**GRANT AGREEMENT – GRANT COUNTY DIGITAL NETWORK**

 This Grant Agreement – Grant County Digital Network (this “Agreement”) is made and entered effective on November \_\_\_, 2021 (the “Effective Date”) between City of John Day (“John Day”), an Oregon municipal corporation, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and City of Seneca (“Seneca”), an Oregon municipal corporation, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

RECITALS:

A. Mahogany Ridge Properties, LLC (“Company”), an Oregon limited liability company, owns certain real property located in Grant County, Oregon commonly known as 300 Barnes Avenue, Seneca, Oregon 97873, as more particularly described on the attached Exhibit A, together with the 1050 square foot commercial building and all other fixtures and improvements located thereon (collectively, the “Property”). The Property is depicted on the attached Exhibit B.

B. Pursuant to the terms of a certain Biannual Commercial Lease with Option to Buy dated January 1, 2021 (the “Lease”) between Company and John Day, John Day has the right and option to purchase the Property for a total purchase price not exceeding $85,000.00. John Day assigned its rights and interests in and to the Lease to Seneca effective as of the Effective Date.

C. Seneca desires to exercise the purchase option under the Lease. John Day is willing to grant Seneca $85,000.00 for Seneca’s payment of the purchase price provided, among other things, Seneca leases and otherwise makes the Property available to the Grant County Digital Network Coalition (“Coalition”), an Oregon intergovernmental entity organized under Oregon Revised Statues Chapter 190, and Grant County Cybermill (“Corporation”), an Oregon nonprofit corporation.

D. Subject to the terms and conditions contained in this Agreement, John Day will make the Grant (as defined below) to Seneca for the Permitted Use.

AGREEMENT:

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

 1. Grant of Funds; Disbursement Procedures.

 1.1 Grant. Subject to the terms and conditions contained in this Agreement, John Day will grant and disburse $85,000.00 to Seneca (the “Grant”). John Day will provide the Grant to Seneca for the Permitted Use and for no other purposes (as defined below). Seneca must use the Grant for the Permitted Use and for no other purpose.

 1.2 Conditions Precedent to Disbursement. John Day will not be obligated to disburse the Grant (or any portion thereof) to Seneca unless and until each of the following conditions have been satisfied or waived by John Day: (a) Seneca and Company must have entered into a purchase and sale agreement concerning Seneca’s purchase of the Property (which sale agreement will contain terms and conditions acceptable to John Day); (b) Seneca must have entered to lease agreements with Coalition and Corporation concerning the use of the Property (which lease agreements will contain terms and conditions acceptable to John Day); (c) Seneca has satisfied all other conditions identified under this Agreement; and (d) Seneca has satisfied any other conditions that John Day may impose on Seneca as a condition to John Day’s disbursement of Grant funds to Seneca

 2. Property; Commercial Leases.

 2.1 Property Purchase. Seneca will purchase the Property from Company no later than December 31, 2021. To the extent the Grant is insufficient to pay for the purchase, Seneca will be responsible for payment of the deficiency. Seneca will complete (or cause to be completed) the purchase expeditiously. The purchase will be completed in compliance with all applicable federal, state, and local laws, regulations, and/or ordinances (collectively, the “Laws”).

 2.2 Commercial Leases. Seneca will enter into certain commercial leases with Coalition and Corporation. The leases will provide Coalition and Corporation the right to use the Property for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 3. Representations; Warranties. In addition to any other representation and/or warranty made by Seneca under this Agreement, Seneca represents and warrants the following to John Day: (a) Seneca has full power and authority to sign and deliver this Agreement and to perform all Seneca’s obligations under this Agreement; (b) this Agreement is the legal, valid, and binding obligation of Seneca, enforceable against Seneca in accordance with its terms; (c) the signing and delivery of this Agreement and performance by Seneca of all Seneca’s obligations under this Agreement will not (i) breach any agreement to which Seneca is a party, or give any person the right to accelerate any obligation of Seneca, (ii) violate any law, judgment, or order to which Seneca is subject, and/or (iii) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

 4. Indemnification. Seneca will defend, indemnify, and hold JOHN DAY and each JOHN DAY officer, employee, agent, and representative harmless for, from, and against all claims, actions, proceedings, damages, liabilities, obligations, costs, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) Seneca’s completion of the Improvements, including, without limitation, payment for the Improvements; and/or (b) Seneca’s breach and/or failure to perform any Seneca representation, warranty, covenant, and/or obligation under this Agreement. This indemnification provision will survive the termination of this Agreement and the satisfaction of Seneca’s obligations to JOHN DAY under this Agreement.

 5. Defaults; Remedies. Seneca will be in default under this Agreement if Seneca breaches and/or otherwise fails to perform any Seneca representation, warranty, covenant, and/or obligation under this Agreement and/or any Loan Document. If Seneca defaults under this Agreement, John Day may exercise the following remedies, which remedies are cumulative and which may be exercised singularly or concurrently: (a) within ten (10) days after John Day’s written demand, Seneca will repay the Grant to John Day in full; and/or (b) any other remedy available to John Day under this Agreement, the Trust Deed, and/or at law or in equity.

 6. Miscellaneous.

 6.1 No Waiver. No failure and/or delay of John Day in exercising any right, power, and/or remedy under this Agreement will operate as a waiver of such right, power, and/or remedy of John Day or of any other right. A waiver of any provision of this Agreement will not constitute a waiver of or prejudice John Day’s right to demand strict compliance with that provision and/or any other provision. Any waiver, permit, consent, and/or approval of any kind or character on the part of John Day must be in writing and will be effective only to the extent specifically set forth in writing.

 6.2 Costs and Fees; Attorney Fees. Without otherwise limiting any other provision contained in this Agreement, Seneca will pay John Day immediately on demand an amount equal to all costs and expenses incurred by John Day in connection with the enforcement of this Agreement, including, without limitation, all recording costs, filing fees, inspection, collateral audits, and attorney fees. Notwithstanding the foregoing, if any arbitration, action, suit, and/or proceeding is instituted to interpret, enforce, and/or rescind this Agreement, 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, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

 6.3 Legal Representation; Notices; Attorney in Fact. The law firm of Bryant, Lovlien & Jarvis, P.C. has been employed by John Day to prepare this Agreement and such attorneys represent only John Day in this matter. Seneca has employed its own independent legal counsel to assist in Seneca’s review and negotiation of this Agreement (and any document referenced herein) or has knowingly waived its right to do so. Any notice required under this Agreement must be in writing. Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day.

 6.4 Successors; Severability; Governing Law. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns, except that Seneca may not assign or transfer any of its rights or obligations under this Agreement. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. This Agreement 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 this Agreement. Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon. Time is of the essence with respect to Seneca’s performance of Seneca’s obligations under this Agreement.

 6.5 Interpretation; Discretion. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. When John Day is exercising any consent, approval, determination, and/or similar discretionary action under this Agreement, the standard will be John Day’s sole discretion. For purposes of this Agreement, the term “person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

 6.6 Integration; Survival; Joint and Several. This Agreement comprises the entire agreement of the parties on the subject matter hereof and supersedes and replaces all prior agreements, oral and written, on such subject matter. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party. This Agreement may be amended only by a written agreement signed by each party. Seneca understands and agrees that in making the Grant, John Day is relying on all representations, warranties, and covenants made by Seneca in this Agreement and/or in any document, certificate, and/or instrument delivered by Seneca in connection with this Agreement. All Seneca representations, warranties, and covenants will survive the Grant disbursement and will be continuing in nature, and will remain in full force and effect until such time as Seneca has satisfied its obligations under this Agreement in full.

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

JOHN DAY: SENECA:

An Oregon municipal corporation  an Oregon municipal corporation

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By: Nicholas Green By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: City Manager Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit A

Legal Description

The subject real property is legally described as follows:

Exhibit B

Property Depiction