

RESOLUTION NO. 1305

A RESOLUTION AUTHORIZING THE CITY OF PRINEVILLE TO PURCHASE FROM IRONHORSE DEVELOPMENT LLC APPROXIMATELY 460 ACRES OF REAL PROPERTY

WHEREAS, pursuant to City of Prineville (“City”) Resolution No. 1300, Ironhorse Development LLC (“Ironhorse”) and the City entered into a Real Estate Purchase and Sale Agreement (“Agreement”) under the terms of which City would purchase from Ironhorse approximately 460 acres of real property in the Ironhorse Subdivision, together with water rights on the 460 acres and water rights on additional property (the “Property”); and

WHEREAS, pursuant to the terms of the Agreement, City had the right to perform due diligence regarding the physical and environmental condition of the Property, including the water rights being transferred, and land use requirements on the Property; and

WHEREAS, the City, in performing its due diligence regarding the purchase of the Property, discovered that two mercury mines were located on the northeast portion of the Property and that there had been releases of hazardous substances in the vicinity of the mines; and

WHEREAS, the City had further investigations conducted near the site of the mines (the “Mines Area”) that showed levels of mercury within legal limits for non-residential uses; and

WHEREAS, the City desires to have the Oregon Department of Environmental Quality (“DEQ”) issue a No Further Action (“NFA”) for the Mines Area; and

WHEREAS, attached as Exhibit 1 to this Resolution is an Agreement Ironhorse and City have negotiated under the terms of which Ironhorse agrees, at their cost, to obtain the NFA of the Mines Area and if they cannot, that the City will transfer the Mines Area back to Ironhorse (the “Agreement”); and

WHEREAS, City staff recommends City Council approve the execution of the Agreement and the purchase of the Property.

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

1. The purchase of the Property is approved.
2. The Agreement is approved.
3. The Mayor, City Manager, and other representatives of the City, as necessary or convenient, are authorized and instructed to execute on behalf of the City, the Agreement and all necessary documents concerning the purchase of the Property.

Approved by the City Council on the ____ day of December, 2016.

Bette J. Roppe, Mayor

ATTEST:

Lisa Morgan, City Recorder

EXHIBIT 1

AGREEMENT RE NFA LETTER

THIS AGREEMENT RE NFA LETTER (this "Agreement") is made as of December __, 2016, by and between IRONHORSE DEVELOPMENT LLC, an Oregon limited liability company ("IronHorse"), and CITY OF PRINEVILLE, an Oregon municipal corporation ("City").

Pursuant to that certain Real Estate Purchase and Sale Agreement dated August 23, 2016, as amended by that certain First Amendment to Real Estate Purchase and Sale Agreement dated September 27, 2016, and as amended by that certain Amendment No. 2 to Real Estate Purchase and Sale Agreement dated November 10, 2016 (as amended, the "PSA"), IronHorse agreed to sell and City agreed to buy the Property (as defined in the PSA).

A small portion (approximately two acres) of the Property contains mining portals that were historically used to mine cinnabar (the "Mines"), in the location substantially as depicted on the attached **Exhibit A** (the "Mines Area"). City has requested that IronHorse obtain a "No Further Action" letter from the Oregon Department of Environmental Quality ("DEQ") with respect to the presence of cinnabar or cinnabar-related debris in the Mines Area (the "NFA"). IronHorse has agreed to use reasonable efforts to seek such NFA after the Closing (as defined below), pursuant to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other valuable consideration, IronHorse and City agree as follows:

1. Effective Date; Term. This Agreement shall become effective, if at all, upon the closing (the "Closing") of the sale of the Property from IronHorse to the City (the "Effective Date"). The term of this Agreement (the "Term") shall commence upon the Effective Date and shall terminate upon the earlier to occur of: (a) DEQ issuance of the NFA; or (b) thirty (30) days after the expiration of the NFA Period, if the City doesn't elect to convey the Mines Area to IronHorse; or (c) the date on which the City conveys the Mines Area to IronHorse pursuant to Section 3.

2. NFA. IronHorse agrees to use reasonable efforts, including testing, to obtain an NFA within one year after the Closing (the "NFA Period"), which NFA Period may be extended upon the joint, written agreement of the parties. The parties have mutually agreed that IronHorse shall engage an environmental consultant (the "Consultant") to perform the testing and consulting services IronHorse believes to be reasonably necessary to obtain the NFA.

3. NFA Not Obtained. In the event that, despite its reasonable efforts, IronHorse is unable to obtain the NFA within the NFA Period (as the same may have been extended), City may at its election reconvey the Mines Area to IronHorse via lot line adjustment. In the event that the City elects to convey the Mines Area to IronHorse, it shall notify IronHorse in writing of such election not later than thirty (30) days after the expiration of the NFA Period (as the same may have been extended). Upon receipt of such notification, IronHorse shall promptly, at its cost and expense, prepare the paperwork and surveys necessary for such lot line adjustment, and City shall cooperate as IronHorse may reasonably request.

4. Zone Change and ODP Amendment. In the event that DEQ conditions the NFA on a zone change and/or amendment to the IronHorse Outline Development Plan (the "ODP") for the Mines Area, the City will prepare and process the applications necessary to obtain such zone change or ODP amendment, including, without limitation, payment of all

fees. If the City is to file an ODP amendment, the City shall coordinate and cooperate with IronHorse to allow IronHorse to file one or more ODP amendments jointly with the City's ODP amendment; provided, however, City shall have no obligation to allow joint filing if it objects, in City's reasonable discretion, to IronHorse's proposed amendment. If the parties jointly file ODP amendments, they shall cooperate with the processing of the applications and split any fees that apply to both amendments. If DEQ conditions the NFA on the imposition of a deed restriction prohibiting residential construction on the Mines Area, the City agrees to execute such a deed restriction. If DEQ conditions the NFA on some other action that is not objectionable to City, in its reasonable discretion, then City shall cooperate.

5. License; Cooperation. Upon the Effective Date of this Agreement, City grants to IronHorse a license for the Term of this Agreement to access the Property. Such license shall permit entry onto the Property by DEQ personnel and IronHorse and its employees and consultants, including the Consultant, to perform such inspections, surveys and testing as IronHorse and/or its Consultant may deem reasonably necessary to carry out IronHorse's obligations pursuant to this Agreement. In addition, City agrees to cooperate as IronHorse may reasonably request in helping IronHorse to seek the NFA.

6. Indemnity. IronHorse shall indemnify, defend and hold City harmless from any losses or claims arising out of any cinnabar or mercury contamination on the Mines Area from the Mines to the extent such losses or claims arise during the Term of this Agreement. This indemnity shall expire upon the expiration of the Term of this Agreement.

7. Tax Reporting. The parties agree and acknowledge that the sale of the property (including the Mines Area) by IronHorse to the City shall be considered for all tax and accounting purposes to have occurred on the Effective Date of the Closing, notwithstanding IronHorse's obligation pursuant to this Agreement to obtain the NFA after Closing. Neither party shall take any position for any tax or accounting purpose that is inconsistent with such agreement.

8. General. This Agreement may be executed in counterparts, each of which shall be considered an original, but all of which, when taken together, shall constitute one and the same instrument. Counterparts to this Agreement may be delivered by facsimile or other electronic means and a facsimile or scanned signature shall have the same effect as an original. All of the recitals in this Agreement are hereby incorporated as agreements of the parties. This Agreement is governed by and construed in accordance with the laws of the State of Oregon. All capitalized terms in this Agreement that are not defined in this Agreement will have the definitions ascribed to them in the original Agreement.

IRONHORSE:

IRONHORSE DEVELOPMENT LLC
an Oregon limited liability company

By: _____
Name: _____
Title: _____

CITY:

CITY OF PRINEVILLE,
an Oregon Municipal Corporation

By: _____

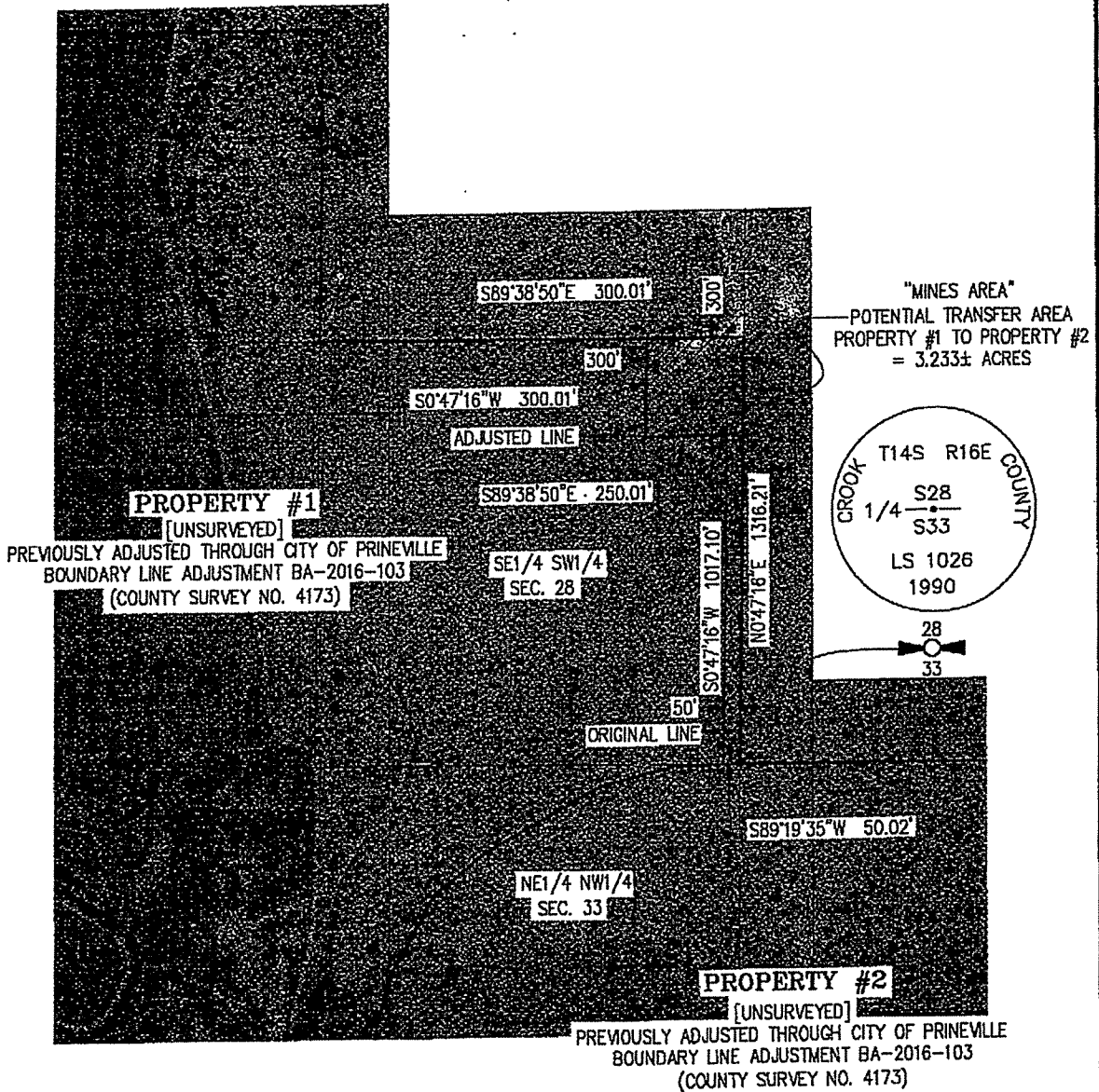
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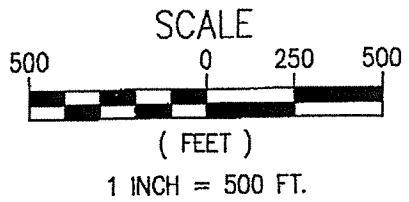
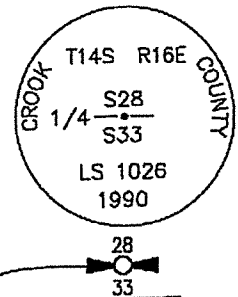
EXHIBIT A

"MINES AREA"

SECTIONS 28 & 33, TOWNSHIP 14 SOUTH, RANGE 16 EAST, WILLAMETTE MERIDIAN,
CITY OF PRINEVILLE, CROOK COUNTY, OREGON



"MINES AREA"
POTENTIAL TRANSFER AREA
PROPERTY #1 TO PROPERTY #2
= 3.233± ACRES



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