

**RESOLUTION NO. 22-884-05**

**A RESOLUTION OF THE CITY APPROVING THE SALE OF CERTAIN REAL PROPERTY LOCATED IN CITY**

WHEREAS, City of John Day (“City”) has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, pursuant to ORS 221.727, City adopted Ordinance No. 21-192-03 (the “Ordinance”) establishing alternative procedures and exemptions for the sale, transfer, and conveyance of certain “classes” of City-owned real property; and

WHEREAS, City desires to transfer certain real property consisting of approximately 2.9 Acres, which real property is more particularly described and depicted on the attached Exhibit A; and

WHEREAS, in accordance with Section 6.1 of the Ordinance, City may transfer City-owned real property to any federal, state, and/or local agency, government, and/or political subdivision if the council finds that (a) the real property is not needed for public use, and/or (b) the public interest may be furthered by disposal of the real property; and

WHEREAS, the ultimate beneficiary of the Property shall be the Grant County Library; and

WHEREAS, although not required under the Ordinance, by adoption of this Resolution No. 22-884-05, the council desires to establish the minimum acceptable terms for the transfer of the Property;

NOW, THEREFORE, the City of John Day resolves as follows:

1. Findings. The above-stated findings contained in this Resolution are hereby adopted. Without otherwise limiting the immediately preceding sentence, the council finds that (a) the Property is not needed for public use, and (b) the public interest will be furthered by disposal of the Property.

2. Transfer Approved. The Council approves the transfer of the Property to the Grant County Library Foundation, Inc. (the “Foundation”) in accordance with the terms of the purchase and sale agreement between the City and Foundation substantially in the form attached hereto as Exhibit A. Notwithstanding anything contained in this Resolution to the contrary, the purchase and sale agreement (a) will be in form and content satisfactory to City and contain such terms and conditions the city manager and/or city attorney determine necessary and/or appropriate, which may include, without limitation, that the Property will be transferred AS IS, WITH ALL FAULTS AND DEFECTS, and subject to all encumbrances of record, and (b) will be subject to the

review and approval of the city manager and city attorney. Upon completion, the city manager is authorized to execute and deliver the purchase and sale agreement for and on behalf of City.

3. Miscellaneous. All pronouns contained in this Resolution 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 provisions of this Resolution are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution may be corrected by order of the council to cure editorial and/or clerical errors. This resolution will be in full force and effect from and after its approval and adoption.

APPROVED AND ADOPTED by the City Council of City of John Day and signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Ron Lundbom, Mayor

Attest:

\_\_\_\_\_  
Nicholas Green, City Manager

Exhibit A. Property Transfer Agreement

[Enclosed]

## EXHIBIT A. PROPERTY TRANSFER AGREEMENT

This Property Transfer Agreement (this "Agreement") is made and entered into effective on \_\_\_\_\_, 2022 (the "Effective Date") between City of John Day ("City"), an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845, and, the Grant County Library Foundation, Inc. ("Foundation"), an Oregon public benefit corporation whose address is 507 S. Canyon Blvd, John Day, Oregon 97845.

### RECITALS:

A. City owns certain real property located in City of John Day, Oregon consisting of 2.89 acres located along NW 7<sup>th</sup> Avenue, which property is more particularly described on the attached Exhibit A (the "City Land"). Foundation is the owner of certain real property located at 125 NW Canton Street in John Day, Oregon consisting of approximately 1.03 acres, which property is more particularly described and depicted on the attached Exhibit B (the "Foundation Land").

B. Through this Agreement, (a) Foundation desires to acquire City Land from City and (b) City desires to acquire Foundation Land from Foundation.

### AGREEMENT:

NOW, THEREFORE, in consideration of 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. Unless defined elsewhere in this Agreement, capitalized terms contained in this Agreement have the meanings assigned to them in the attached Appendix A.

2. Transfer of Properties; Fees; Purchase Price.

2.1 Transfer of Properties. Subject to the terms and conditions contained in this Agreement, (a) City will transfer and convey the City Land to Foundation and Foundation will receive the City Land from City, and (b) Foundation will transfer and convey the Foundation Land to City and City will receive the Foundation Land from Foundation.

2.2 Property Line Adjustment; Fees. The property transfers identified in Section 2.1 are subject to and contingent upon the property line adjustment under City of John Day PLA-22-03 (the "PLA"). Notwithstanding anything contained in this Agreement to the contrary, City will pay all costs and expenses of the PLA, including, without limitation, all survey costs, application fees, filing fees, community development fees, legal fees and expenses, and recording costs (collectively, the "PLA Costs") associated with this Transaction. For purposes of this Agreement, the term "Transaction" means the purchase and sale of the Property as provided under this Agreement, including, without limitation, the PLA.

2.3. Purchase Price; Donation. The purchase price for the Foundation Land is \$125,000 (the "Purchase Price"). City will pay Foundation the Purchase Price at the Closing by cash, cashier's check, or wire transfer to an account specified by Foundation. City Land shall be donated to Foundation at no cost to Foundation.

3. Foundation Representations; Warranties; Covenants. In addition to any other Foundation representation, warranty, and/or covenant contained in this Agreement, Foundation, warrants, and covenants to City as follows:

3.1 Authority; Binding Obligation. Foundation has full power and authority to sign and deliver this Agreement and to perform all Foundation's obligations under this Agreement. The execution, delivery,

and performance of this Agreement, and any agreement contemplated herein, constitute a valid and binding agreement of Foundation, enforceable in accordance with its terms. Foundation's execution, delivery and performance of this Agreement, and any agreement contemplated herein, will not result in a breach or violation of, nor constitute a default under, any agreement, law, judgment, or order, or require the consent, authorization, or approval of any person, including without limitation, any governmental body.

3.2 Evaluation; Encumbrance; Laws. Foundation has knowledge and experience in real estate and land use matters necessary to make Foundation capable of evaluating the merits and risks of this Transaction and entering into this Agreement. Foundation has entered into this Agreement on the basis of its own examination, personal knowledge, and opinion as to the suitability of this Transaction. In connection with Foundation's decision to enter into this Agreement, Foundation has not relied on any representations or warranties made by City other than those specified in this Agreement. Foundation has had the opportunity to ask questions and receive answers concerning this Transaction and has obtained all information Foundation deems necessary or appropriate to evaluate this Transaction. The Foundation Land is free and clear of any Encumbrances that may interfere with City's use of the Foundation Land. No encroachments, boundary agreements, boundary disputes, and/or boundary changes exist or concern the Foundation Land that may interfere with the City's use of the Foundation Land. Foundation and the Foundation Land are in compliance with the Laws. Foundation has no knowledge of any defects or issues concerning the Foundation Land that may affect City's intended use of the Foundation Land. Foundation acknowledges and agrees that City will transfer the City Land to Foundation subject to all Encumbrances of record, as shown in Title Report Order No. [REDACTED].

3.3 Property Conditions; No Brokers or Finders. Foundation has not incurred any liability or obligation, whether contingent or otherwise, for a brokerage commission, a finder's fee, or any other similar payment in connection with this Agreement and/or the Transaction. Foundation and/or the Foundation Land are not subject to any judgments and/or orders and there are no actions, judgments, suits, audits, hearings, proceedings, orders, investigations, and/or claims pending or threatened against Foundation and/or the Foundation Land. Foundation is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

3.4 Foundation Indemnification. Foundation releases and will defend, indemnify, and hold City and each City Representative harmless for, from, and against all Damages, whether known or unknown, resulting from or arising out of, whether directly or indirectly, the following: (a) Foundation's breach and/or failure to perform any Foundation representation, warranty, covenant, and/or obligation contained in this Agreement; (b) Foundation and/or any Foundation Representative's activities on the Properties involving the use, storage, handling, transportation, treatment, disposal, and/or release of any Hazardous Substances; and/or (c) Foundation's occupancy, possession, repair, maintenance, ownership, and/or use of the Properties, including, without limitation, use of the Properties by any contractor, representative, tenant, and/or invitee of Foundation and/or any other person. City's right to indemnification under this Section 3.4 is in addition to, and not in lieu of, any other rights which City may be entitled under this Agreement, at law, and/or in equity. The indemnification covenants contained in this Section 3.4 will survive the Closing and will not merge into the property line adjustment deeds described in Section 5.2.

3.5 Accuracy. None of Foundation's representations or warranties contains or will contain any untrue statement of a material fact or omit or will omit or misstate a material fact necessary to make the statements contained herein not misleading.

4. City Representations; Warranties. City represents and warrants to Foundation as follows:

4.1 Authority; Binding Obligation. City has full power and authority to sign and deliver this Agreement and to perform all City's obligations under this Agreement. The execution, delivery, and performance of this Agreement, and any agreement contemplated herein, constitute a valid and binding agreement of City, enforceable in accordance with its terms. City's execution, delivery and performance of this Agreement, and any agreement contemplated herein, will not result in a breach or violation of, nor constitute a default under, any agreement, law, judgment, or order, or require the consent, authorization, or approval of any person, including

without limitation, any governmental body.

4.2 Evaluation; Encumbrance; Laws. City has knowledge and experience in real estate and land use matters necessary to make Foundation capable of evaluating the merits and risks of this Transaction and entering into this Agreement. City has entered into this Agreement on the basis of its own examination, personal knowledge, and opinion as to the suitability of this Transaction. In connection with City's decision to enter into this Agreement, City has not relied on any representations or warranties made by Foundation other than those specified in this Agreement. City has had the opportunity to ask questions and receive answers concerning this Transaction and has obtained all information City deems necessary or appropriate to evaluate this Transaction. The City Land is free and clear of any Encumbrances that may interfere with Foundation's use of the City Land. No encroachments, boundary agreements, boundary disputes, and/or boundary changes exist or concern the City Land that may interfere with the Foundation's use of the City Land, save and except for those expressly identified in this Agreement. City and the City Land are in compliance with the Laws. City has no knowledge of any defects or issues concerning the City Land that may affect Foundation's intended use of the City Land. City acknowledges and agrees that Foundation will transfer the Foundation Land to City subject to all Encumbrances of record, as shown in Title Report Order No. 28227.

4.3 Property Conditions; No Brokers or Finders. City has not incurred any liability or obligation, whether contingent or otherwise, for a brokerage commission, a finder's fee, or any other similar payment in connection with this Agreement and/or the Transaction. City and/or the City Land are not subject to any judgments and/or orders and there are no actions, judgments, suits, audits, hearings, proceedings, orders, investigations, and/or claims pending or threatened against City and/or the City Land. City is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

4.4 City Indemnification. City releases and will defend, indemnify, and hold Foundation and each Foundation Representative harmless for, from, and against all Damages, whether known or unknown, resulting from or arising out of, whether directly or indirectly, the following: (a) City's breach and/or failure to perform any City representation, warranty, covenant, and/or obligation contained in this Agreement; (b) City and/or any City Representative's activities on the Properties involving the use, storage, handling, transportation, treatment, disposal, and/or release of any Hazardous Substances; and/or (c) City's occupancy, possession, repair, maintenance, ownership, and/or use of the Properties, including, without limitation, use of the Properties by any contractor, representative, tenant, and/or invitee of Foundation and/or any other person. Foundation's right to indemnification under this Section 3.4 is in addition to, and not in lieu of, any other rights which Foundation may be entitled under this Agreement, at law, and/or in equity. The indemnification covenants contained in this Section 4.4 will survive the Closing and will not merge into the property line adjustment deeds described in Section 5.2.

4.5 Accuracy. None of City's representations or warranties contains or will contain any untrue statement of a material fact or omit or will omit or misstate a material fact necessary to make the statements contained herein not misleading.

## 5. Closing.

5.1 Closing Conditions. Notwithstanding anything contained in this Agreement to the contrary, City's obligation to close the Transaction is conditioned on City having obtained all consents, authorizations, approvals, agreements, and instruments required to consummate the Transaction, including, without limitation, PLA approval.

5.2 Closing. The Closing of the Transaction will take place the offices of Title Company on the Closing Date or any other place or time that the parties may agree in writing contemporaneously with the parties' mutual execution of this Agreement. At the Closing, City will deliver the following items to Foundation: (a) the appropriate property line adjustment deeds signed by City concerning the Properties (in form and substance acceptable to City); and (b) exclusive possession of the City Land. At the Closing, Foundation will deliver the following to City: (x) the appropriate deeds signed by Foundation concerning the Properties (in form and substance

acceptable to City); (y) exclusive possession of the Foundation Land; and (z) all documents and instruments that City may reasonably request to close the Transaction, in form and substance satisfactory to City.

5.3 Costs and Expenses. City will pay all costs, charges, and expenses associated with this Transaction, including, without limitation, PLA Costs, closing costs, and recording fees.

6. City's Post-closing Obligations.

6.1 Sand Shed; Materials; Debris. Within six months after the date of Closing, City will, at City's cost and expense, remove all materials located on City Land, including the sand shed, gravel piles, and any other non-native materials with the exception of the barbed-wire fence and drying beds for the Wastewater Treatment Facility (the "Facility"), which shall remain in place until the demolition and decommissioning of the Facility, at which point fence and drying beds shall also be removed from City Land and will become available for Foundation's use.

6.2 Access Road. Within 24 months of closing, City shall establish a public right-of-way through City Land (the "7<sup>th</sup> Street Extension Road") up to the western boundary of City Land, which shall include paved streets, water, sewer, power, broadband and reclaimed water to the City Land (the "Improvements"). Right-of-way and Improvements shall be subject to and in accordance with all land use and development design, review, and approval standards and requirements of City, including, without limitation, all applicable standards and requirements under Article 5-3 of the John Day Development Code. City shall grant Foundation an access (or accesses) to this right-of-way for purposes of future development of the City Land in conjunction with Foundation's site design review and/or land use review approval for the future Grant County Library ("Library").

6.3 Site Design Review. City shall assist Foundation with the Site Design Review for the Library, including waiving all fees and staff time associated with preparation of the Site Design Review application.

6.4 Grant Applications; Administration Agreement. For and on behalf of Foundation, City shall apply for the 2022 Congressionally Directed Spending grant ("CDS grant") and 2022 Community Development Block Grant ("CDBG grant") for up to \$3.5 million in capital construction costs for Library. If awarded, City shall be Foundation's fiduciary agent and grant administrator for the duration of the CDS grant and CDBG grant obligations.

6.5 Kam Wah Chung Lease Agreement. City shall assume the Kam Wah Chung lease agreement obligations (the "Lease") and its amendment (the "Lease Amendment") with Oregon State Parks and Recreation Department, as shown in Exhibit D, through June 30, 2025. The rent associated with the Lease Amendment (the "Rent") shall be payable to City upon completion of this Transaction.

6.6 Madden Easement. City shall record a legal easement for Madden's as part of the proposed parking improvements in accordance with the terms of Foundation's agreement, as shown in Exhibit E.

7. Foundation's Post-closing Obligations.

7.1 City Access to Property. Foundation shall grant unfettered access to City for purposes of completing its post-closing obligations described in Section 6.

7.2 Future Right-of-Way. Foundation shall dedicate a 60-foot public right-of-way to City along the path of the current gravel driveway for purposes of establishing the 7<sup>th</sup> Street Extension road and utility corridor.

7.3 Future Trail Easements. Foundation shall provide trail easements for City's Davis Creek trail system to access City Land and future public right-of-way.

8. Miscellaneous.

8.1 Statutory Warning. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

8.2 Expenses; Notices. Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with the Transaction, including, without limitation, the preparation, negotiation, signing, and performance of this Agreement. Any notice required under this Agreement must be in writing. Any notice will be deemed given when personally delivered or delivered by email or facsimile transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day.

8.3 Execution; Counterparts; Time. 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. If the date for performance of an obligation or delivery of any notice hereunder falls on a day other than a business day, the date for such performance or delivery of such notice will be postponed until the next ensuing business day. For purposes of this Agreement, a "business day" means a normal working day (i.e., Monday through Friday of each calendar week, exclusive of Federal and state holidays and one day following each of Thanksgiving, Christmas, and New Year's).

8.4 Person; Interpretation; Attorney Fees. 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. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.



8.5 Further Assurances; Assignment; Waiver. The parties will sign other documents and take all other actions reasonably necessary to further effect and evidence this Agreement. Neither party may assign or delegate any of the party's rights or obligations under this Agreement to any person without the prior written consent of the other party, which the other party may not unreasonably withhold, delay, or condition. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision in this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

8.6 Entire Agreement; Governing Law; Severability. This Agreement sets forth the entire understanding of the parties with respect to the Transaction. This Agreement supersedes all prior negotiations, discussions, agreements, and understandings between the parties with respect to the Transaction. This Agreement may not be modified or amended except by written agreement executed by the parties to this Agreement. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. 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. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and made effective for all purposes as of the Effective Date.

[Signature page follows]

CITY:  
City of John Day,  
an Oregon municipal corporation

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By: Nicholas Green, City Manager

FOUNDATION:  
Grant County Library Foundation, Inc.  
an Oregon public benefit corporation

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Megan Brandsma, President

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Ashley Armichardy, Secretary

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Appendix A  
Definitions

“Agreement” has the meaning assigned to such term in the preamble.

“CDBG grant” has the meaning assigned to such term in Section 7.2.

“CDS grant” has the meaning assigned to such term in Section 7.2.

“City” has the meaning assigned to such term in the Preamble.

“City Land” has the meaning assigned to such term in Recital A.

“City Representative(s)” means each present and future officer, employee, agent, and/or representative of City.

“Closing” means the closing of the Transaction.

“Damages” means all claims, actions, proceedings, damages, liabilities, obligations, costs, attorney fees and costs, and expenses of every kind or nature, including, without limitation, environmental remediation costs and expenses, whether known or unknown.

“Encumbrance(s)” means any lien, mortgage, pledge, security interest, reservation, restriction, adverse claim, and/or other encumbrance.

“Environmental Law(s)” means all applicable federal, state, and/or local statutes, regulations, and/or ordinances, and/or any judicial or other governmental orders pertaining to the protection of health, safety, and/or the environment.

“Hazardous Substance(s)” means any hazardous, toxic, infectious, and/or radioactive substance, waste, and/or material as defined, controlled, and/or listed by any Environmental Law, including, without limitation, petroleum oil and its fractions.

“Law(s)” means all federal, state, and local laws, statutes, ordinances, codes, regulations, orders, rules, covenants, conditions, easements, declarations, leases, liens, and/or restrictions directly or indirectly affecting or concerning the ownership, use, condition, maintenance, leasing, and/or operation of all or any part of the Properties, including, without limitation, all Environmental Laws.

“Library” means the future Grant County Library.

“Foundation” has the meaning assigned to such term in the Preamble.

“Foundation Land” has the meaning assigned to such term in Recital A.

“Foundation Representative(s)” means each present and future officer, employee, agent, and/or representative of Foundation.

“PLA” has the meaning assigned to such term under Section 2.2.

“PLA Costs” has the meaning assigned to such term under Section 2.2.

“Property(ies)” has the meaning assigned to such term under Recital B.

“Title Company” means Land Title Company of Grant County, Inc., 145 NE Dayton Street, John Day, Oregon 97845.

“Transaction” means City’s transfer and conveyance of the City Land to Foundation and Foundation’s transfer and conveyance of the Foundation Land to City as provided under this Agreement, including, without limitation, the PLA.

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Exhibit A  
City Land Description

The City Land is more particularly described as follows:

[to be inserted from Title Report]

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Exhibit B  
Foundation Land Description

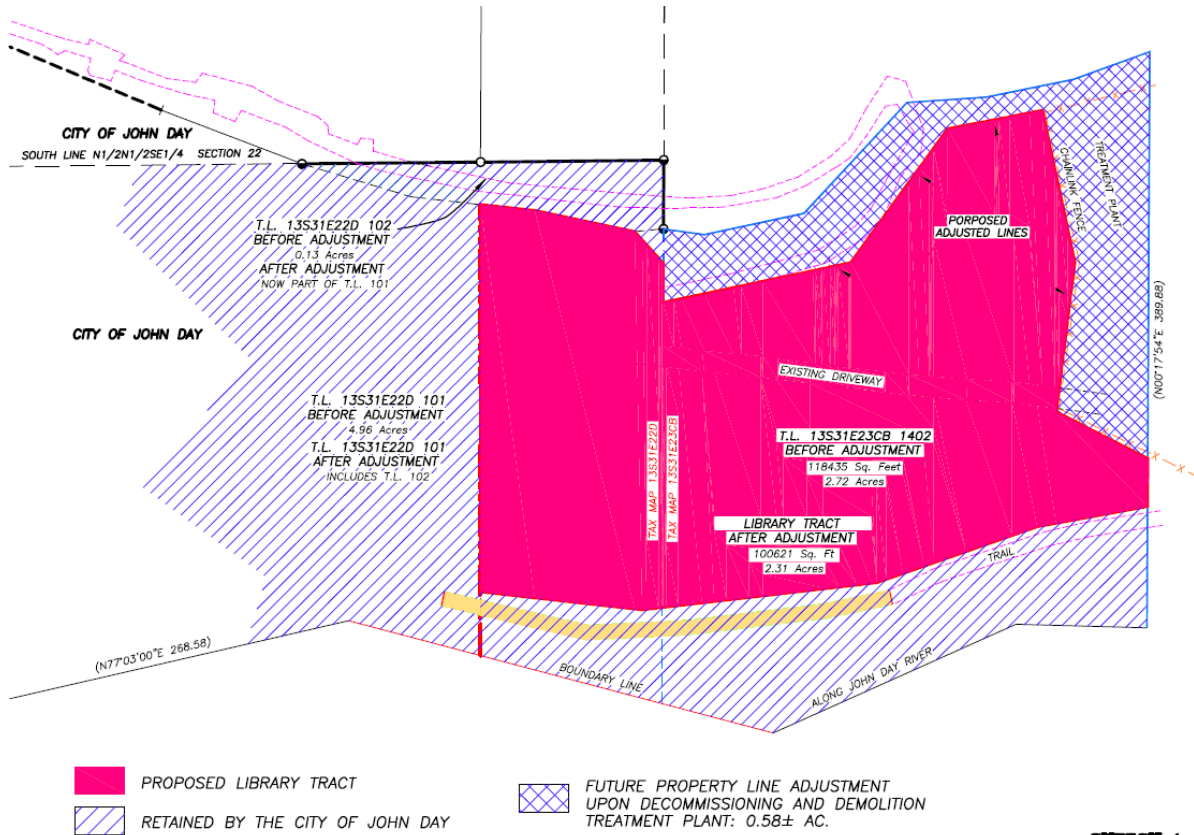
**LEGAL DESCRIPTION:**

Land in Grant County, Oregon, as follows:

**PARCEL 2 of LAND PARTITION PLAT NO. 2014-09**, according to the plat thereof filed for record in the office of the clerk of said county and state on November 10, 2014.  
(Tax Acct. 3-1 13-31-26BA TL4901; Ref. 40024)

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**Exhibit C**  
Property Line Adjustment Depiction



**SKETCH 1**

Exhibit D  
Kam Wah Chung Lease Agreement

[enclosed]

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**KAM WAH CHUNG VISITOR CENTER  
BUILDING LEASE AGREEMENT**

RECEIVED  
MAR 29 2012

This Lease Agreement is between the State of Oregon, acting by and through the Oregon Parks and Recreation Department, hereafter called "OPRD" and the Grant County Library Foundation, an Oregon non-profit corporation, hereafter called "GCLF" and collectively referred to as the Parties. This Lease Agreement (Agreement) is effective once fully executed and approved as required by applicable law.

Premises: Approximately 2,697 square feet of space to include the building currently used as the Kam Wah Chung Interpretive Center (Building A), and the building commonly referred to as the "Head Start" building (Building B), both on the old school district grounds in John Day, Oregon (hereafter collectively called the "Premises") as identified on Exhibit "A."

**RECITALS**

WHEREAS, OPRD is a state agency with a purpose to provide recreational, cultural and historical opportunities to the citizens of the State of Oregon; and

WHEREAS, OPRD currently operates the Kam Wah Chung State Heritage Site in John Day, Oregon; and

WHEREAS, OPRD has leased the Kam Wah Chung Interpretive Center (i.e. Building A) from the Grant School District in the past; and

WHEREAS, OPRD completed approximately \$45,000 worth of improvements to Building A, including structural, electrical, plumbing and interior finish upgrades; and

WHEREAS, OPRD commits to complete parking improvements similar to those shown on Exhibit B or in a different configuration if mutually acceptable to both Parties, at OPRD expense of approximately \$3,350; and

WHEREAS, OPRD would like to continue to lease Building A, and begin leasing Building B from GCLF;

NOW THEREFORE, the Parties to this Agreement hereby approve the above recitals. In consideration of the mutual covenants contained herein, Parties mutually agree as follows:

1. **RENT:** OPRD agrees to pay GCLF rent for the period November 2012 through June 30, 2013 an amount of \$250.00 per month. Rent for any partial month shall be prorated on a per diem basis.
2. **USE OF PREMISES:** OPRD may use the Premises as a visitor center, storage and other lawful purposes including but not limited to functions related to the management of the Kam Wah Chung Museum.

3. TERM: The term of this Agreement shall end June 30, 2013, with option for renewal upon terms acceptable to both Parties.
4. UTILITIES PAID BY OPRD: The following utilities will be paid by OPRD: natural gas, electric, garbage, water and sewer.
5. PARKING: OPRD staff will park their vehicles in the area identified on Exhibit "A" and will encourage visitors to the Kam Wah Chung Interpretive Center to park in this area also by placing signage at the entrance to the parking area.
7. SIGN: OPRD may install signs on the Premises. The Parties shall agree on the type, location and contents of all signs prior to their installation. OPRD shall be solely responsible for the cost of any signage and maintenance thereof.
8. STORAGE:
  - a. Any hazardous chemicals stored on the Premises need the prior approval of the GCLF. OPRD shall provide a safety plan for the Premises and copies of all relevant Material Safety Data Sheets.
  - b. OPRD and its staff shall be responsible for the security of all personal items on the Premises and for insuring all personal property items.
9. MAINTENANCE AND REPAIR; RULES: OPRD will, at its sole expense, keep and maintain the Premises in good repair and sanitary condition during the term of this Agreement and any renewal thereof. Without limiting the generality of the foregoing, OPRD shall:
  - a. Keep any windows, window coverings, doors, locks and hardware in good, clean order and repair;
  - b. Not cause or permit any locks to be placed upon any door or window without the Prior notification to GCLF;
  - c. Be responsible for all locks, keys, exterior security lighting, any fencing or gates, fire extinguisher, smoke detectors, and any security systems OPRD may install, said security system(s) to be approved by GCLF prior to installation.
  - d. Keep all sinks, toilets, and other water and plumbing apparatus in Building A in good order and repair and shall use same only for the purposes for which they were constructed. Building B has not been winterized, and consequently, there may be damage to the pipes, supply lines, or plumbing fixtures. OPRD may elect to repair, replace, or disconnect the water supply, but in any event, the plumbing apparatus will be maintained in equal or better condition in Building B than currently exists. Provide all cleaning supplies and paper products for use within the premises. Any damage to any such apparatus and the cost of clearing stopped plumbing resulting from misuse shall be borne by OPRD;

- e. Deposit all trash, garbage, or refuse in the appropriate garbage receptacles; OPRD will be responsible for disposing of all trash it generates.
  - f. Perform routine maintenance of electrical, mechanical, gas, and water systems; structural integrity, and building condition.
  - g. Report any building concerns to GCLF.
10. GENERAL: OPRD shall be responsible for the conduct of its staff and all other persons invited on the Premises.
11. INDEMNITY: OPRD shall indemnify and hold harmless GCLF to the extent possible under the Oregon Tort Claims Act and the Oregon Constitution, from and against all damages, claims, demands, suits, actions or cause of suit or action resulting from, or because of, any damage to property or injury or death of any person arising out of the occupancy and use of the aforementioned Premises by OPRD.
12. SUBLET: OPRD shall not sublet said Premises or any part thereof or assign this Agreement without the express written consent of GCLF.
13. GCLF RIGHTS AND OBLIGATIONS:
- a. Shall have access to the Premises for the purposes of:
    - 1. Responding to an emergency.
    - 2. Conducting an annual inspection of Premises to ensure OPRD is complying with terms of this agreement or for the purpose of scheduling repair, remodel, or maintenance work and for budgeting major renovations GCLF may elect to undertake.
    - 3. Providing routine maintenance, repair, alterations, improvements and services it may elect to undertake, provided such activities are scheduled in coordination with the Park Manager to reduce impact to Park visitors.
    - 4. Except in the case of an emergency, GCLF shall give OPRD 72 hours advance notice of when any access to the Premises is needed and when any work or services will be conducted and by whom.
  - b. Perform, or contract for, major repairs, alterations, improvements or maintenance needs identified by the GCLF.
  - c. Schedule annual fire and safety inspection, if required by code.
  - d. Be responsible for any security systems GCLF may install or require.
  - e. Post on the Premises procedures for dealing with emergencies, list relevant names and telephone numbers and provide appropriate operating/maintenance procedures for gas, water, electrical and mechanical systems.

14. TERMINATION: This Agreement may be terminated by either party upon 60 days written notice (120 days upon renewal and every renewal hereafter); provided, however, that if either Party fails to comply with the terms and conditions of this Agreement, the other Party may proceed to terminate this Agreement in the manner prescribed by law. Upon vacating the premises, the Park Manager and GCLF shall conduct an on-site inspection of the Premises. OPRD shall surrender the premises in a clean and sanitary condition and be responsible for the repair of any damages, normal wear and tear excepted.
15. GENERAL: OPRD shall not make any improvements or modifications to the Premises without the written permission of GCLF. If new buildings are constructed or improvements are made to the Premises, they shall become the property of GCLF without compensation to OPRD upon the default or the termination of this Agreement or any extensions thereof unless otherwise agreed to in writing between the parties.
16. PERMITS, ASSESSMENTS, COMPLIANCE WITH LAWS:
- a. OPRD shall carry fire insurance in an amount adequate to insure its personal property.
  - b. Currently, the Premises are tax exempt. GCLF represents it is an exempt organization.
  - c. OPRD shall be responsible for obtaining any permits necessary for its management, maintenance or operation of the Premises and comply with all local, state and federal laws.
17. NOTICES: All notices or other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by fax, e-mail or regular mail.
- To OPRD: Attn: Dennis Bradley, Park Manager  
Oregon Parks and Recreation Department  
P.O. Box 10  
Mt. Vernon, OR 97865
- To GCLF: Attn: <sup>mSB</sup> ~~Executive Director~~ Megan Brandsma, President  
Grant County Library Foundation  
PO Box 875  
John Day, OR 97845
18. MERGER: This Agreement sets forth the entire understanding of Parties. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between Parties. This Agreement may not be modified or amended except by a written agreement executed by both Parties. It is mutually acknowledged and agreed by GCLF and OPRD that there are no verbal agreements, representations, warranties, or other understandings affecting this Agreement.

19. AMENDMENTS: No amendment to this Agreement is effective unless it is in writing signed by the Parties, and all approvals required by applicable law have been obtained.

OPRD and GCLF, by the signatures below of its authorized representatives, acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**Grant County Library Foundation:**

<u>Megan Brandsma</u>	<u>President</u> <del>Executive Director</del> <sup>njb</sup>	<u>3-15-13</u>
	Title	Date

**Oregon Parks and Recreation Dept.**

<u>Jerry Winegar</u>	<u>Region Manager</u>	<u>3-18-13</u>
Jerry Winegar	Title	Date

KAM WAH CHUNG VISITOR CENTER  
BUILDING LEASE AGREEMENT

AMENDMENT #2

THIS AMENDMENT #2 (Amendment) to the Building Lease Agreement (Lease) is between the State of Oregon, by and through the Oregon Parks and Recreation Department, hereafter called (OPRD) and the Grant County Library Foundation, hereafter called (GCLF) and collectively referred to as the parties. This Amendment is effective once fully executed and approved as required by applicable law.

WHEREAS, OPRD and GCLF entered into the Lease on November 22, 2013, whereby GCLF leased to OPRD certain premises, therein described, said premises located in John Day, Oregon, and

WHEREAS, OPRD AND GCLF desire to amend the Lease to extend the lease term, and

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

1. Extension of Term. The Lease will be renewed for four (4) years, expiring June 30, 2025.
2. Rent. Rent will remain the same at \$600 per month.
3. Other Terms and Conditions Remain the Same. In the event of any inconsistencies between the Lease and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be effective as of the last date written below.

Oregon Parks & Recreation Department

By: *SR Collier*

Print Name: SR Collier

Its: Mountain Region Manager

Date: 1/12/2022

Grant County Library Foundation

By: *Megan Brandsmen*

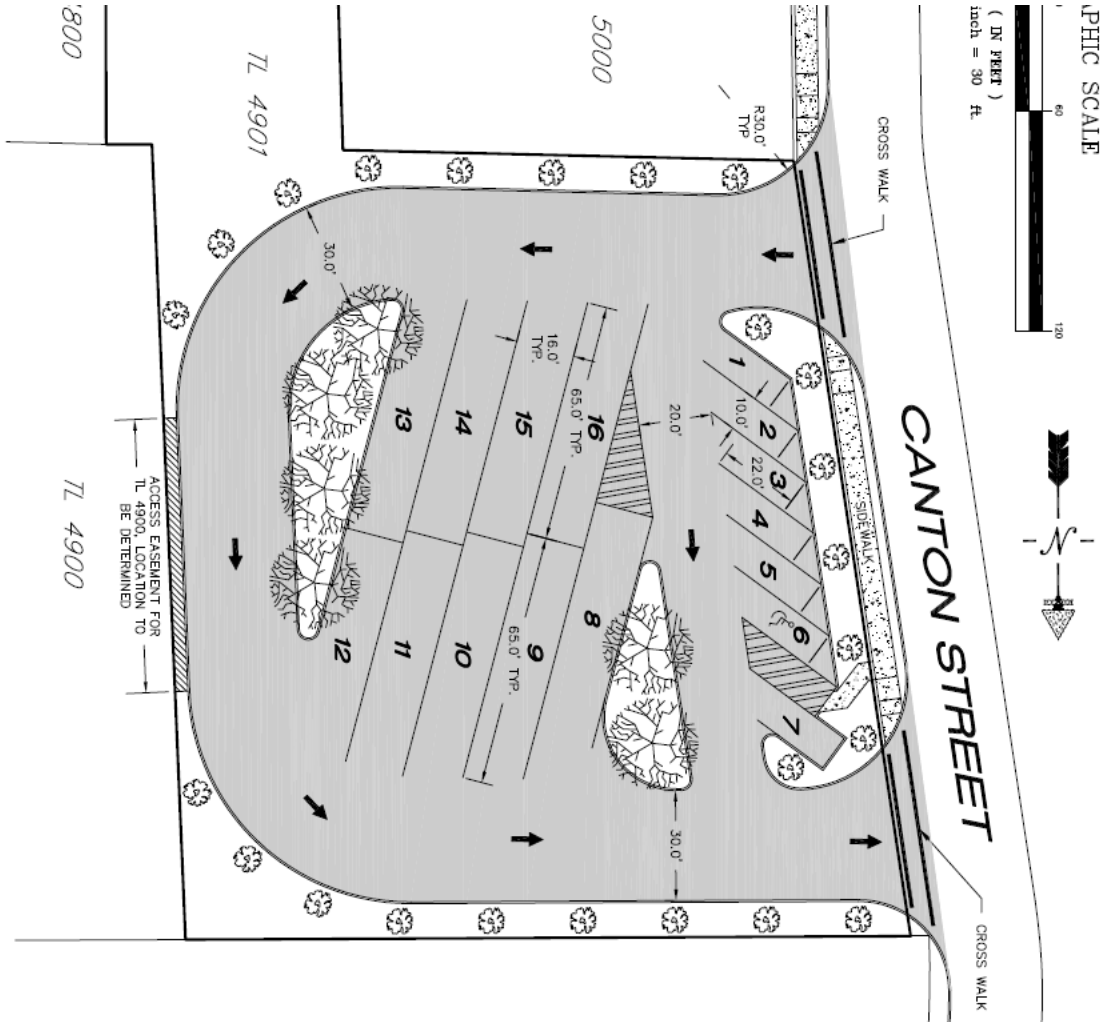
Print Name: Megan Brandsmen

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

Date: 11-16-2021

Exhibit E

Madden Easement Depiction



October 21, 2014

Blue Mountain Custom Homes & Development, Inc.

PO Box 237

Canyon City, OR 97820

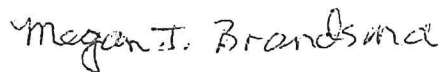
Dear Jessie and Joseph Madden,

Grant County Library Foundation grants to Blue Mountain Custom Homes & Development, Inc. temporary access to Parcel 1 ( see attached map) from Canton Street over and across Parcel 2 until such time as a 12 foot permanent easement becomes necessary and can be designated.

We expect that date will be when the new library is designed and located on Parcel 2.

In any event this will occur within 3 years from date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Megan T. Brandsma".

Megan Brandsma

President, Grant County Library Foundation