

RESOLUTION NO. 16836

A RESOLUTION APPROVING PROPERTY EXCHANGE AGREEMENT - BEAR CREEK GREENWAY - WITH JACKSON COUNTY AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME

RECITALS:

- A. Jackson County owns multiple parcels of land which are developed with a portion of the Bear Creek Greenway multi-use trail and/or which abuts properties along the Bear Creek Greenway.
- B. The City of Central Point desires to take ownership of real property along the Bear Creek Greenway, which is within City limits, to allow the City to more efficiently manage and maintain greenway property in order to reduce fire risk, and ensure the greenway is an attractive, usable public amenity.
- C. Jackson County has agreed to transfer the properties to the City subject to a Land and Water Conservation Fund Project Agreement, to which Jackson County is currently subject.

The City of Central Point resolves:

Section 1. The attached Property Exchange Agreement for properties within the Bear Creek Greenway with Jackson County (the "Agreement"), in substantially the form attached hereto as Exhibit "A" is approved.

Section 2. The City Manager is hereby authorized, on behalf of the City and without further action by the City Council, to execute the attached Agreement and to perform all necessary acts, sign all necessary documents, and complete any other necessary matters in order to effectuate this Resolution.

Passed by the Council and signed by me in authentication of its passage this 14th day of October, 2021.


Mayor Hank Williams

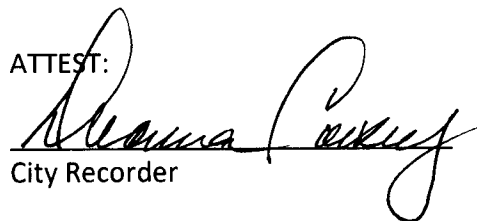
ATTEST:

City Recorder

Exhibit A to Resolution

PROPERTY TRANSFER AGREEMENT Bear Creek Greenway

DATE: _____, 2021

BETWEEN: **City of Central Point, Oregon** (“Central Point”)
140 S 3rd Street
Central Point, Oregon 97502

AND: **Jackson County, Oregon** (“Jackson County”)
10 South Oakdale Avenue
Medford, Oregon 97501

RECITALS

A. Jackson County is the owner of certain real property located in Jackson County (City of Central Point), Oregon, and commonly known as Township 37 South, Range 2 West, Section 02D, Tax Lot 2001 (“Tract A”), a more particular description of Tract A is attached hereto as **Exhibit A**. Tract A is approximately 3.74 acres in size and is developed with a portion of the Bear Creek Greenway multi-use trail.

B. Jackson County is the owner of certain real property located in Jackson County, Oregon, and commonly known as Township 37 South, Range 2 West, Section 11A, Tax Lot 102 (“Tract B”), a more particular description of Tract B is described on **Exhibit A**. Tract B is approximately 3.52 acres in size and is developed with a portion of the Bear Creek Greenway multi-use trail.

C. Jackson County is the owner of certain real property located in Jackson County, Oregon, and commonly known as Township 37 South, Range 2 West, Section 11A, Tax Lot 28100 (“Tract C”), a more particular description of Tract C is described on **Exhibit A**. Tract C is approximately 1.38 acres in size and is developed with a portion of the Bear Creek Greenway multi-use trail.

D. Jackson County is the owner of certain real property located in Jackson County (City of Central Point), Oregon, and commonly known as Township 37 South, Range 2 West, Section 12B, Tax Lot 502 (“Tract D”), a more particular description of Tract D is described on **Exhibit A**. Tract D is approximately 13.21 acres in size and is developed with a portion of the Bear Creek Greenway multi-use trail.

E. Jackson County is the owner of certain real property located in Jackson County, Oregon, and commonly known as Township 37 South, Range 2 West, Section 12B, Tax Lot 505 (“Tract E”), a more particular description of Tract E is described on **Exhibit A**. Tract E is approximately 4.25 acres in size and is developed with a portion of the Bear Creek Greenway multi-use trail.

F. Jackson County is the owner of certain real property located in Jackson County, Oregon, and commonly known as Township 37 South, Range 2 West, Section 12B, Tax Lot 699 (“Tract F”), a more particular description of Tract F is described on **Exhibit A**. Tract F is approximately 0.63 acres in size.

G. Jackson County is the owner of certain real property located in Jackson County, Oregon, and commonly known as Township 37 South, Range 2 West, Section 12C, Tax Lot 301 (“Tract G”), a more particular description of Tract G is described on **Exhibit A**. Tract G is approximately 8.14 acres in size.

H. Jackson County is the owner of certain real property located in Jackson County, Oregon, and commonly known as Township 37 South, Range 2 West, Section 12C, Tax Lot 805 (“Tract H”), a more particular description of Tract H is described on **Exhibit A**. Tract H is approximately 0.53 acres in size.

I. For the purposes of this Agreement, Tracts A, B, C, D, E, F, G AND H shall be collectively referred to herein as “the Tracts”. A map depicting the boundaries of the Tracts is attached hereto as **Exhibit B**.

J. The Bear Creek Greenway (“the Greenway”) includes Bear Creek, its adjacent riparian area and a 20-mile, paved, multi-use trail that links the cities of Ashland, Talent, Phoenix, Medford and Central Point. All the Tracts are located within the Greenway.

K. Jackson County utilized federal funds awarded by the United States of America from the federal Land and Water Conservation Fund to purchase and make certain improvements to Tracts. As a result, the Tracts are subject to the Land and Water Conservation Fund Project Agreement, as amended, attached hereto as Exhibit C and the [state and local agreement] attached hereto as Exhibit D (collectively, the “LWCF Agreements”).

K. The parties desire to consummate this property transfer pursuant to the terms and conditions of this Agreement for the efficient management and maintenance of the Greenway. Specifically, the Tracts are located within the Central Point municipal boundary or are located adjacent to said boundary and, therefore, the parties desire that Central Point own the Tracts subject to the LWCF Agreements.

AGREEMENT

In consideration of the mutual promises, covenants and undertakings of the parties herein contained, the parties hereby agree as follows:

1. Recitals. The parties acknowledge and agree that the Recitals set forth above are incorporated herein and deemed a material part of this Agreement.

2. Consideration. The parties acknowledge and agree that the consideration for this Agreement is as follows: (a) Central Point shall be solely responsible for the management and

maintenance and all other obligations of any other nature of the Tracts upon Closing and all obligations under the Land and Water Conservation Fund Project Agreement Number 41-00556 applicable to the Tracts; and (b) Jackson County shall have no further management and maintenance obligations or other obligations of any nature concerning the Tracts post-Closing. Notwithstanding the foregoing, Jackson County and Central Point may cooperate in pursuing Greenway funding mechanisms such as creation of a Greenway taxing district, grant funding or other agreements.

3. Title. Jackson County shall convey title to the Tracts by quit claim deed, properly executed and notarized conveying title to Central Point in the form attached hereto as Exhibit E. Central Point acknowledges that the Deed contains restrictions on the use of the Tracts, which are required to satisfy the LWCF Requirements. Central Point, at Central Point's sole expense, shall obtain a title insurance policy from First American Title Insurance Company, located at 1225 Crater Lake Avenue, Suite 101, Medford, Oregon, 97504 ("the Escrow Agent"). Upon complete execution of this Agreement, Central Point, at Central Point's sole expense, shall order a preliminary title report ("Title Report") from the Escrow Agent with copies of the Title Report being delivered to all parties. Central Point shall have 30 days from the date of Central Point's receipt of the Title Report to notify Jackson County in writing of any exceptions unacceptable to Central Point ("Objection Notice"). Central Point shall have no obligation to close on the Tracts if the parties are unable to resolve title issues concerning any Tract. Central Point's failure to issue an Objection Notice within the time allowed will be deemed as Central Point's acceptance of the exceptions to title set forth in the Title Report for any Tract.

The parties acknowledge and agree that Jackson County shall convey, and Central Point will accept, the tracts Subject to the LCWF Agreements. The parties shall diligently cooperate with the Oregon Parks and Recreation Department and any other party for the purpose of amending the LCWF Agreements for the purpose of transferring Jackson County's rights and obligations with respect to the Tracts under the LCWF Agreements to Central Point. Each party shall execute and deliver all instruments and shall take or cause to be taken such further actions as may be necessary to effect such transfer of rights and obligations contemplated under this paragraph. Unless and until such time as the transfer of rights and obligations under this paragraph become effective, Central Point agrees that (i) this Agreement is subject to and subordinate to the LCWF Agreements; (ii) Central Point will perform all affirmative obligations of County under the LCWF Agreements as applicable to the Tracts; (iii) Central Point will not, by its act or omission, cause a default under the LCWF Agreements; and (iv) Central Point will indemnify, defend, and hold harmless County for any claims or actions alleging a violation or default under the LCWF Agreements.

4. As Is. Except as otherwise stated herein, the parties hereby acknowledge and agree that this is an "AS IS" transaction and, except as otherwise expressly stated herein, Jackson County makes no representations or warranties as to the condition of the Tracts, any improvements thereon or their fitness for a particular purpose.

5. Due Performance. Due performance of the terms, conditions, and agreements of this Agreement to be performed by a party and the accuracy of the representations and warranties of each as of the Closing Date is a condition to closing by the other party. Such performance shall

include, without limitation, execution, and delivery in proper form of all of the documents required hereunder to be delivered on the Closing Date and the rendering of all other performances and undertakings contemplated hereunder.

6. Closing. Closing shall occur on or before November 30, 2021 (“Closing Date”) at the offices of the Escrow Agent.

7. Closing Provisions.

7.1 Closing. This purchase and sale transaction shall be closed on the Closing Date, unless otherwise extended pursuant to mutual agreement of the parties, at the offices of the Escrow Agent.

7.2 Funds and Documents.

7.2.1 Central Point's Funds and Documents. On or before the Closing Date, Central Point shall cause to be delivered to the Escrow Agent on the Closing Date, each of the following:

(a) All funds required of Central Point for costs and expenses as set forth herein.

(b) All documents required pursuant to this Agreement, properly executed by Central Point.

7.2.2 Jackson County Documents. On or before the Closing Date, Jackson County shall cause to be delivered to the Escrow Agent on the Closing Date, all documents required pursuant to this Agreement, properly executed.

7.3 Costs of Closing. Central Point, at Central Point’s sole expense shall be responsible for the following costs: (a) the Escrow Agent’s fee; (b) all premiums for title insurance policies; (c) all recording and miscellaneous charges imposed by the Escrow Agent; and (d) all attorney fees incurred by Central Point with respect to preparing and negotiating this Agreement.

8. Council/Board Approval. The parties acknowledge and agree that this Agreement is subject to approval by the following: (a) City of Central Point City Council; and (b) Jackson County Board of Commissioners (collectively, “Governmental Approval”). In the event this Agreement does not receive Governmental Approval, this Agreement shall terminate and be of no further force or effect.

9. Intergovernmental Agreement. Central Point and Jackson County are parties to the *Intergovernmental Agreement for the Joint Management of The Bear Creek Greenway Corridor* dated February 14, 2008 (“the Intergovernmental Agreement”). The parties acknowledge and agree that they will act in good faith to jointly seek an amendment of the Intergovernmental Agreement and/or the accompanying *Bear Creek Greenway Management Plan 2017-2022* (“the Management Plan”) to be consistent with the property exchange set forth in this Agreement.

10. Miscellaneous Provisions.

10.1 Conflict of Interests. No member, official or employee of Central Point or Jackson County shall make any decision relating to the Agreement which affects the member's, official's, or employee's personal interests or the interests of any corporation, partnership, or association in which member, official, or employee is directly or indirectly interested.

10.2 No Partnership. Nothing contained in this Agreement or any acts of the parties hereby shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties.

10.3 Notices. Notices under this Agreement shall be in writing and shall be effective when actually delivered by hand delivery, electronic correspondence or United States mail directed to the other party at the address set forth below, or to such other address as the party may indicate by written notice to the other:

Jackson County:

Jackson County Counsel
c/o Joel Benton
10 South Oakdale Avenue
Medford, Oregon 97501
bentonjc@jacksoncounty.org

Central Point:

c/o Chris Clayton
City Manager
140 S 3rd Street
Central Point, Oregon 97502
chris.clayton@centralpointoregon.gov

and

Daniel O'Connor
O'Connor Law, LLC
670 G Street, Suite B
Jacksonville, Oregon 97530
dano@oconnorlawgroup.net

10.4 Amendment. This Agreement may be amended only by written instrument executed by the parties.

10.5 Representations and Warranties. All representations and warranties made herein shall survive Closing.

10.6 Entire Understanding. This Agreement, and the documents incorporated herein, consists of the entire Agreement between the parties with relation to the conveyance of the Tracts.

10.7 Time of Essence. Time is of the essence of this Agreement.

10.8 Applicable law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Jackson County.

10.9 Counterparts. This Agreement may be executed by the parties in separate counterparts, which together shall constitute one instrument. For the purposes of this Agreement, a facsimile or electronic copy of a signature shall have the same force and effect as an original signature.

10.10 Statutory Disclaimer.

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.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

JACKSON COUNTY:

Date: , 2021

By:
Its:

CITY OF CENTRAL POINT:

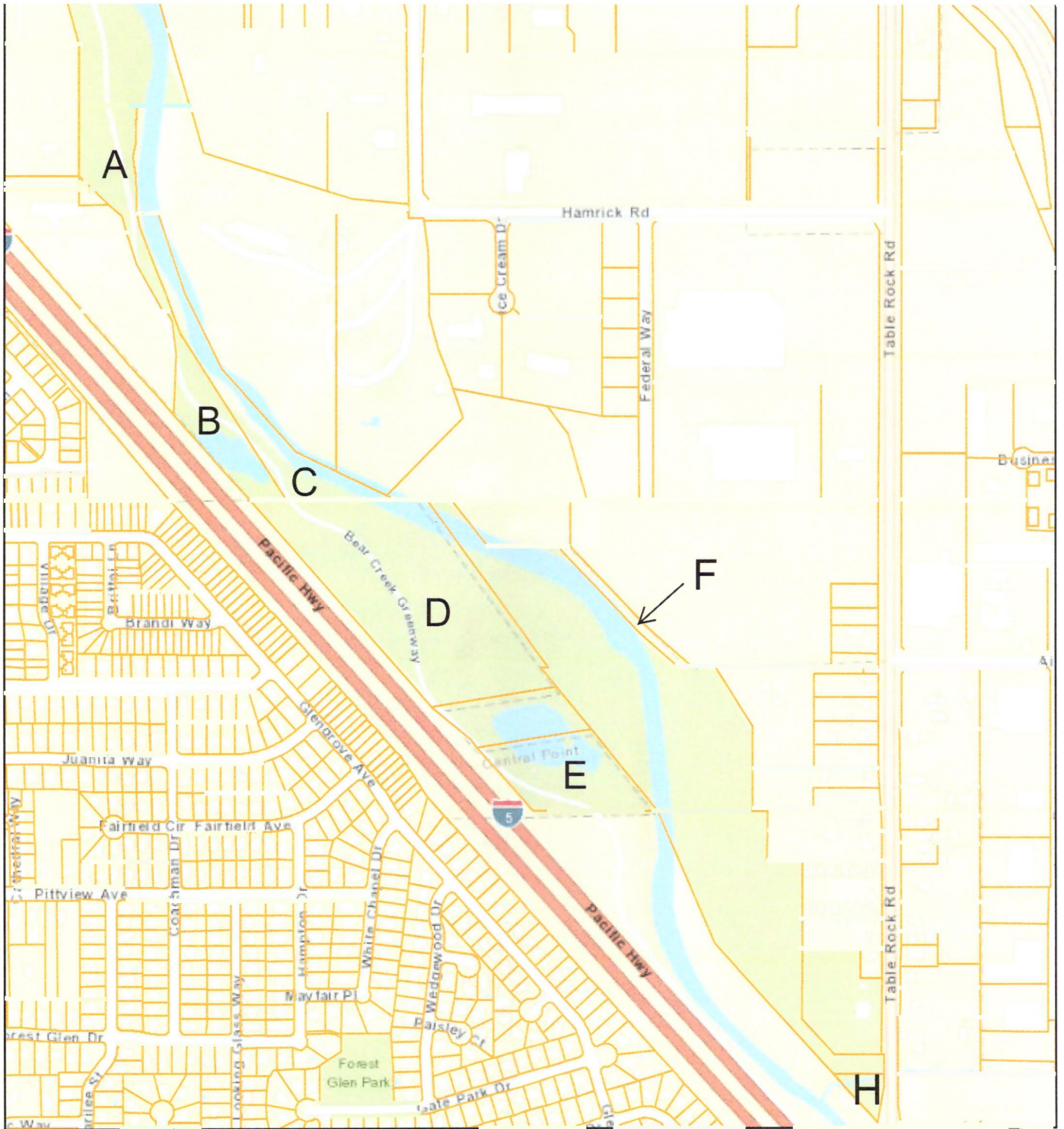
Date: , 2021

By:
Its:

EXHIBIT A
Legal Descriptions

To be provided.

Bear Creek Greenway Property Exchange Map



- Tract A: 37-2W-02D Tax Lot 2001
- Tract B: 37-2W-11A Tax Lot 102
- Tract C: 37-2W-11A Tax Lot 28100
- Tract D: 37-2W-12B Tax Lot 502
- Tract E: 37-2W-12B Tax Lot 505
- Tract F: 37-2W-12B Tax Lot 699
- Tract G: 37-2W-12C Tax Lot 301
- Tract H: 37-2W-12C Tax Lot 805

