

## RESOLUTION NO. 1273

### A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF PRINEVILLE AND DOUGLAS L. COWARD AND NANCY L. COWARD, TRUSTEES OF THE DOUGLAS L. AND NANCY L. COWARD TRUST ("Cowards") REGARDING DISPOSITION OF PRINEVILLE MOBILE PARK WASTEWATER

WHEREAS, Prineville Mobile Park ("Park") located at 3050 North Main Street, Prineville, Oregon, has been approved for placement of 43 manufactured homes; and

WHEREAS, wastewater generated from the manufactured homes in the Park is treated and disposed of in the Park by way of an onsite septic tank and drain field system which has failed, resulting in raw sewage discharging on the Park grounds; and

WHEREAS, the Park offers a low income housing opportunity for Prineville area residents that could be lost if the Park were to close; and

WHEREAS, the City of Prineville ("City") owns and operates a municipal sewer system, a portion of which system is located within 300 feet of the Park; and

WHEREAS, City staff has negotiated with Cowards and agreement under the terms of which the Park would utilize a septic tank effluent pumping system to partially treat sewage from the Park so that it would be more easily treated in City's sewer system (the "Agreement"). A copy of the Agreement is attached to this Resolution as Exhibit A; and

WHEREAS, pursuant to the Agreement, Cowards shall pay to the City a monthly fee for their limited use of City's sewer system; and

WHEREAS, City staff recommends that the City Council approve the Agreement;

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

1. The Agreement with Cowards attached as Exhibit A is approved.
2. The Mayor of the City is authorized and instructed to sign the Agreement.

Dated: September 9<sup>th</sup>, 2015

  
Betty J. Roppe, Mayor

ATTEST:

  
Lisa Morgan, City Recorder

## AGREEMENT

THIS AGREEMENT is made this 31 day of July, 2015, by and between the **City of Prineville**, an Oregon municipal corporation, ("City") and **Douglas L. Coward and Nancy L. Coward, Trustees of the Douglas L. and Nancy L. Coward Trust** ("Trust"), collectively the "Parties" and individually a "Party."

### RECITALS:

- A. Trust owns a mobile home park known as Prineville Mobile Park located on Tax Lots 600 and 700 of Tax Map 1416-29BC, with the address of 3050 North Main Street, Prineville, Oregon (the "Park"). The Park has been approved for placement of 43 manufactured or mobile homes ("Homes"). None of the Homes are owned by the Trust. Monthly space rent is relatively low, making the Park a low income housing option for the Prineville area.
- B. The Park collects, treats, and disposes of wastewater generated from the Homes with an onsite septic tank and drain field system. There have been documented failures of the drain field at the Park resulting in raw sewage discharging upon the Park ground in violation of Oregon law. Because of the failures of the drainfield and the raw sewage discharge, a health, safety, and welfare problem exists at the Park.
- C. City owns and operates a municipal sewer system for the collection, treatment, and disposition of wastewater. City's sewer system is located within 300 feet of the Park and under state rule the Park is required to connect to City's sewer system. Under City Ordinance, in order to connect to City's sewer system, the Trust would be required to pay sewer system development charges ("SDCs") in the amount of approximately \$125,000 based upon 40 Homes located in the Park.
- D. If Trust pays the SDCs, as well as the costs of extending the City's sewer to the Park and reconstructing the sewage collection system in the Park, the total cost would be approximately \$450,000, which would either require redevelopment of the Park property or an increase in space rent for the Homes. The Parties believe the increase in space rent would force Homeowners from the Park.
- E. Most of the Homes cannot be moved to new locations and would have to be demolished if the Homeowners left the Park.
- F. Trust has retained MAP Engineering, Inc., to engineer a reconstruction of the sewage collection system in the Park in a manner so that solids are contained in the septic tank and the only discharge from the Park into the City's sewer system will be effluent sewer waste water. MAP Engineer, Inc., by letter dated May 26, 2015, (the "MAP letter") sets out the expected wastewater constituent concentration from residences within the Park, suggested maintenance of the septic tank at the Park,



effluent filters, and pumping of septic tanks. A copy of the MAP letter is attached hereto as Exhibit A and by this reference made a part hereof.

G. City staff and Trust have reached an oral agreement regarding connecting the Park to City's sewer system and desire to memorialize that agreement.

BASED UPON the following covenants, the Parties agree as follows:

1. The above Recitals are made a part of this Agreement.
2. Trust agrees to reconstruct the current septic tank located on the Park property and connect the septic tank to the City's sewer system utilizing a septic tank effluent pumping system ("STEP System"). The septic tank, STEP System, effluent filter, their respective parts and associated connections are referred to as the "Septic System."
3. Trust shall be responsible for the costs of installing a line from the STEP System to City's sewer system. Installation of the Septic System and line shall be done in conformance with state law and City's standards and specifications. Trust shall also be responsible for the costs of maintenance, repair, and replacement of all parts of the Septic System. Maintenance on the Septic System shall be done not less than as set out in the MAP letter and written reports of all maintenance activity shall be provided to the City within ten (10) days of each maintenance activity.
4. City is entering into this Agreement on the condition that Trust will deliver wastewater from the Park to City's sewer system, which wastewater shall contain levels of constituents as shown on Table 2 of the MAP letter in the column with the heading of "Effluent Sewer Concentration (mg/L) @ 45 gpd/cap." Trust shall test and monitor the effluent generated from the STEP System for the constituents set out in Table 2 of the Map letter not less than annually and shall provide the test results to City as soon as Trust receives the results. Results will be evaluated based on the average daily mass load on the City wastewater system.
5. If City believes the expected wastewater constituent concentration from residences in the Park exceeds the limits described in the MAP letter, City may test the effluent being discharged from the Septic System and shall furnish a copy of the test results to the Trust upon receipt of such results.
6. While this agreement is in effect, Trust shall pay monthly to City one-half of the City's monthly residential waste water rate then in effect for each manufactured or mobile home located at the Park. If Trust fails to pay the monthly waste water charge City may disconnect the Park's sewage collection system from the City's sewer system after giving appropriate notices. Trust is not paying

any SDCs at this time. Therefore, when SDCs are paid to the City, Trust shall not receive any credit for prepaid SDCs.

7. Upon the happening of any of the following events Trust agrees to immediately pay to City sewer SDCs based upon the proposed use of the Park:

- a. Failure of the effluent from the Septic System to meet the standards set out in the MAP letter;
- b. Failure by Trust to monitor and test the effluent and STEP System as set out in Section 4 above;
- c. Failure by Trust to provide to the City the results of the monitoring and testing described in Section 4 above;
- d. Failure to maintain the Septic System as set out in the MAP letter;
- e. Failure by Trust to provide to the City the written reports of maintenance activity described in Section 3 above;
- f. Conversion of the Park to another use.

Upon Trust paying sewer SDCs to the City, the sewer collection system in the Park shall be reconstructed by Trust to meet state and City requirements and Trust shall pay to City monthly sewer charges pursuant to City's Ordinances and Resolutions.

8. If additional Home spaces are permitted in the Park, the full amount of sewer SDCs for each additional space and regular monthly sewer fees for such additional permitted spaces shall be paid by Trust to City even though the sewer effluent generated from Homes on the additional spaces continue to be disposed of through the Septic System.

9. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any Party without the prior written consent of the other Party.

10. All notices and other communications under this Agreement must be in writing and shall be deemed to have been given if delivered personally, mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the Parties at the following addresses:

To Trust:  
**P.O. Box 554**  
**San Clemente, CA 92674**

To City:  
**387 NE Third Street**  
**Prineville, OR 97754**

Any notice or other communication shall be deemed to be given (a) on the date of personal delivery, (b) at the expiration of two days after the date of deposit in the United States mail, or (c) on the date of confirmed delivery by overnight delivery service.



11. This Agreement may be amended only by an instrument in writing executed by both Parties, which writing must refer to this Agreement.

12. Any provision or condition of this Agreement may be waived at any time, in writing, by the Party entitled to the benefit of such provision or condition. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-laws principles.

14. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the Party prevailing on an issue shall be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

15. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the Parties with respect to such subject matter.

City of Prineville

By: Douglas L. Coward  
DLC/MSJ  
Betty J. Reppe, Mayor

Douglas L. Coward  
Douglas L. Coward, Trustee of the Douglas  
L. and Nancy L. Coward Trust

Nancy L. Coward  
Nancy L. Coward, Trustee of the Douglas  
L. and Nancy L. Coward Trust

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See attached loose  
leaf Certificate *MSJ*

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange )

On 8/13/2015 before me, Kathrin Delano, Notary Public  
(insert name and title of the officer)

personally appeared Douglas L. Coward and  
Nancy L. Coward

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



(Seal)