

4. Retain sediment by increasing depositional areas and increase aquatic and wildlife habitat by adding large woody material to the creek and its bank, where appropriate.
5. Encourage the establishment of native *Carex* (sedge), *Scirpus* (bulrush) and *Juncus* (rush) species in depositional and wetland areas along the stream bank
6. Reduce the amount of bare ground and increase the abundance of desirable, perennial plant species.
7. Reduce erosion and increase riparian shading.
8. Decrease available habitats for non-native noxious weed disbursement.
9. Improve water conditions within the project site.

Proposed Management Actions

1. Plant a diversity of wetland, herbaceous, and woody species in appropriate areas and develop a seeding/planting plan that incorporates seedbed preparation and planting on bare ground areas and sites supporting non-native vegetation. Initial planting will be at a much higher density than the objective. Less vigorous plants will subsequently be removed to achieve the desired density. A temporary and/or permanent irrigation system will be installed to ensure survival and vigor of riparian plants during summer months. This plan will also incorporate plantings to assist in naturally controlling erosion.
2. Periodic mowing of herbaceous species to encourage tillering, maintain plant community vigor and optimize competition with invasive plant species.
3. Control of existing invasive and undesirable plant species through the development of an integrated weed management plan, consulting with Crook County Weed Management for herbicidal application when needed.
4. Removal or pruning of live woody plants to maintain visual obstruction objectives.
5. Periodic removal of dead/downed woody material to limit available habitats for invasive plant species establishment.
6. Conduct routine maintenance activities including: removal of trash, irrigation system maintenance, and repair of existing improvements.

EXHIBIT E

GLOSSARY OF DEFINED TERMS

The following terms have the designated meanings in this Agreement:

“Affiliate” means with respect to any person or entity (i) any other person or entity, that directly or indirectly, controls, is controlled by, or is under common control with, such specified person or entity, or (ii) any person or entity that is an officer, director, general partner, or member of, or that serves in a similar capacity with respect to, such specified person or entity. Without limitation, a person or entity shall be deemed to be controlled by any other person or entity if such other person or entity possesses, directly or indirectly, the power to direct the management of the specified person or entity by a contract or otherwise.

“Agreement” means this Ochoco Creek Restoration and Enhancement Agreement and all attached Exhibits.

“City” means the City of Prineville, Oregon.

“City Code” means the Municipal Code of the City of Prineville, Oregon.

“City Council” or “Council” means the City Council of the City of Prineville, Oregon.

“Default” means failure to perform any obligation contained in this Agreement within ten days after notice from City specifying the nature of the default or, if the default cannot be cured within ten days, failure within such time to commence and pursue curity of the default with due diligence as soon as reasonably practicable.

“Effective Date” means the date first set forth in this Agreement.

“Environmental Standards” means all federal, state and local laws, ordinances, rules and regulations pertaining to the protection or regulation of the environment that apply to the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (defined herein), CERCLA (defined herein), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.

“Laws” means all laws, rules, regulations and ordinances that apply to the Project.

“Parties” means all of the City and Ochoco.

“Project” means the development of the Project Area.

“Project Area” means the real property designated as the Project Area on Exhibit A.

“Project Limits” refer to the specific line identified in the Legend of the Bussard Engineering Grading Plan dated September 20, 2007, and further constitutes sufficient setbacks required for the protection of the creek and the associated wetland in the Project Area.

“Restoration Area” means the real property designated within the Project Limits on Exhibit C.

**OCHOCO LUMBER MILL SITE
OCHOCO CREEK RESTORATION
AND ENHANCEMENT AGREEMENT**

Between:

**OCHOCO LUMBER COMPANY
AND
THE CITY OF PRINEVILLE**

July __, 2009

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EXHIBITS

Exhibit Description

Exhibit A – Legal Description

Exhibit B – Project Area

Exhibit C – Ochoco Creek Restoration and Enhancement Area - “Restoration Area”

Exhibit D – Proposed Landscaping Standards

Exhibit E – Defined Terms

SECTION 2 DESCRIPTION OF PROJECT

2.1 In General

Ochoco anticipates transformation of the Project Area into a vibrant, mixed-use district that is anticipated to include open space, improvements to Ochoco Creek, public access along the creek, light industrial, commercial, and retail facilities as well as a range of housing options.

The first step in proceeding with the ultimate development of the Project Area is the implementation of the Ochoco Creek Restoration and Enhancement Project is described below.

2.2 Ochoco Creek Restoration and Enhancement

The Ochoco Creek Restoration and Enhancement Project consist of those improvements to Ochoco Creek (the "Creek Improvements") within the Restoration Area. The Creek Improvements are not required under the Prineville Code of Ordinances, but Ochoco has elected to make the Creek Improvements as part of its voluntary effort to redevelop a key brownfield site. As further depicted on Exhibit C, the Restoration Area shows the location of (i) the top of bank, (ii) the existing and proposed stream channel, (iii) approximate locations of bridges, trails and footpaths, and (iv) setbacks ("Project Limits"). The wetlands and riparian areas have been provided to the City in the wetland delineation prepared by Ochoco. Stream and riparian improvements will be designed the Crooked River Watershed Council and its partnering agencies. Proposed landscaping standards governing the planting, trimming and removal of vegetation within the riparian area shown on Exhibit D (the "Landscaping Standards"). The Landscaping Standards also provide guidelines for the riparian area of Ochoco Creek. Ochoco has received grant funding to assist Ochoco with the Creek Improvements (the "Grant Funding"). The Creek Improvements may be subject to further agency review and approval, including, but not limited to approval by the Oregon Division of State Lands and the National Oceanic and Atmospheric Agency. Because of the multi-regulatory agency involvement to ensure protection of the stream and its associated habitat, this Agreement shall be automatically amended to include a reference to the Creek Improvements as approved by the Division of State Lands and other regulatory agencies having jurisdiction over the Creek Improvements and reviewed by Crooked River Watershed Council. Ochoco, in conjunction with the Crooked River Watershed Council, shall construct the Creek Improvements prior to any development on the site.

2.2.1 City Connection to Trails

Ochoco proposes to eventually construct a trail, or partner with agencies to construct the trail, as part of the Creek Improvements. Upon completion of the trail system as outlined in the Creek Improvements by Ochoco or its partnering agencies, the City and/or Crook County Parks and Recreation shall be allowed to connect the trails within the Restoration and Project Area to public trails or other footpaths located on adjacent properties.

2.2.2 Creek as Open Space

The entire Restoration Area shall be considered open space for the entire Project Area and, notwithstanding any future partition or subdivision of the Project Area, Ochoco shall be permitted

to rely on Ochoco Creek and the surrounding trails and riparian areas in the Restoration Area for open space calculations within the Project Area.

2.2.3 Goal 5, 6 and 7 Updates

The City is currently updating the Comprehensive Plan to incorporate elements of Statewide Planning Goals 5, 6 and 7 (the "Plan Amendments"). It is the express intent and understanding of the City and Ochoco that the Creek Improvements are consistent with the intent and objectives of the Plan Amendments. Therefore, the use and development of the Restoration Area within the Project Area (i.e. setbacks, landscape design, etc.) shall be controlled by Exhibits C and D of this Agreement rather than the general standards adopted in the Plan Amendments, or any future amendments to the Prineville Code of Ordinances or the Prineville Comprehensive Plan.

2.2.3.1 Landscape Maintenance Standards

Upon completion of the Creek Improvements, and at all times thereafter, Ochoco, in conjunction with the Crooked River Watershed Council, shall be solely responsible for the maintenance of the Creek Improvements located within the Project Area, including the planting, replanting, trimming and removal of vegetation consistent with Landscaping Standards. Notwithstanding any provision to the contrary in the Prineville Code of Ordinances, Ochoco shall have the right, without the need to seek any permit or other approval from the City, to maintain the Creek Improvements and other vegetation within the Restoration Area identified on Exhibit D to the Landscaping Standards.

SECTION 3 GENERAL PROVISIONS.

3.1 Environmental Conditions and Abatement

The Project Area is considered a brownfield, and Ochoco has entered the state Department of Environmental Quality's (the "DEQ") voluntary clean up program. Ochoco shall continue to coordinate its work with DEQ, and the Parties recognize that development of the Project Area may be subject to certain limitations or conditions imposed by the DEQ in connection with the environmental clean-up of the Project Area.

3.2 Permits and Approvals

Crooked River Watershed Council, in partnership with Ochoco Lumber Company, will be responsible for obtaining all permits, and any other approvals necessary to construct improvements within the Ochoco Creek Restoration and Enhancement Area.

3.3 Effect of Planning Documents

This Agreement sets out the terms and conditions for development in the Restoration Area that are intended by the Parties to comply with the City's land use regulations as of the Effective Date.

SECTION 4 EFFECTIVE DATE.

4.1 Effective Date

This Agreement is effective when all Parties have executed the Agreement, and this Agreement shall have an effective date which is the Effective Date first set forth above.

SECTION 5 MISCELLANEOUS PROVISIONS

5.1 Good Faith and Fair Dealing

The Parties shall have imputed to all of their duties, obligations, and acts performed under this Agreement, a standard of conduct of good faith and fair dealing.

5.2 Inspection of Records

Each Party agrees that, upon the reasonable prior notice from another requesting Party, it will make available to the requesting Party its records, reports and information pertaining to the Project for review, but not copying (unless agreed upon by the non-requesting Party), so as to inform the requesting Party and to enable the requesting Party to determine the other Party's compliance with the terms of this Agreement.

5.3 Confidentiality

Each Party agrees to keep as confidential any document or information identified by the originating Party as being confidential, by means of marking the document or information as being confidential. A Party agrees to only communicate confidential information to its legal counsel or as required by court order. In the event that the City is served with a request for the production of confidential information provided to the City, pursuant to ORS 192.410, *et. seq.*, then the City shall, at least seven (7) days before the City would make the confidential information available to the requesting party, provide Ochoco with a copy of the request, so that Ochoco may take steps to prevent the disclosure of the confidential information. However, the Parties acknowledge that, as a public entity, the City must comply with and will comply with ORS 192.410, *et. seq.*

5.4 Conflict of Interests

No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested.

5.5 Discrimination

The City and Ochoco, each for itself and its successor and assigns, agrees that in performing its obligations under this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

5.6 Governing Law; Venue; Jurisdiction

This Agreement shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Any action or suit to enforce or construe any provision of this Agreement by either party shall be brought in the Circuit Court of the State of Oregon for Crook County or the Federal District Court located in Multnomah County, Oregon. The Circuit Court of the State of Oregon for Crook County or the Federal District Court located in Multnomah County shall have exclusive jurisdiction over all lawsuits brought by any Party against any other Party with respect to the subject matter of this Agreement, and each Party hereby irrevocably consents to such exclusive jurisdiction and waives any and all objections it might otherwise have with respect thereto.

5.7 Notices

All notices given under this Agreement shall be in writing and shall be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

CITY: City of Prineville
Attn: Mr. Steve Forrester
387 NE Third Street
Prineville, OR 97754
(541) 447-5628 (Fax)
(541) 447-5627 (Telephone)

OCHOCO: Ochoco Lumber Company
Attn: Ms. Donna Barnes
P.O. Box 668
Prineville, Oregon 97754
(541) 447-8992 (Fax)
(541) 447-6296 (Telephone)

Any notice delivered by personal delivery or overnight courier shall be deemed received by the addressee upon actual delivery, and any notice delivered by certified mail shall be deemed received by the addressee on the third business day after deposit in the mail. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

5.8 Non-waiver

Waiver by any Party of strict performance of any provision of this Agreement shall not be deemed a waiver of or prejudice a Party's right to require strict performance of the same or any other provision in the future. A claimed waiver must be in writing and signed by the Party granting a waiver. A waiver of one provision of this Agreement shall be a waiver of only that provision. A waiver of a provision in one instance shall be a waiver only for that instance, unless the waiver explicitly waives that provision for all instances.

5.9 Non-waiver of Government Rights

Subject to the terms and conditions of this Agreement, by making this Agreement, the City is specifically not obligating itself, the City, or any other agency with respect to any police power or regulatory actions relating to development or operation of the Project Area or other improvements to be constructed in or near the Project Area, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required.

5.10 Survival

Any covenant or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its terms is to survive the termination of this Agreement, shall survive the expiration or earlier termination of this Agreement and shall remain fully enforceable thereafter.

5.11 Partial Invalidity

If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If a material provision of this Agreement is held invalid or unenforceable such that a Party does not receive the benefit of its bargain, then the other Parties shall renegotiate in good faith terms and provisions that will effectuate the spirit and intent of the Parties' agreement herein.

5.12 Headings, Table of Contents

The section headings and Table of Contents are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

5.13 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

5.14 Amendments

This Agreement may be modified only by a writing signed by the Parties.

5.15 Attorneys' Fees

If City seeks legal counsel because of a default in the performance of any of the terms of this Agreement, Ochoco shall pay, immediately on demand, City's reasonable attorney's fees, even though no suit of action is filed thereon and any other fees or expenses incurred by the City related to such default. However, City shall have no right to recover attorney's fees, other fees, or expenses if Ochoco is not in default. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U. S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations

hereunder, the prevailing party shall be entitled to recover its attorney, paralegal and all other fees, costs, and expenses actually incurred and reasonably necessary, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

5.16 Entire Agreement

This Agreement constitutes the entire agreement between the Parties as to the subject matter covered by this Agreement.

5.17 Successors and Assigns

The rights, obligations, liabilities, and remedies provided in this Agreement shall extend to the successors-in-interest of the Parties and to the transferees and assignees of the Parties.

5.18 Interpretation of Agreement; Status of Parties

This Agreement is the result of arm's-length negotiations between the Parties and shall not be construed against any Party by reason of its preparation of this Agreement. Nothing contained in this Agreement shall be construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship between the Parties.

5.19 Future Assurances

Each of the Parties shall promptly execute and deliver such additional documents and shall do such acts that are reasonably necessary, in connection with the performance of their respective obligations under this Agreement so as to carry out the intent of this Agreement.

5.20 Exhibits

The Exhibits attached to this Agreement are an integral part of this Agreement and are fully incorporated into this Agreement where they are referenced in the text of this Agreement.

5.21 Memorandum of Restoration Agreement

The Parties agree to execute, deliver and record, against those properties in the Project Area owned by Ochoco as of the Effective Date, a memorandum of this agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates shown below.

CITY:

THE CITY OF PRINEVILLE, an Oregon municipal corporation

By: Steven Forrester
Its: City Manager

OCHOCO:

OCHOCO LUMBER COMPANY, an Oregon limited
partnership

By: OCHOCO MANAGEMENT, INC., an Oregon
corporation

Its: General Partner

By: Bruce Daucsavage
Its: President