

## Purchase and Sale Agreement

This Purchase and Sale Agreement (this “**Agreement**”) for the Gleason Park Property is entered into effective as of July 20, 2022 (the “**Effective Date**”) between CITY OF JOHN DAY, a municipal corporation (“**Seller**”), and STATE OF OREGON, by and through the Oregon Parks and Recreation Department (“**Buyer**”). Seller and Buyer are referred to together herein as the “parties.” The Effective Date of this Agreement shall be as of the date of the last signature of this Agreement.

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### RECITALS

A. The addresses and contact information of the parties to this Agreement are as follows:

**Seller:**

CITY OF JOHN DAY, a municipal corporation  
450 East Main Street  
John Day, OR 97845  
Attn: Corum Ketchum, Interim City Manager  
Ph: 541-575-0028  
Email: Ketchumj@grantcounty-or.gov

**Buyer:**

STATE OF OREGON, by and through the Oregon Parks and Recreation Department  
725 Summer Street NE, Suite C  
Salem, OR 97301-1266  
Attn: Tabitha Henricksen, Property Unit  
Ph: 503-339-6806  
Email: Tabitha.Henricksen@oregon.gov

B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, certain real property with rights appurtenant thereto, commonly known as the Gleason Park Property in Grant County, Oregon, and legally described on Exhibit A. The land to be sold and purchased under this Agreement is referred to herein as the “**Property**.”

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties, intending to be legally bound, agree as follows:

### SECTION 1 AGREEMENT OF SALE

**1.1 Sale and Purchase.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property, for the price and on the terms and conditions set forth herein, together with all of Seller’s right, title, and interest in and to any rights, licenses, privileges, reversions, and easements appurtenant to the Property.

**1.2 Purchase Price.** Buyer agrees to pay Seller the sum of Two Hundred Twenty-Two Thousand Dollars (\$222,000.00) for the purchase of the Property (the “**Purchase Price**”).

**1.3 Payment of Purchase Price.** The Purchase Price will be paid in cash at the Closing (as defined below).

**1.4 Demolition Work.** Prior to the Effective Date, Seller completed certain Property site demolition and preparation work (collectively, “Seller’s Work”) within the Property area defined in Exhibit B (the “Demolition Area”). Seller’s Work was completed in accordance with the SHPO-approved plan and a Memorandum of Agreement (the “Demolition MOA”) between the Parties attached hereto as Exhibit C. Seller’s Work included, among other things, removal of existing above-ground structures and their contents, destruction of pools and aprons, backfilling and bringing of the Demolition Area to grade, and removal of all resulting debris and equipment from the Property (including all regulatory and permitting requirements related thereto). Seller’s Work was performed at Seller’s sole cost and expense, except as expressly set forth in the Demolition MOA. Prior to the Effective Date, Buyer reviewed and inspected Seller’s Work to confirm proper completion. Buyer is satisfied with Seller’s completion of the Seller’s Work without condition and/or reservation. Seller covenants to complete final site cleanup (including removal of all equipment and debris) prior to the Closing Date.

**1.5 Lease Agreement.** As partial consideration for Buyer’s execution of this Agreement with Seller (and purchase of the Property), Seller and Buyer will enter into a commercial lease agreement concerning Seller’s lease of a certain Seller-owned commercial building located at 125 NW Canton Street, John Day, Oregon 97845 (the “Building”) to Buyer (the “Lease”). Subject to the terms and conditions contained in the Lease, Buyer will not pay any “base rent” concerning the Building under the Lease; provided, however, Buyer will timely pay all costs and expenses related to or concerning (a) Buyer’s repair and maintenance of the Building, and (b) all Building taxes, water, sewer, power, internet, and all other utilities. The Lease will be on a form mutually agreeable to Buyer and Seller and based on the form attached hereto as Exhibit D.

## **SECTION 2 ESCROW**

**2.1 Escrow.** The parties will promptly upon mutual execution of this Agreement open an escrow account at Land Title Company of Grant County, Inc., located at 145 NE Dayton St, John Day, OR 97845 (the “Escrow Agent”), and deposit this Agreement with the Escrow Agent. The representative of the Escrow Agent for this transaction is:

Kristen Coombs  
Phone: 541-575-1529  
Fax: 541-628-7415  
Email: Kristen@ltcofgrantcounty.com

**2.2 Escrow Instructions.** This Agreement constitutes joint instructions to the Escrow Agent. The parties may execute such additional instructions as reasonably requested by the Escrow Agent if such instructions are consistent with the terms hereof. If such additional or supplemental instructions conflict with the express terms of this Agreement, the terms of this Agreement control.

### SECTION 3 TITLE TO PROPERTY

**3.1 Conveyance.** At the Closing, Seller will convey to Buyer fee simple title to the Property by statutory warranty deed, free and clear of all liens, encumbrances, easements, and restrictions, except for the Permitted Encumbrances (as defined in 4.2(b)).

**3.2 Water Rights.** Seller's conveyance of the Property to Buyer includes all water rights appurtenant to the Property, if any.

**3.3 Inspections.** Prior to the Closing, Buyer may conduct such inspections, examinations, and investigations of the Property in Buyer's sole discretion to ascertain the condition of the Property and its suitability for Buyer's purposes. All such testing, examination, and investigation will be subject to the indemnification provisions of Section 3.4.

**3.4 Right of Inspection; Indemnification.** Buyer may inspect the Property, including making invasive inspections, with reasonable prior notice to Seller. Buyer's inspections may include the taking of samples and other physically invasive procedures. If the real estate transaction subject to this Agreement does not close, Buyer will restore the Property to its condition prior to Buyer's inspections. To the extent permitted by Article XI, Section 7 of the Oregon Constitution, and subject to the limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, Buyer will indemnify, defend and hold Seller harmless from and against any and all losses, claims, damages, and liabilities arising out of or resulting from Buyer's inspections, unless and to the extent Seller's negligence or intentional acts contributed to the losses, claims, damages, or liabilities.

**3.5 Title Insurance Policy.** Buyer may, at Buyer's expense, obtain an ALTA Owner's Standard Coverage Title Insurance Policy on the Closing Date (as defined below) in an amount equal to the Purchase Price insuring fee simple title vested in Buyer subject only to the Permitted Encumbrances.

**3.6 AS-IS.** Buyer has entered into this Agreement based on Buyer's own examination and personal knowledge of the Property. Buyer has not relied on any Seller representations, warranties, and/or covenants concerning the Property except as expressly provided in Section 5.1 of this Agreement. Except for those express representations and warranties made by Seller under Section 5.1, Buyer is buying the Property from Seller "AS-IS" and "WITH ALL FAULTS" as of the Closing Date, and (b) Buyer accepts the Property in its "AS-IS" and "WITH ALL FAULTS" condition as of the Closing Date.

### SECTION 4 CLOSING

**4.1 Closing Date.** The parties intend that the Property sale provided for herein will be closed (the "Closing") in escrow at the office of the Escrow Agent (or at another agreed location) within thirty (30) days after the Effective Date (the "Closing Date.")

## 4.2 Buyer's Conditions to Closing.

**4.2.1** Buyer's obligation to purchase the Property is expressly contingent upon, and subject to, the satisfaction or express written waiver of the following conditions not later than the Closing Date:

(a) **Commission Approval.** Buyer's purchase of the Property is conditioned on receiving approval of the terms of this Agreement by the Oregon Parks and Recreation Commission.

(b) **Review of Title.** Escrow Agent has supplied Buyer with a preliminary title report dated January 20, 2022 (the "Preliminary Title Report"). Buyer will accept title to the Property subject only to the encumbrances identified in the Deed (as defined below) (the "**Permitted Encumbrances**"). Escrow Agent shall provide Buyer with an updated Preliminary Title Report approximately five days prior to the Closing Date. Based upon Buyer's review of the updated preliminary title report, Buyer may require that any encumbrances that are not Permitted Encumbrances be removed from the title to the Property. Any such encumbrances to which Buyer does not object before the Closing Date shall be Permitted Encumbrances.

(c) **Evaluation of Property.** Buyer may examine and inspect the condition of the Property as provided in Sections 3.3 and 3.4 and be satisfied with the results of such inspections.

(d) **Title Insurance.** The Escrow Agent must commit to issue a title insurance policy as provided in Section 3.5.

The conditions in Section 4.2 of this Agreement are solely for the benefit of Buyer and may be waived only by Buyer. Buyer will at all times have the right to waive any condition.

**4.3 Prorates and Closing Costs.** All real property taxes for the current tax year, if any, will be prorated between the parties as of the Closing Date. Buyer will be responsible for payment of the premium for any title insurance policy, the recording fees for recording the statutory warranty deed and one-half of the escrow fee. Seller will be responsible for one-half of the escrow fee.

## 4.4 Deliveries to Escrow Agent.

**4.4.1 By Seller.** On or before the Closing Date, Seller will deliver the following to the Escrow Agent:

(a) **Deed.** A statutory warranty deed substantially in the form attached hereto as Exhibit E (the "Deed") duly executed and acknowledged by Seller, conveying the Property to Buyer, subject only to non-delinquent property taxes, and free and clear of all liens, encumbrances, easements, and restrictions except for the Permitted Encumbrances.

(b) **Non-foreign Certification.** A certification of non-foreign status in the form required by Internal Revenue Code §1445 and related regulations.

(c) **Lease; Miscellaneous.** Seller will sign and deliver the Lease duly executed by Seller and all other documents, instruments, or records or agreements called for hereunder that have not previously been delivered or as may be reasonably requested by Escrow Agent in order to issue the title policy.

(d) **Pro-ration amounts.** The amount due from Seller, if any, after the prorations are computed under Section 4.3 of this Agreement. Seller may pay its proration amount from the proceeds of the Purchase Price.

**4.4.2 By Buyer.** On or before the Closing Date, if the conditions to the Closing have been satisfied to Buyer's satisfaction, Buyer will deliver the following to the Escrow Agent:

(a) **The Purchase Price.**

(b) **Lease; Miscellaneous.** Buyer will sign and deliver the Lease duly executed by Buyer and all other documents, instruments, or records or agreements called for hereunder that have not previously been delivered or as may be reasonably requested by Escrow Agent in order to issue the title policy.

(c) **Pro-ration amounts.** The amount due from Buyer, if any, after the prorations are computed under Section 4.3 of this Agreement.

**4.5 Possession.** Buyer shall be entitled to possession of the Property on the Closing Date.

## **SECTION 5 REPRESENTATIONS AND WARRANTIES**

**5.1 Seller's Representations and Warranties.** Seller represents and warrants to Buyer as follows:

**5.1.1** Seller has all necessary power and authority, and has taken all action required, to enter into, execute, and deliver this Agreement, to fully perform its obligations hereunder, and to carry out and consummate the land sale and other obligations contemplated herein. During the period between the Effective Date and the Closing Date, Seller will not convey the Property or any portion of or rights associated with the Property to any third party, nor will Seller encumber the Property in any respect.

**5.1.2** Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

**5.1.3** Seller's conveyance of the Property to Buyer will include all water rights appurtenant to the Property, if any, which were received by Seller when it purchased or obtained title to the Property or such water rights as Seller later acquired.

**5.1.4** Buyer may obtain a Phase I Environmental Site Assessment report (“**Report**”). To Seller’s actual knowledge, except as disclosed in the Report the Property is materially in compliance with applicable state and federal environmental standards and laws affecting it and there are no Hazardous Materials or Hazardous Substances released, stored, spilled, discharged or leaking on, to or about the Property in violation of applicable law. For purposes of this Section 5.1.4, the term “Hazardous Materials” and “Hazardous Substances” mean (i) hazardous wastes, hazardous materials, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including, but not limited to, substances defined as “hazardous wastes,” “hazardous materials,” “hazardous substances,” “toxic substances,” “pollutants,” “contaminants,” “radioactive materials,” “toxic pollutants,” or other similar designations as defined in, or otherwise subject to regulation under, any Oregon state law or regulation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601, *et seq.*; the Toxic Substance Control Act (“TSCA”), 15 U.S.C. § 2601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1802; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 9601, *et seq.*; the Clean Water Act (“CWA”), 33 U.S.C. § 1251, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; the Clean Air Act (“CAA”), 42 U.S.C. § 7401, *et seq.*; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinance now or hereafter in effect relating to environmental matters; and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any environmental law, now or hereafter in effect, including but not limited to (A) petroleum; (B) refined petroleum products; (C) waste oil; (D) waste aviation or motor vehicle fuel and their byproducts; (E) asbestos; (F) lead in water, paint or elsewhere; (G) radon; (H) polychlorinated biphenyls (PCB’s); (I) urea formaldehyde; (J) volatile organic compounds (VOC); (K) total petroleum hydrocarbons (TPH); (L) benzene derivative (BTEX); and (M) petroleum byproducts

**5.2 Buyer’s Representations and Warranties.** Buyer represents and warrants to Seller as follows: Buyer has all necessary power and authority, and has taken all action required, to enter into, execute, and deliver this Agreement, to fully perform its obligations hereunder, and to carry out and consummate the sale contemplated herein.

**5.3 Covenant Regarding Operation of Property through Close of Escrow.** Until this transaction is closed or the Agreement is terminated Seller will operate and maintain the Property in a manner consistent with Seller’s recent past practices (which include the closure of the swimming pool and the continued operation and maintenance of the Property) and will promptly disclose to Buyer any material issues or variations from such practices which arise prior to the Closing.

## SECTION 6 DAMAGE, DESTRUCTION OR CONDEMNATION

Until the close of escrow, the risk of loss associated with the Property will be retained by Seller. If all or any material portion of the Property is damaged, destroyed, or condemned or

threatened with condemnation before the Closing, Buyer may terminate this Agreement. In such event, this Agreement and the escrow will be terminated, and this Agreement shall have no further force and effect whatsoever.

## **SECTION 7 EVENTS OF DEFAULT**

**7.1 By Seller.** If escrow does not close by reason of any default by Seller, Buyer will have the right to recover its costs in connection with this transaction and pursue any remedy available to it at law or equity, including the specific performance of this Agreement in which Seller may be required to sell the Property to Buyer under the terms of this Agreement.

**7.2 By Buyer.** If escrow does not close by reason of any default by Buyer, Seller will have the right to recover its costs in connection with this transaction and pursue any remedy available to it at law or equity, including the specific performance of this Agreement.

## **SECTION 8 MISCELLANEOUS**

**8.1 Entire Agreement.** This Agreement is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the Property and supersedes and replaces all prior written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the sale and purchase of the Property is concerned. No supplement, modification, or amendment of this Agreement is binding, unless it is in writing and signed by duly authorized representatives of both parties.

**8.2 Severability.** In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement remains in full force and effect and will in no way be affected or invalidated thereby.

**8.3 Notices.** Any notice or other communication required or permitted under this Agreement must be in writing and must be sent to the parties at the addresses shown on the first page of this Agreement, or at such other address as either party may hereafter designate by written notice to the other. Notices will be deemed given on the date of transmission when sent by electronic mail, provided that a duplicate copy of such notice is deposited in the United States Mail the same day; or on the third business day after the date of mailing when mailed by certified mail, postage prepaid, return receipt requested, from within the United States; or on the date of actual delivery; whichever is the earliest.

**8.4 Binding Effect.** All rights, remedies, and liabilities herein given to or imposed upon either of the parties extend to, inure to the benefit of and bind, as the circumstances may require, the parties and their respective successors and assigns.

**8.5 Other Provisions.** No waiver of any provision of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Time is of the essence with respect to all dates and time periods in 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. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page.

**8.6 Governing Law.** This Agreement and its formation, operation, and performance, will be governed, construed, performed, and enforced in accordance with the laws of the State of Oregon without regard to its conflict of law principles.

**8.7 Dispute Resolution.**

**8.7.1 General.** If any dispute arises between the parties concerning this Agreement that is not resolved by mutual agreement, the parties must attempt to resolve the dispute in mediation as a condition precedent to any party commencing litigation. In such an event, the parties will participate in good faith in a mediation process in which a neutral mediator assists and facilitates the parties' efforts to reach a mutually acceptable resolution of the dispute. The mediator has no authority to force a settlement on the parties. The mediator is to be selected by mutual agreement of the parties, but in the absence of agreement, each party must select an individual and those two individuals will jointly select a mediator. The parties may share equally the cost of compensating the mediator, but Buyer is not required to pay the cost of compensating the mediator unless it is able to enter a personal services contract with the mediator in a form and amount reasonably acceptable to Buyer. The schedule and time allowed for mediation must be acceptable to both parties. The parties and the mediator will comply with all applicable laws governing the confidentiality of mediation.

**8.7.2 Costs.** Each party will bear its own fees and expenses of any mediation.

**8.7.3 Mediation Provisions.** The parties will use their best efforts to complete any mediation within 60 days after one party notifies the other of a dispute requiring mediation; unless the dispute is regarding the refusal to grant a consent or approval, in which case the mediation period will be within 30 days. Each party agrees to keep all disputes and mediation proceedings strictly confidential, except for the disclosure of information required in the ordinary course of business of the parties or as required by applicable law or regulation. Any time limitation (such as the statute of limitations or laches) that would bar litigation of a claim shall also bar mediation of the claim. If any provision of this mediation program is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable.

**8.8 Agency Disclosure; Brokers.** Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller, that (a) no broker or finder has been engaged by either party in connection with any of the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any such transactions, and (b) no broker or finder fees will arise from the sale and purchase of the Property.

**8.9 State Law Requirements/Statutory Disclaimer.** Under ORS 93.040(2), the parties include following statement in this Agreement:



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.

**8.10 Exhibits.** The exhibits attached hereto and referenced in this Agreement are incorporated herein by this reference.

**8.11 Survival.** All obligations of the parties which are not performed before the Closing will survive termination or expiration of this Agreement, including without limitation the obligations in Sections 3.4 and 8.7. If the Property is sold and purchased under this Agreement, the parties intend that the surviving obligations will continue in effect and will not merge in the deed under the doctrine of merger.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the Effective Date.

**SELLER:**

CITY OF JOHN DAY

By: 

Print name: Ron Lundbom

Title: Mayor

Date: 7/20/2022

**BUYER:**

STATE OF OREGON, by and through  
Oregon Parks and Recreation Department

By: 

Lisa Sumption (Jul 20, 2022 16:30 PDT)

Lisa Sumption, Director

Date: 07/20/22

**Exhibit A**  
**to**  
**Purchase and Sale Agreement**

Legal Description

A tract of land situated in the SW1/4SW1/4 Section 23, T. 13S, R.31E., W.M., City of John Day, Grant County, Oregon, more particularly described as follows:

*Beginning at a point on the west right of way line of NW Canton Street, said point being the southeast corner of Lot 71 of Geisler Addition to the City of John Day, the plat of which is on file and of record in the office of the Grant County Clerk;*  
*thence along the south line of Lots 71, 70, 69, 68, 67, 66, 65, 64 and 63 of said Geisler Addition West, 450.0 feet to the southwest corner of Lot 63 of said addition;*  
*thence, continuing West, 25.0 feet;*  
*thence North, 100.0 feet, on a line parallel to and 25 feet distant from, when measured at right angles to, the west line of Lot 63, to the south right of way line of NW Third Avenue;*  
*thence along said south right of way line as follows:*  
*S.89°48'12"W., 6.81 feet;*  
*55.00 feet, more or less, along the arc of a 220.00 foot radius curve left (the long chord of which bears S.81°42'W., 55 feet more or less) to the centerline of Canyon Creek;*  
*thence Southerly, 590 feet, more or less, along the centerline of Canyon Creek, the south line of that certain tract of land described in Deed Book 79, Page 257, deed records of Grant County;*  
*thence along the south and east lines of said tract as follows:*  
*S.88°44'E., 108.30 feet;*  
*N.16°00'W., 50.0 feet;*  
*thence East, 112 feet, more or less, to the west right of way line of NW Ing Hay Way;*  
*thence along said west right of way line as follows:*  
*N.34°26'28"W., 84.95 feet;*  
*N.00°17'07"W., 5.0 feet, more or less, to the southeast corner of that certain tract of land described in Deed Book 113, Page 532, deed records of Grant County;*  
*thence along the south, west and north lines of said tract as follows:*  
*West, 112.33 feet; N.15°00'W., 145.56 feet;*  
*East, 150.0 feet;*  
*thence North, 85 feet, more or less, to a point on the south line of that certain tract of land described in Deed Book 97, Page 673, deed records of Grant County, Oregon;*  
*thence N.89°10'E., 136 feet, more or less, to a point on the west right of way line of NW Canton Street;*  
*thence along said west right of way line N.00°11'15"W., 87 feet, more or less, to a point that is N.89°48'45"E., 5.00 feet from the point of beginning;*  
*thence S.89°48'45"W., 5.00 feet to the point of beginning.*

**Exhibit B  
to  
Purchase and Sale Agreement**

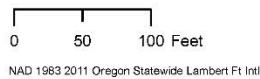
Demolition Area

Demolition Area

Oregon Parks and Recreation Dept.  
725 Summer St. NE, Suite C  
Salem OR, 97301



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



**Exhibit C**  
**to**  
**Purchase and Sale Agreement**

Demolition MOA

[Enclosed]

**MEMORANDUM OF AGREEMENT AMONG  
CITY OF JOHN DAY  
AND  
OREGON PARKS AND RECREATION DEPARTMENT  
AND  
THE OREGON STATE HISTORIC PRESERVATION OFFICE  
REGARDING THE GLEASON POOL DEMOLITION, JOHN DAY, GRANT COUNTY,  
OREGON (SHPO CASE NO. 22-0270)**

**WHEREAS**, by authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all function and activities that a party to the agreement, its officer, or agents have the authority to perform; and

**WHEREAS**, City of John Day (“City”) proposes to demolish its Gleason Pool in the Gleason Park, John Day, Grant County, Oregon prior to transfer of Gleason Pool and Gleason Park to the Oregon State Parks and Recreation Department (“OPRD”); and

**WHEREAS**, City consulted with the Oregon State Historic Preservation Office (SHPO) pursuant to the Oregon Revised Statute (ORS) 358.653 to consider effects of the undertaking on historic properties; and

**WHEREAS**, City and OPRD consulted with the Commission on Indian Services and the following tribes: Burns Paiute Tribe; Confederated Tribes of the Umatilla Indian Reservation; and Confederated Tribes of the Warm Springs Reservation (collectively, “Tribes”); and

**WHEREAS**, following City and OPRD’s consult, the State of Oregon issued Archaeological Excavation Permit No. AP-3339 for purposes of excavation and removal of archaeological, historical, prehistoric, or anthropological materials from the Gleason Pool demolition site; and

**WHEREAS**, City defined the undertaking’s area of potential affect (“APE”) as Gleason Pool in the Gleason Park, and the SHPO concurred with APE; and

**WHEREAS**, City is in the process of transferring ownership of Gleason Park to OPRD for the development of the Kam Wah Chung State Heritage Site and construction of a new Interpretive Center and OPRD has agreed to complete mitigation work as outlined below as part of the negotiation for a timely property sale; and

**WHEREAS**, OPRD has also agreed to complete the review of mitigation materials stipulation, monitoring and reporting stipulation as outlined below on behalf of City; and

**WHEREAS**, City determined, and the SHPO concurred, that Gleason Pool is eligible for listing in the National Register of Historic Places; and

**WHEREAS**, City determined, and the SHPO concurred, that the undertaking will adversely affect the eligible Gleason Pool; and

**WHEREAS**, the project information that was submitted to City’s city council for review and approval was made available to the public via a Notice of Public Hearing published in the Blue Mountain Eagle on November 3, 2021; and

**WHEREAS**, City’s city council reviewed and unanimously approved Resolution No. 21-868-16, which authorized the sale of Gleason Park and demolition of Gleason Pool following a public hearing held on November 9, 2021; and

**WHEREAS**, City consulted with OPRD regarding the effects of the undertaking on historic properties and due to the sale agreement OPRD will be signatory to this MOA among City, OPRD and SHPO (collectively, “Parties”); and

**WHEREAS**, the City acknowledges its continued responsibility to engage in meaningful consultation with Tribes throughout the process of carrying out the stipulations of this agreement as applicable; and

**WHEREAS**, Parties shall keep sensitive cultural resources information confidential to the extent allowed by state statute and regulations, including but not limited to ORS 192.345; and

**NOW, THEREFORE**, Parties agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties.

#### **I. STIPULATIONS**

OPRD on behalf of City shall ensure that the following measures are carried out by professionals who meet the appropriate Secretary of the Interior’s Professional Qualifications Standards (36 CFR 61):

- a. Oregon State Level Documentation of Gleason Pool in accordance with SHPO guidelines will be completed prior to demolition of building, as described in Appendix A;
- b. One interpretive panel will be created and installed in Gleason Park documenting the transformation of the former park from historic Chinese settlement/town to City Park with Gleason Pool back to Chinese Heritage Site, with panel’s main focus on Gleason Pool and its history. Panel shall be installed after the demolition of the pool, redevelopment of the site and construction of new Interpretive Center, as described in Appendix B;
- c. City retains ultimate responsibility for complying with State and Federal requirements pertaining to direct government-to-government consultation with the Tribes and compliance with the terms of Archaeological Permit No AP-3339 and any amendments to the Permit, as described in Appendix C; Notwithstanding other provisions in this stipulation, City honors the request of any tribe listed herein and/or in the Permit for direct government-to-government consultation regarding this project. City acknowledges its continued responsibility for tribal consultation (e.g., Executive Order 13175, United States Code (USC) 470a(d)(6)(B), and the November 5, 2009 Presidential Memorandum on Tribal Consultation) throughout the process of carrying out this project.
- d. City ensures that an active public participation program is carried out. City makes available to the general public for review modified versions of reports (printed or electronic format) on historic properties to prevent dissemination of sensitive information. Consistent with Section 304 of the NHPA, as amended, and the Oregon Public Records Law, ORS 192.345(11).
- e. Archaeological monitoring shall be completed based upon the Recommendations proposed in the “Gleason Pool Demolition Archaeological Review” memo, prepared by Steve Jenevein, dated March 17, 2022 (Appendix E)

## **II. REVIEW OF MITIGATION MATERIALS**

OPRD on behalf of City shall provide the signatories and consulting parties at least one opportunity lasting a minimum of thirty (30) calendar days to comment on the completeness of the mitigation materials specified in the stipulations described in Stipulation I. of this document before final submission. Comments provided by the signatories and consulting parties shall be taken into consideration within the limits of the project as described in the stipulations.

## **III. MONITORING AND REPORTING**

Each year following the execution date of this MOA until it expires or is terminated, Oregon Parks and Recreation Department on behalf of City of John Day shall provide all parties to this MOA a summary report briefly detailing work undertaken pursuant to its terms. Such report shall include a description of work completed, ongoing, and planned as required under the stipulations; any schedule changes proposed; and any problems encountered. The report shall also summarize any disputes, objections, or comments received from the signatories, consulting parties, local governments, interested parties, and the general public related to City or OPRD's efforts to carry out the terms of this MOA, and how concerns were responded to. Inadvertent discoveries shall be briefly summarized in the annual report, but otherwise documented and reported required in Stipulation IV. Post Review Discoveries.

## **IV. POST-REVIEW DISCOVERIES**

In the event any additional cultural resources are encountered or previously unanticipated effects on historic properties found, City should cease activities in the area and an appropriate cultural resources professional should be contacted to evaluate the discovery. An Inadvertent Discovery Plan (IDP) outlining the process that will be followed in such cases can be found in Appendix D. The results of evaluation shall be submitted to SHPO and consultation will continue as necessary.

## **V. AMENDMENTS**

Any signatory may request that this MOA be amended by submitting such a request to City in writing. City shall consult with the signatories and consulting parties for up to thirty (30) calendar days, or another time period agreed to by all signatories in writing, concerning the necessity and appropriateness of the proposed amendment. At the end of the consultation period City shall provide an amended MOA for signature by the signatories and consulting parties or a written statement describing why the City chose not to pursue an amendment to this MOA. Amendments shall be effective on the date a copy of the MOA is signed by all of the signatories and filed with the SHPO.

## **VI. TERMINATION**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation V, above. If within thirty (30) days of initial consultation on termination, or another time period agreed to by all signatories, an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Termination shall be effective the day City receives written notification.

Once the MOA is terminated, and prior to work continuing on the undertaking, City must execute an MOA pursuant to Oregon SHPO guidelines for the implementation of ORS 358.653(1). City shall notify the signatories as to the course of action it will pursue within thirty (30) calendar days of the termination of this MOA, or within another time period agreed to by all parties in writing.

## **VII. DURATION**

This MOA is effective on the date a copy of the MOA signed by all signatories is filed with the SHPO. The MOA will expire if its terms are not carried out within five (5) years from the date of its execution.

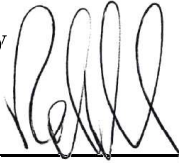
Prior to such time, City may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V. above. The MOA shall be considered complete once all stipulations are finalized and approved by the SHPO.

**VIII. EXECUTION**

Executions of this MOA by Parties and implementation of its terms evidence that City took into account the effects of the undertaking on historic properties under ORS 358.653.

**SIGNATORIES:**

**City of John Day**



\_\_\_\_\_  
Ron Lundbom, Mayor, City of John Day

Date 05/19/2022

**Oregon Parks and Recreation Department**



\_\_\_\_\_  
JR Collier, OPRD Deputy of Statewide Operations (Acting)

Date 05/19/22

**Oregon State Historic Preservation Office**



\_\_\_\_\_  
Christine Curran, Deputy State Historic Preservation Officer

Date 05/18/22



Appendix A.  
Oregon State Level Documentation of Gleason Pool

Oregon State Level Documentation of the Gleason Pool Property in accordance with the following standards will be completed. Documentation will include no less than:

- a. Architectural descriptions of no less than 500 words for all contributing buildings of Gleason Pool to include the following information:
  - i. The physical context of the buildings and how they relate to the surrounding environment or property as a whole,
  - ii. The historical context of Gleason Pool concerning the relationship of the buildings or structures to the historical development of the surrounding area and to trends in local and national histories,
  - iii. Specific historical data, including the dates of initial planning and development, any changes in plan and evolution, individuals such as architects or developers associated with the site, and associated historical events, and;
- b. A physical description of the site according to the original plan, how it has changed over time, and how it is at present; and
- c. A history of Gleason Pool of no less than 500 words that includes at minimum the dates of construction, names of architects or builders, ownership, and changes to the property; and
- d. A bibliography of sources cited and consulted; and
- e. A map of the Gleason Pool site on the appropriate United States Geological Survey or similar map; and
- f. A scale site plan that includes all buildings and structures at the Gleason Pool property; and
- g. Scale floor plans of Gleason Pool; and
- h. Digital photographs adhering to National Register digital photograph standards in lieu of large-scale film photography. Each building or structure should have no less than eight (8) photos. The photographic documentation will be completed and sent to SHPO for review of adequacy and completeness prior to any construction or changes to Gleason Pool. Photographs will include:
  - i. General or environmental views of Gleason Pool to illustrate setting, landscape, adjacent buildings, and roadways,
  - ii. The front façade of each building on site,
  - iii. Perspective view, front and one side of each building on site,
  - iv. Perspective view, rear and opposing side of each building on site,
  - v. Detail, front entrance and/or a typical doorway,
  - vi. Exterior details of architectural interest, and
  - vii. Interior views to capture spatial relationships, typical spaces, and any decorative or character defining features including hallways and stairways; and
- i. Relevant archival materials, including original architectural drawings or maps, brochures, historic photos, newspaper clippings, or other archival items of interest related to the property; and
- j. City will supply one hard copy and one digital copy of this documentation to the Oregon SHPO to fulfill this stipulation. Additional copies of this documentation will be provided to the Kam Wah Chung Interpretive Center, Oregon Historical Society, and the University of Oregon Knight Library Special Collections. If the listed repositories cannot accept the document, SHPO and City will work together to find alternative repositories. At minimum, the document will be available at one another location besides the SHPO and City; and
- k. The documentation will be reviewed, completed, and accepted by the Oregon SHPO prior to demolition, renovation, or remodeling commencing. Proof of these submissions is required before the stipulation will be considered complete

Appendix B.  
Gleason Pool Interpretive Panel

Create and install an interpretative and photographic display that describes the history Gleason Pool. The display will be located in the vicinity of the new Kam Wah Chung Interpretive Center to be erected at the site of the former pool, in a publicly accessible area. Information gathered during the compilation of Oregon State Level Documentation could be used for this interpretive display.

The display will include:

- a. At a minimum a presentation of Gleason Pool's history and interpretation of the Gleason Pool's historic significance.
- b. It will consist of at least one panel that may range in size from 2' by 3' up to 4' by 6'.
- c. The interpretive display shall be of professional quality.
- d. Interpretive panel(s) shall be prepared by persons that possess the skills of a qualified Historian, Architectural Historian, Cultural Resource Specialist, Exhibit Specialist/ Graphic Artist; or by an organization that has the ability to create and design professional quality interpretive panels.
- e. The new interpretative display will be available to the public at a minimum of 5 years.
- f. The design and content of the interpretive display will be reviewed and meet the approval of City and SHPO prior to being installed and the stipulation accepted as fulfilled.

Appendix C.  
Archaeological Permit No AP-3339

[Enclosed]



# Oregon

Kate Brown, Governor

## Parks and Recreation Department

State Historic Preservation Office

725 Summer St NE Ste C

Salem, OR 97301-1266

Phone (503) 986-0690

Fax (503) 986-0793

[www.oregonheritage.org](http://www.oregonheritage.org)



### STATE OF OREGON ARCHAEOLOGICAL EXCAVATION PERMIT NO. AP-3339

The State of Oregon, acting by and through its Parks and Recreation Department, hereinafter called STATE, under authority of ORS 390.235, hereby grants to Chelsea Rose, hereinafter called PERMITTEE, a permit for purposes of excavation and removal of archaeological, historical, prehistoric, or anthropological materials. This permit is granted subject to the following terms and conditions.

- 1. Term** PERMITTEE may conduct survey, excavation, and collection work beginning on the date this permit is signed and continuing for one year and one day, provided that reasonable supervision, as provided hereinafter, is exercised.
- 2. Location** This permit shall apply to lands owned by the State of Oregon, a city, county, district, or municipal corporation in Oregon, or private property, more particularly described as follows:  
Gleason Pool Monitoring  
13S 31E 23  
Grant County
- 3. Supervision** The design and work in connection with the survey or excavation, including exploratory excavation and collection, shall be personally supervised by Chelsea Rose, Steve Jenevein.
- 4. Compliance** PERMITTEE shall comply with all applicable federal, state and local laws, rules, regulations and ordinances.
- 5. Exploration shall consist of:**  
\*See attached application and research design
- 6. Indemnification** PERMITTEE agrees to defend and hold STATE, its officers, agents, and employees harmless, and shall require its contractors to do the same, from any and all claims, damages, or expenses of any kind suffered or alleged to be suffered on the lands described in paragraph 2 or arising out of or in connection with the activities of PERMITTEE or its contractors pursuant to this Permit.
- 7. Insurance** PERMITTEE shall obtain at PERMITTEE's expense, and keep in effect during the term of the Permit, comprehensive or commercial general liability insurance covering personal injury and property damage. This insurance shall include contractual liability coverage for the indemnification provided under this Permit. Coverage limits shall not be less than the limits of liability set forth in the provisions of ORS 30.270(1) as now in effect or as hereinafter amended. Such provisions now require that the coverage limits not less than \$500,000 combined single limit per occurrence. The insurance shall be in a form and with compliance acceptable to STATE. Such insurance may be evidenced by certificates or copies of policies. Such evidence shall be provided to STATE prior to the commencement of any operations or activities under this Permit.
- 8. Records** PERMITTEE shall submit a final excavation report by to the State Historic Preservation Office and the Oregon State Museum of Anthropology. If PERMITTEE is conducting an excavation associated with a prehistoric or historic American Indian archaeological site, then PERMITTEE shall also submit copies of the Final Report to the Commission on Indian Services and the following tribe(s):

**Burns Paiute Tribe**  
**Confederated Tribes of the Umatilla Indian Reservation**  
**Confederated Tribes of the Warm Springs Reservation**

**9. Custody**

All archaeological, historical, prehistoric, or anthropological materials recovered under this permit shall remain under the stewardship of the State of Oregon and shall be curated by UOMNCH. Any change in custody must be approved by the Oregon State Museum of Anthropology in accordance with ORS 390.235. Prior to submitting the materials to the permanent curation facility, the appropriate tribe(s) must be given 30 days to view all archaeological materials to ensure that funerary objects, sacred objects, and objects of cultural patrimony are returned to tribal ownership per state law (ORS 97.740).

**10. Notification**

- a. If PERMITTEE is conducting an excavation associated with a prehistoric or historic American Indian archaeological site, PERMITTEE shall notify in writing the most appropriate Indian tribe. The notification shall include:
  - i. The location and schedule of the forthcoming excavation;
  - ii. A description of the nature of the of the investigation; and
- b. Upon discovery of an archaeological object which is demonstrably revered by any ethnic group, religious group, or Indian tribe as holy, which object was or is used in connection with a religious or spiritual service or worship of a deity or spirit power, i.e., a "sacred object", PERMITTEE shall notify in writing:
  - i. The State Historic Preservation Office; and
  - ii. The appropriate ethnic group, religious group, or Indian tribe with which the sacred object is associated.

- 11. Consultation** If PERMITTEE is conducting an excavation associated with a prehistoric or historic American Indian archaeological site, PERMITTEE shall consult with a representative of the appropriate tribe to establish a procedure for handling sacred objects recovered during the excavation.

**12. Conditions:**

*Burns Paiute Tribe*

- We would like the opportunity to visit during project work so would like to be notified in advance of the dates.
- We would like the option of monitoring the work should the BPT deem it appropriate.
- We would like the opportunity to comment and potentially provide additional verbiage to archaeological report concerning tribal heritage, history, etc. as appropriate.
- We ask to be listed on the inadvertent discovery plan.
- We would like a copy of any final report.

*Confederated Tribes of the Warm Springs Reservation*

Please provide this office with a draft copy of the report, with ample time to comment.

- 13. Revocation** Failure to comply with all terms of this Permit, in addition to any agreed upon conditions, may lead to its immediate revocation.

OREGON PARKS AND RECREATION DEPARTMENT



*Ian P. Johnson*

Ian P. Johnson (Apr 25, 2022 11:42 PDT)

Christine Curran  
Deputy State Historic Preservation Officer

04/25/22

Date:

Appendix D.  
Inadvertent Discovery Plan

[Enclosed]

# INADVERTENT DISCOVERY PLAN FOR UNANTICIPATED CULTURAL RESOURCES

City of John Day  
Oregon Parks and Recreation Department

## Gleason Pool Demolition Project



March 17, 2022

# ARCHAEOLOGICAL INADVERTENT DISCOVERY PLAN (IDP)

City of John Day - Oregon Parks and Recreation Department – Gleason Pool Demolition

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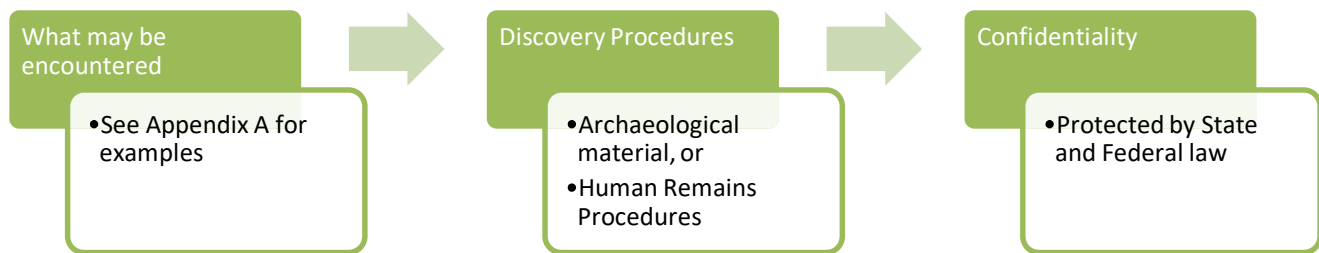
## Introduction

The City of John Day is proposing demolition of the Gleason Pool (Project) located at located 250 NW Canton Street, John Day in Grant County, OR. Cultural resource compliance for the Project is being conducted in partnership between the City of John Day and the Oregon Parks and Recreation Department (OPRD). The Project is located in a sensitive area with the potential to encounter significant cultural resources. As a result, a professional archaeological monitor will be present during demolition and follow procedures outlined within this IDP and any other guidelines provided within a project specific monitoring plan and/or Oregon Archaeological Permit. This Inadvertent Discover Plan (IDP) should be followed by all Project staff and contractors.

## Purpose

This IDP will be followed if cultural materials, including human remains, are encountered during Project work.

## How to use this document



Archaeology consists of the physical remains of the activities of people in the past. This IDP should be followed should any archaeological sites, objects, or human remains are found. These are protected under Federal and State laws and their disturbance can result in criminal penalties.

This document pertains to the work of the City of John Day, a designated Contractor, and OPRD including any and all individuals, organizations, or companies associated with the **Gleason Pool Demolition Project**.

## What may be encountered

Archaeology can be found during any ground-disturbing activity. If encountered all excavation and work in the area **MUST STOP**. Archaeological objects vary and can include evidence or remnants of historic-era and precontact activities by humans. Archaeological objects can include but are not limited to:

- **Stone flakes, arrowheads, stone tools, bone or wooden tools, baskets, beads.**
- Historic building materials such as **nails, glass, metal** such as cans, barrel rings, farm implements, **ceramics, bottles, marbles, beads.**



- Layers of **discolored earth** resulting from hearth fire.
- Structural remains such as **foundations**
- **Shell** Middens
- **Human skeletal remains** and/or **bone fragments** which may be whole or fragmented.

*For photographic examples of artifacts, please see Appendix A. (Human remains not included)*

**If there is an inadvertent discovery of any archaeological objects see procedures below.  
If in doubt call it in.**

## **Discovery Procedures: What to do if you find something**

1. Stop ALL work in the vicinity of the find
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer—work may continue outside of this buffer
3. Notify the Project Manager, Archaeological Monitor or OPRD Archaeologist
4. The Project Manager will need to contact or coordinate with a professional archaeologist to assess the find.
5. If the archaeologist determines the find is an archaeological site or object, contact SHPO. If it is determined to *not* be archaeological, you may continue work.

## **Human Remains Procedures**

1. If it is believed the find may be human remains, stop ALL work.
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer, then work may continue outside of this buffer with caution.
3. Cover remains from view and protect them from damage or exposure, restrict access, and leave in place until directed otherwise. **Do not take photographs. Do not speak to the media.**
4. Notify:
  - Project Manager
  - Project Archaeological Monitor
  - OPRD Archaeologist
  - Oregon State Police **DO NOT CALL 911**
  - SHPO
  - LCIS
  - Appropriate Native American Tribes
5. If the site is determined not to be a crime scene by the Oregon State Police, do not move anything! The remains will continue to be *secured in place* along with any associated funerary objects, and protected from weather, water runoff, and shielded from view.
6. Do not resume any work in the buffered area until a plan is developed and carried out between the City of John Day, OPRD, State Police, SHPO, LCIS, and appropriate Native American Tribes and you are directed that work may proceed.

## Contact Information

Contact and Agency	Contact Name	Phone Number
Project/City Manager, City of John Day	Nick Green	541-575-0028
Region Manager, OPRD	Dennis Bradley	541-519-6542
District Manager, OPRD	Brad Cates	541-620-4540
Kam Wah Chung Museum Curator, OPRD	Don Merritt	541-575-2800
Historian/Preservation Specialist, OPRD	Christy Sweet,	971-345-7288
Archaeologist, OPRD	Steve Jenevein	971-301-3956
State Police	Lieutenant Craig Heuberger	503-508-0779 cell 503-731-3030 dispatch
State Archaeologist, SHPO	John Pouley	503-480-9164
Asst. State Archaeologist, SHPO	Jamie French	503-979-7580
Legislative Commission on Indian Services (LCIS)	Patrick Flanagan, Director	(503) 986-1067
Burns Paiute Tribe	Diane Teeman	541-413-1190
Confederated Tribes of the Umatilla Indian Reservation	Carey Miller	541-429-7234
Confederated Tribes of the Warm Springs Reservation of Oregon	Christian Nauer	541-553-2026

## Confidentiality

The **Gleason Pool Demolition Project** and employees shall make their best efforts, in accordance with federal and state law, to ensure that its personnel and contractors keep the discovery confidential. The media, or any third-party member or members of the public are not to be contacted or have information regarding the discovery, and any public or media inquiry is to be reported to the City of John Day Project Manager and OPRD Region Manager prior to any release, the responsible agencies and Tribes shall concur on the amount of information, if any, to be released to the public.

*To protect fragile, vulnerable, or threatened sites, the National Historic Preservation Act, as amended (Section 304 [16 U.S.C. 470s-3]), and Oregon State law (ORS 192.501(11)) establishes that the location of archaeological sites, both on land and underwater, shall be confidential.*

## Appendices and Supplementary Materials

### APPENDIX A: VISUAL REFERENCE AND EXAMPLES OF ARCHAEOLOGY

## Appendix A

### VISUAL REFERENCE GUIDE TO ENCOUNTERING ARCHAEOLOGY



**Figure 1: Stone flakes**



**Figure 2: Stone tool fragments**



**Figure 3: Cordage**



**Figure 4: Shell midden**



Figure 5: Historic glass artifacts

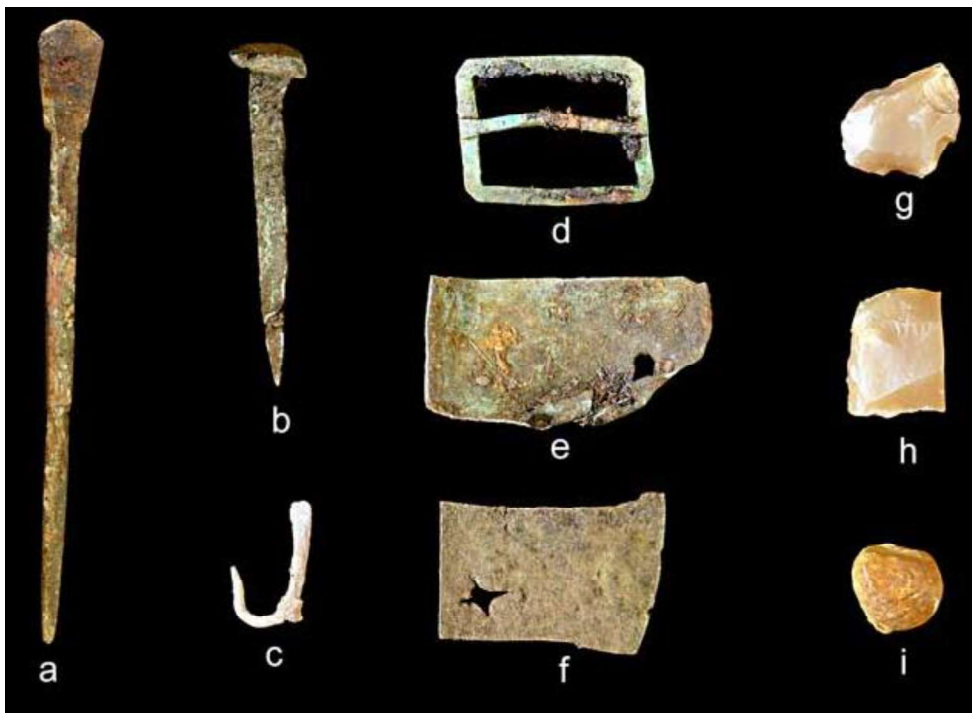


Figure 6: Historic metal artifacts



**Figure 7: Historic building foundations**



**Figure 8: Rock feature**

Appendix E.  
Gleason Pool Demolition Archaeological Review

[Enclosed]

## **Gleason Pool Demolition Archaeological Review**

Prepared by Steve Jenevein, OPRD Archaeologist

March 17, 2022

### **Introduction:**

In partnership with the City of John Day (City), the Oregon Parks and Recreation Department (OPRD) has agreed to take the lead on cultural resource compliance for the proposed Gleason Pool demolition. OPRD cultural resource staff involved in the project include OPRD Historian Christy Sweet and Archaeologist Steve Jenevein. Information provided below address only the below-ground (Archaeology) portion of the project. The above-ground (Historic) assessment of the Gleason Pool will be completed by Christy Sweet.

### **Project Description:**

The City is proposing three stages for the Gleason Pool demolition. Stage One will include removing all above ground mechanical equipment within the existing buildings and then burn the above-ground structures through a burn-to-learn drill for the City firefighters. Remaining structures and debris will be cleaned up and removed off-site using mechanical equipment. Stage One will not require any significant ground disturbance other than vehicle access to and from the site. Stage Two will include demolition of the pool concrete, sidewalks and underground infrastructure (pipes and any residual underground mechanical equipment) by a contractor. Concrete, pipes or other debris will be removed and disposed of off-site. Stage two will involve the most ground disturbing work of the project. Stage Three will include conducting a condition assessment, retention and backfill work on the existing retaining wall located between the residential units located north of the pool complex and the pool itself. Once the structural integrity of the retaining wall is assessed, the pool excavation area will then be backfilled and compacted to grade. Any required fill material will be imported from off-site. All demolition work will be conducted within the project Area of Potential Effect (APE), and vehicle access and equipment staging will be either located within the project APE or on the paved pool parking lot extending east from the pool to NW Canton Street (see attached Archaeological Review Figure A).

### **Project Area of Potential Effect (APE)**

The project APE measures approximately 100 feet north-south by 175 feet east-west totaling 0.35 acres. The proposed demolition APE has a limited footprint that only includes the hardened pool features such as the swimming pool, pool building, and concrete surrounding the structure.

### **Previous Archaeological Investigations:**

The proposed project is located adjacent to the John Day Chinatown Archaeological Site (35GR2086) and the Kam Wah Chung and Company National Historic Landmark. The current project is located on property owned by the City. Most of the previous archaeological investigations conducted at 35GR2086 has been located on State-owned land to the south and managed by OPRD as part of the Kam Wah Chung State Heritage Site (SHS).



The Kam Wah Chung and Company was established in the 1870s as a Chinese labor brokerage and was later expanded under the partnership of Lung On and Ing Hay, who purchased the business in 1887 and used the building as a store, clinic, and apothecary in addition to other non-commercial activities. The remaining building was believed to have been constructed in the 1860s and remained in use until 1948 when the building and contents were deeded to the City of John Day. The Kam Wah Chung and Company building and its contents were listed on the National Register of Historic Places (NRHP) in 1973, and elevated to National Historic Landmark Status in 2005 (NHL #73001575) (Rose and Johnson 2020).

Site 35GR2086 includes the remains of the John Day Chinatown Archaeological Site that surrounds the Kam Wah Chung and Company building and encompasses portions of both OPRD and City property. The site includes archaeological artifacts and features associated with the Chinese occupation of the neighborhood. Significant land modification has occurred surrounding the Kam Wah Chung and Company building and recovered cultural materials have been found in both intact and disturbed contexts. Site 35GR2086 is currently unevaluated for inclusion on the NRHP, however, previous investigations have recommended the site as eligible (Kallenbach and Ruiz 2007; Rose et al. 2019).

Since 2005, multiple archaeological investigations have been conducted at the Kam Wah Chung SHS primarily to evaluate potential effects prior to proposed OPRD projects (Schablitsky et al. 2006, 2007; Rose et al. 2019; Rose and Johnson 2020). The earliest work at the site was conducted in 2005 by the University of Oregon Museum of Natural and Cultural History (UOMNCH) where they excavated 48 shovel test probes throughout the Kam Wah Chung SHS. Testing identified that the area surrounding the Kam Wah Chung and Company building had been significantly modified, primarily from the emplacement of fill. Recovered archaeological materials were found to be associated with the Chinese neighborhood and identified two archaeologically sensitive areas located southeast (ASA-A) and south (ASA-B) of the current project APE. Three of the 48 probes (9, 10, 38) that were excavated nearest the current APE did not contain any cultural materials (see attached Archaeological Review Figure A). Further mechanically-aided testing was recommended at several high probability areas (HPAs) to evaluate the potential for buried cultural deposits (Schablitsky et al. 2006). Identified cultural material was recorded as new archaeological site 35GR2086.

UOMNCH returned to the site in 2006 to further evaluate the site using ground penetrating radar (GPR) and mechanical excavation to penetrate gravel fill deposits, and excavate additional test units to clarify the nature and integrity of cultural deposits in known site areas (Schablitsky et al. 2007). A total of six backhoe trenches and seven 1x1 meter test units were excavated locating intact archaeological deposits both next to the Kam Wah Chung and Company building and directly east along the hedgerow fence.

Two backhoe trenches (Trench 3 and 5) were excavated immediately southeast of the current project APE (Schablitsky et al. 2007:18). Trench 3 was excavated at the site of a possible John Day Chinatown prayer house to a depth of 1.8 meters. Glass was observed at a depth of 1.3 meters which was described as being found in a disturbed context. Trench 5 was located south of Trench 3 in a second attempt to locate the possible prayer house. Excavations identified a disturbed compact thin layer of historic-period

cultural materials located 25-centimeters below the surface. Based on the excavation results within Trench 3 and 5, it was suggested that no intact historic-period cultural layers survived in that area of the Chinatown neighborhood (see attached Archaeological Review Figure A).

The two most recent investigations were conducted in 2018 and 2019 by the Southern Oregon University Laboratory of Anthropology (SOULA) under the direction of Archaeologist Chelsea Rose and included a thorough review of previous work as well as new geophysical survey and testing (Rose et al. 2019; Rose and Johnson 2020). See Rose and Johnson (2020) for a complete cultural context and summary of previous archaeological investigation in the project area.

The 2018 investigations primary focus was to conduct new geophysical survey including GPR and magnetometry on both OPRD and City property throughout the Kam Wah Chung SHS and Gleason Pool areas. Part of the survey included a review of available imagery in an attempt to locate areas with a high probability of containing archaeological remains and to aid in the interpretation of the remote sensing data. The survey located nine potential below ground archaeological features, some of which correlated with possible historic structures identified by georectifying historic imagery (Rose et al. 2019).

Two buildings were noted on early twentieth century images next to the current project APE. Building 5 was described as a false front structure located at the end of the street north of the Kam Wah Chung and Company building (Rose et al. 2019:6). Although observed in historic photographs, the GPR survey results did not indicate a structure at the location of Building 5. Building 5 would have been located in the southeast corner of the current APE (see attached Archaeological Review Figure A).

Building 6 was also identified in historic photographs as being located east of Building 5 at the end of the street. The historic use of building use is unknown and was set back from building 5, rather than in line with it or other buildings (Rose et al. 2019:7). GPR survey results identified possible intact structural remains in the location of Building 6 at a depth of 20-65 centimeters below surface that were described as Feature D.

In 2019, SOULA returned to the site to conduct testing in conjunction with the Oregon Chinese Diaspora Project summer field school and was focused on ground truthing anomalies observed in the 2018 GPR and magnetometry survey. The work included excavation of seven quarter test units (QTUs) and three test units (TUs) of various sizes. The excavations indicated that intact subsurface cultural deposits were present at the Kam Wah Chung SHS, several of which could be linked to historical buildings visible in early photographs of the neighborhood (Rose and Johnson 2020). The footprints of possible Building 5 and 6 (Feature D) were not tested as part of the 2019 SOULA excavations.

**Discussion:**

Although the proposed demolition of the swimming pool, pool building, and concrete surrounding the structure is near significant cultural resources, the direct footprint of the demolition APE is only occurring within heavily previously disturbed areas that have been significantly impacted by the original pool construction. Previous testing in the immediate vicinity of the current APE located few

archaeological materials, and what was located was found to be in a disturbed context (Schablitsky et al. 2006, 2007:18-19). GPR investigations conducted by SOULA did locate one potential buried archaeological feature (Feature D) near the current APE that correlated with Building 6 in historic photographs. Feature D is located outside of the current APE and will not be affected by the current project.

**Recommendations:**

In consultation with SOULA Archaeologist Chelsea Rose and a review of previous archaeological investigations, OPRD recommends that demolition of the Gleason Pool as proposed will not result in an adverse effect to site 35GR2086 or any other known or unknown significant archaeological resource. All stages of the current proposed demolition project have a limited footprint that only includes the hardened pool features such as the swimming pool, pool building, and concrete surrounding the structure.

The demolition project will not extend outside the APE where there remains a potential for intact or semi-intact cultural features. The back yard (west side), walkway/grass area (south), and parking lot/gravel area (east-southeast) were removed from the APE and will be evaluated by OPRD at a later date where more information can be gathered on the below-ground potential for intact cultural deposits. Driving on existing surfaces within or surrounding the APE is also not expected to affect any potentially significant below ground deposits.

Although unlikely, it is possible that cultural deposits (artifacts or features) may be exposed during demolition. As a result, OPRD is recommending archaeological monitoring during demolition. Monitoring will be conducted by an Oregon qualified professional archaeologist meeting Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and conducted under a State Archaeological permit obtained prior to demolition.

Monitoring should focus on observing stratigraphy during demolition to help correlate below ground deposits with previous archeological excavations which could help to confirm or disprove assumptions of previous disturbance in the project area. Important diagnostic artifacts observed in a disturbed context that are potentially able to contribute to local or regional archaeological research questions should be collected. The monitor would also be responsible for ensuring that the contractor remains within the approved APE and install protective measures as required to avoid nearby significant resources as appropriate.

Demolition monitoring activities are expected to be limited to within disturbed sediment of the existing pool construction. All activities will be stopped if significant archaeological or historical resources (e.g., intact cultural features, artifact concentrations, or human remains) are encountered. Features or artifacts observed in the floor or sides of the demolition will not be disturbed and will be documented in place. Any significant intact archaeological resources will be evaluated as part of a separate archaeological permit.

OPRD has retained SOULA Archaeologist Chelsea Rose to obtain a State Archaeological permit, manage all associated field monitoring, and prepare monitoring report summarizing all project activities. A more detailed monitoring plan will be submitted as part of the Archaeological Permit research design. Additional archaeological studies are planned for Summer 2022 to evaluate the potential effects of construction and site development of the new Kam Wah Chung SHS Interpretive Center and Collection Building that is still in the planning phases. OPRD has already begun Tribal consultation on the larger Kam Wah Chung Visitor Center Redevelopment project and plans to consult again on the proposed demolition work immediately.

Based on the above review, it is recommended that the Gleason Pool demolition will have **No Adverse Effect** to archaeological site 35GR2086. The OPRD requests your concurrence with a **FINDING OF NO ADVERSE EFFECT** (Archaeology) for the pool demolition. However, if the scope of work for the project changes, additional archaeological investigations may be necessary.

Please contact OPRD Steve Jenevein, Archaeologist (971) 301-3956 or email at [steve.jenevein@opr.oregon.gov](mailto:steve.jenevein@opr.oregon.gov) if you have any questions or comments specific to the project archaeology.

#### **References:**

Kallenbach, Elizabeth and Chris Ruiz

2007 Site form for 35GR2086. On file at the Oregon State Historic Preservation Office, Salem.

Rose, Chelsea, and Katie Johnson

2020 Results of Archaeological Testing at the Kam Wah Chung State Heritage Site, John Day Chinatown Site 35GR2086. SOULA Report No. 2019.08, Southern Oregon University Laboratory of Anthropology, Ashland. (SHPO Report No. 32201)

Rose, Chelsea, Katie Johnson, and Lewis Somers

2019 Summary and Recommendations of the Geophysical Investigations at the Kam Wah Chung State Heritage Site. SOULA Report No. 2018.08, Southern Oregon University Laboratory of Anthropology, Ashland. Submitted to the Oregon Parks and Recreation Department, Bend, Oregon.

Schablitsky, Julie, Tom Connolly, and Chris Ruiz

2006 Exploratory Archaeological Study of the Kam Wah Chung State Heritage Site in the City of John Day, Grant County, Oregon. Museum Report 2006-31, University of Oregon Museum of Natural and Cultural History, Eugene. (SHPO Report No. 20948)

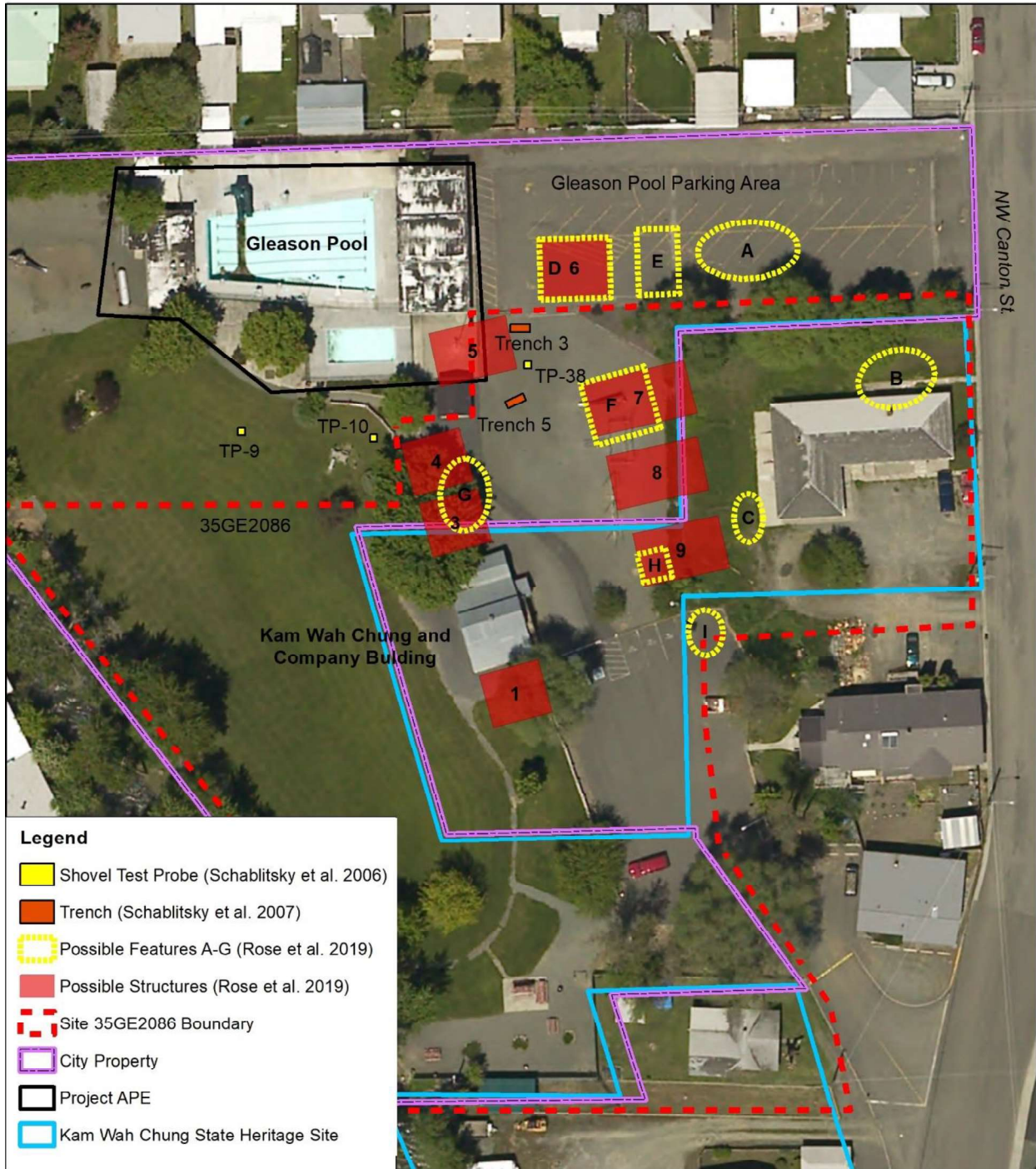
2007 Archaeological Testing (2006) at the Kam Wah Chung Site, Oregon. Museum Report 2007-047, University of Oregon Museum of Natural and Cultural History, Eugene. (SHPO Report No. 21244)

**Archaeological Review Figure A**  
 Gleason Pool Demolition  
 Archaeological Review

Oregon Parks & Recreation Dept.  
 Mountain Region Office  
 1645 NE Forbes Rd, Ste 112  
 Bend, OR 97701-4990

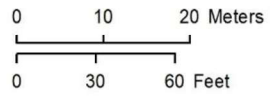


Nature  
 HISTORY  
 Discovery



**Legend**

- Shovel Test Probe (Schablitsky et al. 2006)
- Trench (Schablitsky et al. 2007)
- Possible Features A-G (Rose et al. 2019)
- Possible Structures (Rose et al. 2019)
- Site 35GE2086 Boundary
- City Property
- Project APE
- Kam Wah Chung State Heritage Site



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

NAD 1983 Oregon Statewide Lambert Feet Intl.



3/15/2022  
 Created by: S. Jenevein

**Exhibit D**  
**to**  
**Purchase and Sale Agreement**

Form of Commercial Lease Agreement

[Enclosed]

## ANNUAL COMMERCIAL LEASE

This Annual Commercial Lease (this "Lease") is made and entered into effective on \_\_\_\_\_, 2022 (the "Effective Date") between City of John Day ("Landlord"), whose address is 450 E. Main Street, John Day, OR 97845, and the Oregon Parks and Recreation Department ("Tenant"), whose address is 725 Summer Street NE, Suite C, Salem, OR 97301

### RECITAL:

Landlord is the owner of a certain commercial building located at 125 NW Canton Street, John Day, Oregon, 97845 (the "Building"). Subject to the terms and conditions contained in this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Building, as shown in Exhibit A.

### AGREEMENT:

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

#### 1. OCCUPANCY

1.1 Initial Term. The term of this Lease, Tenant's right to possession of the Premises, and Tenant's obligation to pay Rent (as defined below) will commence on the Effective Date and will continue, subject to the terms and conditions contained in this Lease, on an annual basis thereafter (the "Lease Term"), unless sooner terminated as provided in this Lease. For purposes of this Lease, the term "Building" means the Premises, Building, Parking Area (as defined below), all units or spaces located within the Building, and all other pieces or parcels of real property (and any improvements located thereon) surrounding the Building at any time, and from time to time hereafter, designated by Landlord as part of the Building. Tenant will be bound in accordance with the terms of this Lease from and after the Effective Date.

1.2 Parking Area. The Building has a parking area consisting of certain unassigned/unmarked parking spaces located west and north of the building (the "Parking Area") for use by Building visitors and Tenant staff. Tenant will have an exclusive license to use the Parking Area as currently utilized for the Building for the duration of the Lease Term. Landlord will not be liable for any damage or destruction of any nature to, or any theft of, vehicles, or contents therein, in or about the Parking Area, and will not be obligated to enforce parking restrictions against other users of the Parking Area.

1.3 **Due Diligence; Building Condition AS-IS. Tenant has inspected Premises before the Effective Date. Tenant represents and warrants that Tenant has entered into this Lease on the basis of its own examination and personal knowledge of the Building (including, without limitation, the physical condition of the Premises). Tenant has had the opportunity to ask questions and receive answers concerning the Building and this Lease. Tenant has obtained all the information Tenant desires in connection with the Building and this Lease. Tenant knowingly and unconditionally accepts the Building in its AS IS, WITH ALL FAULTS condition as of the Effective Date. Landlord has made no promise or agreement to repair, alter, construct, and/or improve the Building, or any part thereof. Landlord makes no representations or warranties, whether express or implied, including, without limitation, warranties of habitability, merchantability, or fitness for a particular purpose, or any warranties regarding consumer products as defined in the Magnusson-Moss Warranty Act or the Uniform Commercial Code, with respect to the Building.**

Tenant's Initials: \_\_\_\_\_

## 2. RENT; UTILITIES

2.1 Base Rent. During the Lease Term, Tenant's rent shall be \$0.00 (waived in its entirety).

2.2 Utilities. Tenant shall be responsible for all utilities and all other expenses associated with building maintenance and upkeep, including any water, sewer, power, internet and other utilities.

## 3. FINANCIAL CAPABILITY

Tenant represents, warrants, and covenants the following to Landlord: (a) Tenant has full power and authority to sign and deliver this Lease and to perform all Tenant's obligations under this Lease; and (b) this Lease is the legal, valid, and binding obligation of Tenant, enforceable against Tenant in accordance with its terms. Tenant represents and warrants to Landlord that Tenant has sufficient assets and net worth to ensure Tenant's performance of this Lease and the payment of its obligations under this Lease as and when they become due.

## 4. PERMITTED USE

4.1 Permitted Use. Tenant will use the Premises for general office use and the Kam Wah Chung Visitor's Center (collective, the "Business") and for no other purpose without Landlord's prior written consent. Operation of the Business is subject to all Laws (as defined below). Tenant acknowledges and agrees that neither Landlord or Landlord's Agents have made any representations and/or warranties, whether expressed or implied, concerning the permitted use that may be made of the Premises under the Laws.

4.2 Restrictions on Use. In connection with Tenant's use of the Premises, Tenant will:

4.2.1 Conform and comply with all Laws. Tenant will correct, at Tenant's expense, any failure of compliance created through Tenant's fault or by reason of Tenant's use of the Premises. For purposes of this Lease, the term "Law(s)" means all leases, covenants, conditions, restrictions, easements, declarations, laws, statutes, restrictions, liens, ordinances, orders, codes, rules, and regulations directly or indirectly affecting the Building (including, without limitation, the Premises) and/or Business, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), the Rules and Regulations, and any environmental laws, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated;

4.2.2 Tenant will refrain from (a) any use which would be reasonably offensive to Landlord, other tenants of the Building, and/or neighboring property, or which would tend to create a nuisance or damage the reputation of the Building, (b) making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Building (including, without limitation, the Premises) without the prior written consent of Landlord, and/or (c) causing or permitting any hazardous substances to be used, stored, sold, handled, spilled, leaked, disposed of, and/or released on or under the Building; and

4.2.3 Tenant will comply with all Building rules and regulations (the "Rules and Regulations") Landlord may adopt from time to time and will not perform any act or carry on any practice prohibited by the Rules and Regulations. Tenant acknowledges and agrees that Landlord is permitted to adopt new rules and regulations or amend the Rules and Regulations from time to time as Landlord determines necessary or appropriate.

## 5. MAINTENANCE AND REPAIRS; ALTERATIONS

5.1 Tenant's Repair and Maintenance Obligations. Tenant will maintain, at Tenant's cost and expense, the Premises (including all interior and exterior glass in the Premises) in good order and repair and will preserve the Premises, normal wear and tear excepted, and will not commit nor permit waste. To this end, Tenant will have the following nonexclusive repair and maintenance obligations, which Tenant will complete at Tenant's



cost and expense: (a) all repairs or maintenance necessitated by the negligence of Tenant and/or Tenant's Agents (as defined below); and (b) all repairs or alterations required under Tenant's obligation to comply with the Laws.

5.2 Tenant Reimbursement. If Tenant fails or refuses to complete any repair and/or perform any maintenance that is required under Section 5.1, Landlord may make the repair or perform the maintenance and charge the actual costs of repair or maintenance to Tenant. Landlord will disclose cost of repairs to Tenant in advance of making repairs. Tenant will reimburse such expenditures, together with interest at the rate of 12% per annum from the date of expenditure if reimbursement is not paid upon completion of repairs. Except in the case of an emergency, any repairs, replacements, alterations, and/or other work to be performed by Landlord on, in, and/or around the Premises will be completed so as to interfere with Tenant's use of the Premises as little as reasonably possible. Tenant will have no right to an abatement of Rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with this Section 5.2. Except in the case of an emergency, upon 24 hours' prior notice to Tenant, Landlord will have the right to enter and inspect the Premises to determine the condition of the Premises.

5.3 Alterations Prohibited. Tenant will make no additions, improvements, modifications, and/or alterations in or to the Building (including, without limitation, the Premises) of any kind or nature whatsoever, including, without limitation, the installation of any improvements, fixtures, and/or other devices on the roof of the Building or the installation of computer and telecommunications wiring, cables, and conduit (collectively, "Alterations") without first obtaining Landlord's written consent. Alterations completed in or to the Premises will be the property of Landlord. Except with respect to activities for which Landlord is responsible, Tenant will pay as and when due all claims for work done on and for services rendered or material furnished to the Premises and will keep the Building free from any and all liens. No signs, awnings, and/or other apparatus will be painted on or attached to the Building or anything placed on any glass or woodwork of the Premises or positioned so as to be visible from outside the Premises without Landlord's prior written consent (and Landlord's approval of design, size, location, and color).

## 6. INSURANCE; INDEMNIFICATION

6.1 Insurance Required. Tenant will maintain, at Tenant's cost and expense, a policy of fire, extended coverage, vandalism, and malicious mischief insurance insuring the personal property, furniture, furnishings, and fixtures belonging to Tenant located in or on the Premises. Tenant will procure, and thereafter will continue to carry, comprehensive general liability insurance (occurrence version) with a responsible company against personal injury claims arising directly or indirectly out of Tenant's activities on, or any condition of, the Premises, whether or not related to an occurrence caused, or contributed to, by Landlord's negligence, and will insure the performance by Tenant of Tenant's indemnification obligations under this Lease. Landlord and Landlord's officers, employees, and agents will be named as additional insureds on Tenant's liability insurance policy. Tenant's insurance will be the primary insurance and any insurance maintained by Landlord will be excess and noncontributing. Tenant's liability insurance required to be carried pursuant to this Section 6.1 will have a general aggregate limit of not less than \$2,000,000.00 and a per occurrence limit of not less \$1,000,000.00.

6.2 Tenant's Indemnification. Tenant releases and will defend, indemnify, and hold Landlord and Landlord's Agents (as defined below) harmless for, from, and against all claims, losses, charges, damages, expenses, and/or liabilities, including, without limitation, attorney fees and costs, arising out of or related to, whether directly or indirectly, the following: (a) any activity of Tenant and/or Tenant's Agents on or at the Building; (b) any condition of the Premises; and/or (c) Tenant's breach and/or failure to perform any Tenant representation, warranty, covenant, and/or obligation under this Lease. Tenant releases Landlord for, from, and against all claims, damages, liabilities, and/or demands of whatever nature arising out of or related to, whether directly or indirectly, any damage, loss, and/or injury to Tenant's property in, on, and/or about the Building. For purposes of this Lease, the term "Agents" means the officers, directors, members, managers, shareholders, employees, affiliates, agents, contractors, and invitees of the identified party.

## 7. EVENT OF DEFAULT; REMEDIES

7.1 Event of Default. The occurrence of any one or more of the following events constitutes a default by Tenant under this Lease (each an "Event of Default"): (a) Tenant's failure to comply with any term or condition or perform any Tenant obligation under this Lease within 10 days after written notice by Landlord specifying the nature of the default; and/or (b) Tenant's failure for 180 days or more to occupy the Premises for the purpose permitted under this Lease.

7.2 Remedies. Upon the happening of an Event of a Default, Landlord may (a) terminate this Lease and, if Landlord so elects, reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages, and/or (b) pursue any other rights and remedies Landlord may have under this Lease, at law, and/or in equity. If Landlord terminates the Lease, Landlord will be entitled to recover immediately, without waiting until the due date of any future Rent or until the date fixed for expiration of this Lease, and in addition to any other damages recoverable by Landlord, the reasonable costs of reentry and reletting including, without limitation, the cost of any clean-up, refurbishing, removal of Tenant's property and fixtures, and/or any other expense occasioned by Tenant's failure to quit the Premises upon termination and to leave the Premises in the required condition, including, without limitation, any remodeling costs, attorney fees, court costs, broker commissions, and advertising costs. Landlord will have all rights and remedies available to Landlord under this Lease, at law, and in equity. If this Lease is terminated, Tenant's liability for damages will survive such termination. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Lease Term, and no action for damages will bar a later action for damages subsequently accruing. The foregoing remedies will be in addition to and will not exclude any other remedy available to Landlord under applicable law.

7.3 Condition; Holdover. Upon the termination of this Lease, Tenant will deliver all keys to Landlord and surrender the Premises in good, broom-clean condition, reasonable wear and tear excepted. Alterations constructed by Tenant with permission from Landlord will not be removed or restored to the original condition.

## 8. MISCELLANEOUS

8.1 Term Extension; Options; Termination. The Term for the agreement shall be for twenty four (24) months (the "Initial Term") with the Tenant having an option ("Lease Option") to extend the Agreement by an additional twelve (12) months. Tenant shall notify Landlord within ninety (90) days of intent to execute the Lease Option. Notwithstanding this provision, Tenant's lease shall automatically terminate upon the earlier of (a) Tenant notifying Landlord of its intent to vacate premise and specifying the date of vacation; or (b) 180 days following Tenant's completion of the new Kam Wah Chung Interpretive Center located at 250 NW Canton Street, John Day, Oregon 97845.

8.2 Waiver; Assignment. Waiver by either party of strict performance of any provision of this Lease will not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The termination of this Lease will not relieve a party of any obligations that have accrued before the termination. This Lease (or any memorandum of this Lease) will not be recorded. Tenant will not sell, assign, mortgage, sublet, lien, convey, encumber, and/or otherwise transfer (whether directly, indirectly, voluntarily, involuntarily, or by operation of law) all or any part of Tenant's interest in this Lease and/or in the Premises. Subject to the immediately preceding sentence, this Lease will be binding upon and inure to the benefit of the parties, their respective successors and assigns.

8.3 Attorney Fees; Late Fees. If an Event of Default occurs, Tenant will pay to Landlord, within 10 days after Landlord's demand, any and all attorney fees incurred by Landlord in attempting to enforce the terms of this Lease. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Lease, 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 attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the 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 Rent (or other payment due from Tenant) is not received by Landlord within 10 days after it is due, Tenant will pay a late fee equal to 5% of the payment or \$50.00, whichever is greater (a "Late Fee"). In addition, a charge of 1% per month on the amount past due (a "Late Charge") will be charged beginning 10 days after the due date for such payment until the past due amount is paid in full. Landlord may levy and collect a Late Fee and/or a Late Charge in addition to all other remedies available for Tenant's failure to pay Rent (or other payment due from Tenant).

8.4 Notices; Counterparts. All notices or other communications required or permitted by this Lease must be in writing, must be delivered to the parties at the addresses first set forth above, or at any other address that a party may designate by notice to the other parties, and will be considered delivered upon actual receipt if delivered personally, by facsimile or email transmission (with electronic confirmation of delivery), or an overnight delivery service, or at the end of the third business day after the date deposited in the United States mail, postage pre-paid, certified, return receipt requested. This Lease may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, a party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

8.5 Severability; Further Assurances. If a provision of this Lease is determined to be unenforceable in any respect, the enforceability of the provision in any other respect, and of the remaining provisions of this Lease, will not be impaired. The provisions of any and all exhibits, schedules, instruments, and other documents referenced in this Lease are part of this Lease. The parties will sign such other documents and take such other actions as are reasonably necessary to further effect and evidence this Lease. This Lease 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 the Lease. If any dispute arises regarding this Lease, the parties agree that the sole and exclusive venue for resolution of such dispute will be in Grant County, Oregon. All parties submit to the jurisdiction of courts located in Grant County, Oregon for any such disputes.

8.6 Entire Agreement; Landlord Default. This Lease contains the entire understanding of the parties regarding the subject matter of this Lease and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Lease. 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. 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. For purposes of this Lease, 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). No act or omission of Landlord will be considered a default under this Lease until Landlord has received 30 days' prior written notice from Tenant specifying the nature of the default with reasonable particularity. Commencing from Landlord's receipt of such default notice, Landlord will have 30 days to cure or remedy the default before Landlord will be deemed in default of this Lease; provided, however, that if the default is of such a nature that it cannot be completely remedied or cured within the thirty-day cure period, there will not be a default by Landlord under this Lease if Landlord begins correction of the default within the thirty-day cure period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practical.

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

[signature page follows]

**LANDLORD:**  
City of John Day

**TENANT:**  
Oregon Parks and Recreation Department

---

By:  
Its:

---

By:  
Its:

DRAFT

**Exhibit E**  
**to**  
**Purchase and Sale Agreement**

Form of Statutory Warranty Deed

After recording, return to **GRANTEE**:  
Oregon Parks and Recreation Department  
Attn: Property Unit  
725 Summer Street NE Ste C  
Salem, Oregon 97301

**With a copy to GRANTOR:**  
City of John Day  
Attn: Nick Green  
450 East Main Street  
John Day, OR 97845

---

**STATUTORY WARRANTY DEED**  
(ORS 93.850)

**City of John Day, a municipal corporation, Grantor, conveys and warrants to the State of Oregon acting through the Oregon Parks and Recreation Commission on behalf of the Oregon Parks and Recreation Department, Grantee, the real property in Grant County, Oregon, together with all improvements thereupon, which property is described on attached Exhibit A.**

Grantor conveys and warrants the Property to Grantee free of encumbrances except as are specifically set forth in the attached Exhibit B.

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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, 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.

The true consideration for this conveyance is \$222,000.

Dated this 20 day of July, 2022.

Ketchum

Corum Ketchum  
Interim (Pro-Tem) City Manager

Nick a

Nicholas Green  
Chief Financial Officer

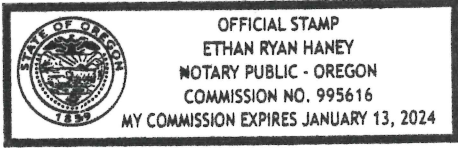
STATE of OREGON            )  
  ) ss:  
COUNTY OF GRANT        )

This instrument was acknowledged before me on July 20, 2022 by

NICHOLAS GREEN AND

CORUM KETCHUM

Ethan Ryan Haney  
Notary Public for Oregon  
My Commission Expires: JAN 13, 2024



*(remainder of page intentionally blank)*

**EXHIBIT A**  
**To Statutory Warranty Deed**

**Legal Description**

A tract of land situated in the SW1/4SW1/4 Section 23, T. 13S, R.31E., W.M., City of John Day, Grant County, Oregon, more particularly described as follows:

*Beginning at a point on the west right of way line of NW Canton Street, said point being the southeast corner of Lot 71 of Geisler Addition to the City of John Day, the plat of which is on file and of record in the office of the Grant County Clerk;*

*thence along the south line of Lots 71, 70, 69, 68, 67, 66, 65, 64 and 63 of said Geisler Addition West, 450.0 feet to the southwest corner of Lot 63 of said addition;*

*thence, continuing West, 25.0 feet;*

*thence North, 100.0 feet, on a line parallel to and 25 feet distant from, when measured at right angles to, the west line of Lot 63, to the south right of way line of NW Third Avenue;*

*thence along said south right of way line as follows:*

*S.89°48'12"W., 6.81 feet;*

*55.00 feet, more or less, along the arc of a 220.00 foot radius curve left (the long chord of which bears S.81°42'W., 55 feet more or less) to the centerline of Canyon Creek;*

*thence Southerly, 590 feet, more or less, along the centerline of Canyon Creek, the south line of that certain tract of land described in Deed Book 79, Page 257, deed records of Grant County;*

*thence along the south and east lines of said tract as follows:*

*S.88°44'E., 108.30 feet;*

*N.16°00'W., 50.0 feet;*

*thence East, 112 feet, more or less, to the west right of way line of NW Ing Hay Way;*

*thence along said west right of way line as follows:*

*N.34°26'28"W., 84.95 feet;*

*N.00°17'07"W., 5.0 feet, more or less, to the southeast corner of that certain tract of land described in Deed Book 113, Page 532, deed records of Grant County;*

*thence along the south, west and north lines of said tract as follows:*

*West, 112.33 feet; N.15°00'W., 145.56 feet;*

*East, 150.0 feet;*

*thence North, 85 feet, more or less, to a point on the south line of that certain tract of land described in Deed Book 97, Page 673, deed records of Grant County, Oregon;*

*thence N.89°10'E., 136 feet, more or less, to a point on the west right of way line of NW Canton Street;*

*thence along said west right of way line N.00°11'15"W., 87 feet, more or less, to a point that is N.89°48'45"E., 5.00 feet from the point of beginning;*

*thence S.89°48'45"W., 5.00 feet to the point of beginning.*

**Exhibit B  
To Statutory Warranty Deed**

**Permitted Encumbrances**

1. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in Public Records of listed in Schedule B. The Company makes no representation as to the present ownership of such interests. There may be leases, grants, exceptions or reservations that are not listed.
2. Rights of the public in and to any portion of the premises herein described lying below the high water mark of Canyon Creek, including any ownership rights which may be claimed by the State of Oregon below the high water mark.
3. Such rights and easements for navigation and fishing as may exist over that portion of the property lying beneath the waters of Canyon Creek.
4. Any adverse claim based upon the assertion that:
  - a. Said land or any part thereof is now or at any time has been below the ordinary HIGH water mark of Canyon Creek.
  - b. Some portion of said land has been created by artificial means or has accreted to such portion so created.
  - c. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of Canyon Creek, or has been formed by accretion to any such portion.
5. Restrictions and Rights of Reverter, including the terms and provisions thereof, contained in agreement.

Recorded : November 9, 1995  
Book : 73  
Page : 358
6. Agreement, including the terms and provisions thereof:

Regarding : "impoundment of water from Canyon Creek:  
Between : the State of Oregon, acting by and through its Game Commission  
And : "owners of lands on which there are water rights of diversion of water from Canyon Creek"  
Recorded : May 25, 1961  
Book : "I"  
Page : 281, Lease & Agreement Records.

The above document was amended by an instrument, including the terms and provisions thereof, recorded July 3, 1962, in Book "I", page 364, Lease & Agreement Records.
7. Agreement, including the terms and provisions thereof:

Recorded : December 21, 1966  
Book : J



- Page : 66
8. Easement, including the terms and provisions thereof:  
For : water line  
Granted to : City of John Day, a municipal corporation  
Recorded : August 29, 1967  
Book : 97  
Page : 373
9. Restrictions, including the terms and provisions thereof, contained in Ordinance No. 3-68  
Recorded : September 22, 1967  
Book : 97  
Page : 466

**CERTIFICATE OF APPROVAL OF CONVEYANCE  
(ORS 93.808)**

**THE STATE OF OREGON, acting through the Oregon Parks and Recreation Commission on behalf of the Oregon Parks and Recreation Department,** hereby approves and accepts, pursuant to ORS 93.808, the conveyance by warranty deed from CITY of JOHN DAY, a municipal corporation, to the State of Oregon of the real property described in the deed to which this Certificate is attached.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

State of Oregon, acting by and through the Oregon  
Parks and Recreation Commission on behalf of the  
Oregon Parks and Recreation Department

By: \_\_\_\_\_  
Name: Lisa Sumption  
Title: Director, Oregon Parks and  
Recreation Department

ACKNOWLEDGEMENT

STATE OF OREGON            )  
  ) ss.  
County of Marion            )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Lisa Sumption as the Director of the Oregon Parks and Recreation Department and authorized representative of the Oregon Parks and Recreation Commission, acting under authority granted to her by the Commission.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_