be entitled to any applicable discount for prompt payment customarily granted by Seller, whether or not shown on its own terms of sale and/or this Agreement.

3. Specifications

3.1 General. The quantity, quality, description, and itemized price(s) of the Goods will, subject to the terms and conditions of this Agreement, be as specified in Schedule 2.1 and/or in any applicable Specification approved by Buyer or Seller in writing. Any Specification supplied by Buyer to Seller, or specifically produced by Seller for Buyer, in connection with this Agreement, together with the copyright, design rights, and/or any other intellectual property rights in the Specification, will be the exclusive property of Buyer, and Seller assigns with full title guarantee to Buyer all such copyright, design rights, and/or other intellectual property for no further consideration (subject only to the payment of the Purchase Price). Subject to and in accordance with the Laws, Seller will not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of Seller, or as required for the purpose of this Agreement.

3.2 Inspection; Instructions. Seller will inspect and test the Goods during manufacture, processing, and storage prior to shipment. If, as a result of inspection and/or testing, the Goods fail to comply with this Agreement, Seller will take such steps as are necessary to ensure compliance with this Agreement. The Goods will be marked in accordance with Buyer's instructions (if any) and/or any applicable regulations or requirements of the carrier, and properly packed, marked, secured, and shipped so as to reach the Delivery Address in an undamaged condition.

4. Terms of Payment. Seller will invoice Buyer on or at any time after delivery of the Goods (or any portion thereof). Each invoice will be itemized, contain a description of the Goods delivered, and all costs and fees applicable to the delivery and Goods. Seller will invoice in duplicate. Unless Buyer disputes any invoice (or a portion thereof), Buyer will pay the amount under each invoice

within thirty (30) days after receipt and approval of the invoice and inspection and acceptance of the Goods. In the event Buyer disputes an invoice (or any portion thereof), the undisputed portion of the invoice will be paid by Buyer in accordance with the immediately preceding sentence. Buyer will set forth its reasons for the disputed claim amount and make a good faith effort to resolve the invoice dispute with Seller as promptly as possible. Buyer may set off against the Purchase Price any sums owed to Buyer by Seller.

5. Delivery; Inspection; Acceptance.

5.1 Delivery. The Goods will be delivered to the Delivery Address on or before \_\_\_\_\_, 2018 (the "Due Date"), and during Buyer's regular business hours; provided, however, Seller may not deliver the Goods more than seven days prior to the Due Date without Buyer's written consent. The time of delivery of the Goods is of the essence of this Agreement. Packing slips must accompany each case, parcel, and/or container, showing Buyer's order number, item number, and a complete description of its contents. If the Goods are to be delivered by installments, this Agreement will be treated as a single contract and not severable. Seller will insure shipments at full value.

5.2 Buyer Inspections; Rejection. The Goods will be subject to inspection and test by Buyer within a reasonable time after delivery. If Buyer finds Goods furnished to be incomplete, nonconforming, damaged, and/or not in compliance with the Specification(s) and/or this Agreement, Buyer may, in Buyer's sole discretion, reject the Goods and require Seller to either correct them without charge or reduce the Purchase Price. If Seller is unable or refuses to cure any defects within ten (10) days after written notice from Buyer, in addition to any other remedy available to Buyer under this Agreement, Buyer may, in Buyer's sole discretion, reject the Goods and cancel this Agreement in whole or in part. Nothing contained in this Agreement, will impair or limit Buyer's rights as a buyer, including, without limitation, the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

5.3 Acceptance; Returns. Buyer will not be deemed to have accepted any Goods until Buyer has had a reasonable time to inspect and accept the goods following delivery (as provided under Section 5.2) or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Seller will supply Buyer in with all instructions and/or other information necessary and/or appropriate for Buyer to accept delivery of the Goods and use the Goods for their intended purposes. Buyer will have no obligation to return to Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by Buyer. Buyer reserves the right to return the Goods (or any portion thereof) in unopened original packing to Seller if delivered to Buyer more than seven days after the Due Date.

6. Risk of Loss; Passage of Title. All deliveries required under this Agreement will be F.O.B destination with all transportation, packaging, labeling, and handling costs, expenses, and/or charges prepaid by Seller. All responsibility and liability for loss and/or damage will remain with Seller until final inspection and acceptance by Buyer when responsibility will pass to Buyer except as to latent defects, fraud, and Buyer's warranty obligations. Title in the Goods will pass to Buyer once payment has been made and the Buyer has accepted the Goods (or any portion thereof) in accordance with Section 5.3.

7. Representations; Warranties; Covenant; Liabilities.

In addition to any other Seller representation, warranty, and/or covenant made in this Agreement, Seller represents, warrants, and covenants to Buyer as follows:

7.1 Authority; Binding Obligation; Conflicts. Seller has full power and authority to sign and deliver this Agreement and to perform all Seller's obligations under this Agreement. Seller has good title to the Goods (including all associated intellectual property rights (e.g., trademarks, copyrights, and/or licenses)) and will transfer and convey the Goods free from any restrictions, lien, conditions, adverse claim, and/or encumbrances. This Agreement is the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms. The signing and delivery of this Agreement by Seller and the performance by Seller of all Seller's obligations under this Agreement will not (a) breach any agreement to which Seller is a party, or give any person the right to accelerate any obligation of Seller, (b) violate any law, judgment, or order to which Seller is subject, or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

7.2 Quality of Products. The Goods, including, without limitation, all product articles, packaging, and labeling, will be (a) accurate, safe, and of good quality and condition, free from defects in design, material, labor, manufacture, and/or workmanship, (b) in compliance with the Laws (as defined below), (c) in merchantable condition, (d) in conformity with any relevant Specifications and/or sample, and (e) new and current model and will carry full manufacturer warranties. The Goods will be fit for their intended purposes and uses as specified by Buyer or otherwise known to Seller or held out by Seller. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this Agreement and all warranties will run to Buyer. Seller's warranties (and any consumer warranties, service policies, and/or similar undertakings of Seller) will be enforceable by Buyer's customers and any subsequent owner or operator of the Goods as well as by Buyer. All warranties contained herein will survive inspection, testing, and acceptance by Buyer.

7.3 Indemnification. To the fullest extent permitted by the Laws, Seller will defend, indemnify, and hold Buyer, and each present and future Buyer employee, officer, agent, and representative (collectively, "Buyer's Representatives"), harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, and/or death to person or property caused directly or indirectly by Seller (and/or Seller's officers, partners, employees, agents, representatives, and/or contractors) and/or the Goods; (b) any claim that the Goods infringe, or their importation, use, and/or resale, infringes, the patent, copyright, design right, trademark, and/or other intellectual property rights of any other person; (c) any claims made against Buyer resulting from or arising out of any claimed defects in the Goods; (d) any alleged violation by the Goods and/or in the manufacture and/or sale of the Goods of any Law; and/or (e) Seller's breach and/or failure to perform any Seller representation, warranty, covenant, and/or obligation contained in this Agreement. Seller's indemnification obligations provided in this Section 7.3 will survive the termination of this Agreement.

7.4 Compliance With Laws. Seller will comply and perform Seller's obligations under this Agreement in accordance with the Laws, including, without limitation, all applicable Laws concerning the manufacture, packaging, packing, shipping, and/or delivery of the Goods. Without otherwise limiting the generality of the immediately preceding sentence, Seller will comply with each obligation applicable to Seller and/or this Agreement under ORS 279B.220, 279B.225, 279B.230, and

279B.235, which statutes are incorporated herein by reference. Prior to Seller's execution of this Agreement, Seller obtained all licenses, approvals, and certificates necessary to perform Seller's obligations under this Agreement.

7.5 Insurance. During the term of this Agreement, Seller will obtain and maintain, in addition to any other insurance required under this Agreement, commercial general liability insurance covering damages as a result of death or injury to any person or destruction or damage to any property and including broad form contractual liability insurance for indemnities provided under this Agreement with limits of not less than \$2,000,000 per occurrence, \$3,000,000 in the aggregate, and including a products-completed operations aggregate in the minimum amount of \$2,000,000 per occurrence. Each liability insurance policy required under this Agreement will be in form and content satisfactory to Buyer, will list Buyer (and Buyer's Representatives (as defined below)) as an additional insured(s). In addition to any other insurance requirement under this Agreement, Seller will obtain and maintain insurance policies that provide adequate coverage for all risks normally insured against by a person carrying on a similar business in a similar location, and for any other risks to which Seller is normally exposed. The insurance Seller is required to obtain under this Agreement may not be cancelled without ten (10) days' prior written notice to Buyer. Seller's insurance will be primary and any insurance carried by Buyer will be excess and noncontributing. Seller will furnish Buyer with appropriate documentation evidencing the insurance coverage (and provisions) and endorsements Seller is required to obtain under this Agreement upon Seller's execution of this Agreement and at any other time requested by Buyer. If Seller fails to maintain insurance as required under this Agreement, Buyer will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Seller immediately upon Buyer's demand.

7.6 Warranty. In addition to, and not in lieu of, any other warranties provided under this Agreement and/or by various manufacturers and supplies, Seller fully warrants all Goods for a period of one year from the date of final acceptance of the Goods and will make all necessary repairs and/or replacements to remedy, in a manner satisfactory to the City Manager and at no cost to City, any and all defects, breaks, and/or failures of the Goods occurring within five years following the date of final acceptance due to faulty or inadequate materials. This one-year warranty period will, with relation to such required repair, be extended one year from the date of completion of such repair.

8. Cancellation; Termination.

8.1 Cancellation. Without otherwise limiting any other remedy available to Buyer, if any Goods are not delivered in accordance with the terms and conditions of this Agreement, Buyer will be entitled to the following: (a) to require Seller, at no cost or expense to Buyer, repair the Goods or to supply replacement Goods in accordance with this Agreement within twenty (20) days of written demand from Buyer; or (b) Buyer may, in Buyer's sole discretion, and whether or not Buyer has previously required Seller to repair the Goods or to supply any replacement Goods, to treat the Agreement as discharged by Seller's breach. Buyer reserves the right to purchase the undelivered portion of the Goods elsewhere and hold Seller accountable for the difference in cost.

8.2 Remedies. If a party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently. Seller will be liable for all damages suffered

by Buyer as the result of Seller's breach, including, without limitation, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170.

9. Miscellaneous.

9.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Seller will not assign this Agreement to any person without Buyer's prior written consent. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party.

9.2 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), Buyer and Seller will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

9.3 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.

9.4 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. If any provisions contained in an attached exhibit, schedule, instrument, document, and/or other attachment conflicts with this Agreement, the provisions of this Agreement will control. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Seller's performance of its obligations under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation or delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

9.5 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by Buyer and Seller. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Seller has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

9.6 Person; Interpretation. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

9.7 Execution; Counterparts. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on the date first written above but made effective for all purposes as of the Effective Date.

BUYER:  
City of John Day,  
an Oregon municipal corporation

SELLER:

\_\_\_\_\_  
By: Nick Green  
Its: City Manager

\_\_\_\_\_  
By:  
Its:

Schedule 2.1  
Specifications

(attached)

DRAFT