

**UMATILLA CITY COUNCIL MEETING
A G E N D A
COUNCIL CHAMBERS
JANUARY 15, 2019
6:00 P.M.**

1. MEETING CALLED TO ORDER

2. ROLL CALL

3. CITY MANAGER'S REPORT

- 3.1 Appreciation for Heidi Sipe
- 3.2 Tree City USA *pages 1 -5*
- 3.3 Police Department Quarterly Report *pages 6 -11*
- 3.4 City Manager's Quarterly Report *pages 12 - 21*

4. DISCUSSION ITEMS

- 4.1 Council Policies and Procedures *pages 22 - 41*
- 4.2 City of Umatilla Policy for Public Contracting and Purchasing *pages 42 -81*
- 4.3 Sanitary Sewer Agreement with Vadata *pages 82 -119*
- 4.4 RWS Franchise Agreement *pages 120 - 128*
- 4.5 Cascade Natural Gas Easement *pages 129 -138*
- 4.6 Anacapa Land – Accept Deed *pages 139 -146*
- 4.7 Lind Road Agreement *pages 147 -149*

5. ADJOURN

This institution is an equal opportunity provider. Discrimination is prohibited by Federal law. Special accommodations to attend or participate in a city meeting or other function can be provided by contacting City Hall at (541) 922-3226 or use the TTY Relay Service at 1-800-735-2900 for appropriate assistance.

CITY OF UMATILLA, OREGON

AGENDA BILL

Agenda Title:

Tree City USA Application

Meeting Date:

January 15, 2019

Department:

Community
Development

Director:

Tamra Mabbott

Contact Person:

Tamra Mabbott

Phone Number:

541-922-
3226x101

Cost of Proposal:

n/a

Amount Budgeted:

\$15,000.00

Fund(s) Name and Number(s):

n/a

Reviewed by Finance Department:

Yes – M.Ince

Attachments to Agenda Packet Item:

Memorandum, application for Certification signed by previous Mayor, Dufloth, planning calendar and Arbor Day Observance Proclamation.

Summary Statement:

Reporting to council status of Tree City USA application, history and goals for the upcoming year.

Consistent with Council Goals:

MEMORANDUM

TO: MAYOR AND COUNCIL
FROM: ESMERALDA HORN, COMMUNITY DEVELOPMENT COORDINATOR
SUBJECT: TREE CITY USA APPLICATION
DATE: 1/10/2019

On April 1st 2014, City of Umatilla adopted an ordinance establishing an urban tree management program to develop a city-wide tree management strategy and to facilitate best practice in planting, care, maintenance and removal of trees.

Fast forward 2018, City Manager, Russ Pelleberg wanted the city to be recognized as a *Tree City*. In order to be recognized as a Tree City there are many requisites the city had to meet such as:

- Ordinance in place for the care and management of trees.
- Proclamation for the observance of Arbor Day.
- Arbor Day Observation and Festivities
- Tree planting
- Budget \$2 per capita
 - Tree Planting - \$2,000
 - Tree Maintenance - \$1,000
 - Tree Removals - \$10,000
 - Arbor Day Supplies - \$2,000
- Calendar forecasting the care of trees

Since this was our first year applying, we partnered with the school district to observe Arbor Day along with their Earth Day Festivities. We presented to the students the importance of trees in our community. Along with the presentation, goody bags were given to the students. On actual Arbor Day, City planted a tree at Kiwanis Park with the help of local residents and did a tree give-a-way raffle for residents.

We worked on meeting all other criteria throughout the year which has been met.

Why do we want to become a *Tree City*?

Becoming a Tree City allows us to be able to apply for grants to help subsidize the purchase of trees and along with that it is a national recognition!

At this time our application has been approved at the state level we are now waiting for Tree City USA to accept the application.

PROCLAMATION FOR ARBOR WEEK AND DAY

WHEREAS, National Arbor Day has been an occasion for recognizing the value of trees and their positive benefits to human welfare since 1872; and,

WHEREAS, the Arbor Day holiday, was first observed with the planting of more than a million trees in Nebraska; and,

WHEREAS, Arbor Day is now observed throughout the nation and the world; and,

WHEREAS, trees are significant resources providing benefits in terms of storm water reduction, moderating temperatures, improved air quality, increased real estate values, energy savings, enhanced economic vitality of business areas, wildlife habitat, and the attractiveness of our community; and,

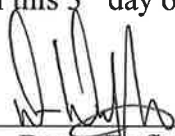
WHEREAS, trees wherever they are planted, are a source of joy and spiritual renewal; and,

WHEREAS, the City of Umatilla, Oregon, desires to be known as a “*Tree City USA*”; and,

WHEREAS, programs like Tree City USA and the Arbor Day holiday are opportunities for us to plant and maintain trees for the future, and we urge all of our citizens to plant and protect our community’s trees.

NOW, THEREFORE, I, Daren Dufloth, by virtue of the authority vested in me as the Mayor of the City of Umatilla, Oregon, do hereby proclaim the week of April 16, 2018 through April 22, 2018 as *ARBOR WEEK* in the City of Umatilla, Oregon and Friday, April 27, 2018, as *ARBOR DAY* in the City of Umatilla, Oregon, and urge all citizens to support efforts to care for and maintain trees in our community.

Adopted by the City Council this 3rd day of April, 2018.



Daren Dufloth, Mayor

PLANNING CALENDAR

2019

CITY OF UMATILLA FORESTRY PROGRAM

JANUARY <ul style="list-style-type: none">• Tree planting plans	FEBRUARY <ul style="list-style-type: none">• Start planning Arbor Day/Week/Month events.	MARCH <ul style="list-style-type: none">• Continue with Arbor Day event planning• PW Tree pruning• PW Tree maintenance
APRIL <ul style="list-style-type: none">• Arbor Day Ceremony (Umatilla School District)• Tree planting finished• Host tree pruning workshop	MAY <ul style="list-style-type: none">• Tree inventory• Tree inspections	JUNE <ul style="list-style-type: none">• Attend Annual Oregon Urban Forestry Conference
JULY <ul style="list-style-type: none">• Plan next year's tree planting	AUGUST	SEPTEMBER <ul style="list-style-type: none">• Finalize tree planting plans for next year
OCTOBER <ul style="list-style-type: none">• Tree Board Work Session	NOVEMBER <ul style="list-style-type: none">• Work on TCUSA application• Start tree removal process thru January.	DECEMBER <ul style="list-style-type: none">• Finish and submit TCUSA application• Order trees for winter/spring planting

Print this page

Tree City USA



TREE CITY USA

2018 Application for Certification

The Tree City USA award is in recognition of work completed by the community during the 2018 calendar year.

As Mayor or Equivalent of the Community of Umatilla

I herewith make application for this community to be officially certified/recertified as a Tree City USA for 2018, having achieved the standards set forth by the Arbor Day Foundation as noted below.

Standard 1: A Tree Board or Department

Community has both a Tree Board and a Department Chair or City Manager/Official

Department Chair/City Manager

David Stockdale Dept Chairperson 541-922-3226 dave@umatilla-city.org

Tree Board Chair

Bill Meade Tree Board Chairperson 541-922-3226 bmeade1915@outlook.com

Standard 2: A Community Tree Ordinance

✓ Our community ordinance is on record

Standard 3: A Community Forestry Program with an Annual Budget of at Least \$2 Per Capita

Total Community Forestry Expenditures \$15000

Community Population 7245

Per Capita Spending \$2.07

Standard 4: An Arbor Day Observance and Proclamation

✓ Official Arbor Day proclamation is on record

Mayor or Equivalent Signature

MAJOR
Title

12/10/18
Date

Application Certification

To Be Completed By The State Forester:

Umatilla

The above named community has made formal application to this office. I am pleased to advise you that we reviewed the application and have concluded that, based on the information contained herein, said community is eligible to be certified as a Tree City USA community, for the 2018 calendar year, having in my opinion met the four standards required for recognition.

State Forester Signature

Title

Date



Print this page

Umatilla Police Department

QUARTERLY REPORT - October through December 2018

Patrol

During the second quarter of FY19 calls for service/self-initiated activity increased by 46% from the second quarter of FY18, from 2,057 to 3,003.

Response times and average time spent on each call continue to be fairly consistent in providing 24/7 coverage.

	FY19	FY18
Total Dispatched Incidents	465	532
Average Response Time	7:27	7:08
Average Time per Incident	37:13	40:56

Police Department Overtime

During the second quarter of FY19, the department was operating with two full time officer vacancies, had one officer on military leave and had one officer attending the basic recruit academy. A lot of the overtime hours this quarter can be attributed to the scheduled holidays and the added holidays approved by Council.

FY19	FY18
Second Qt. Hours of OT	Second Qt. Hours of OT
164	59

Staff Meetings

During the second quarter of FY19, regular staff meetings were conducted on October 12th and November 7th. On December 7th, instead of our staff meeting, we had our annual family holiday dinner at the police department. Supervisor meetings were conducted prior to regular staff meetings on the above listed dates.

Training

Year to date training hours combined with pre-scheduled training for department personnel is approximately 697 hours for patrol officers and support personnel and 460 hours for supervisory personnel. Total training for second quarter FY19 was approximately 378 hours.

Second quarter FY19 training included:

- Chief Huxel attended various leadership related training which included use of force, deadly force, officer involved shootings, background investigations and attending the OPOA Conference. Chief also instructed 3.5 hours of required annual maintenance to staff members. (Annual maintenance this quarter included Bias-based policing, ethics, PREA and workplace harassment.)
- Lt. Kennedy received training in Incident Command and annual maintenance.
- Sgt. Wright received training in background investigations, annual training and First Aid/CPR/AED. He also attended the CIT conference in Washington.
- Sgt. Tovey completed her 80 hours of Supervisory training at DPSST and attended training in background investigations, tactical medical response for first responders and annual maintenance.
- Officer Adams received training in tactical medical response for first responders, First Aid/CPR/AED and annual maintenance.
- Officer Capers received training in Defensive Tactics Instructor certification and annual maintenance.
- Officer Holden received training in tactical medical response for first responders, First Aid/CPR/AED and annual maintenance.
- Officer Claustro completed her 16 weeks of training at DPSST. In addition to those hours she also completed training in SFST/DID and Lidar/Radar operations, tactical medical response for first responders, and First Aid/CPR/AED.
- Officer Skillman completed her Field Training Manual for submission to DPSST for her Basic Police Officer certification. She also received training in First Aid/CPR/AED and annual maintenance.
- Officer Vandever received training in annual maintenance.
- Support staff (Baker, Zita & Eddy) received training in annual maintenance.
- Reserve officers received a total of 23 hours of various training which included tactical medical response for first responders, First Aid/CPR/AED and annual maintenance.

Reserves

- Police Reserve Officers contributed approximately 72 hours volunteer time during the second quarter. The total number of hours the Reserve Officers volunteered for the entire FY19 year was 233 hours. The annual number is down from previous years due to various personal excused absences such as maternity leave, weddings and regular employment requirements.

Community/School

- October Events – Participated in the annual Trick or Treat on Main with our haunted house. Participated in the Red Ribbon Week at the school. Celebrated work anniversaries for Reserve Officer Leon (4 years) and Officer Gamble (1 year).
- December Events – Hosted the annual (since 2005) Shop with a Cop event.

- Celebrated work anniversaries for Chief Huxel (22 years) and Officer Adams (3 years).

Juvenile

During the second quarter of FY19, calls involving juveniles decreased 3% from second quarter FY18 from 22 to 18. Cases/incidents involving juveniles include all juvenile complaints/contacts, runaways and minor in possession of alcohol or tobacco. Some of these cases/incidents were referred to our Community Accountability Board which generally will see cases/incidents for first time offenders of violations or misdemeanor classed crimes. Future reports will provide referrals to the CAB program as well as the Community Truancy Board.

Sex Crimes/Registrations

- There were 4 sex crimes reported and 4 sex offender registrations completed this quarter. This is the exact same number reported in FY18.

Traffic Infractions

- During the second quarter of FY19 the Umatilla PD conducted 495 self-initiated traffic stops/traffic complaints. As a result, 232 traffic infractions were issued, which resulted in a traffic infraction citation being issued approximately 47% of the time. This figure includes both criminal and non-criminal traffic infractions.

Traffic Citations - Second quarter of FY19 indicates a 12% increase from second quarter of FY18. Offenses that are tracked include:

- Speed
- Traffic Control Devices
- Insurance/Registration
- No Operators License
- Driving While Suspended
- Equipment violations

Traffic Crashes – Second quarter of FY19 indicates a 1% increase from second quarter of FY18 from 27 to 29.

Summary

As stated earlier, during the second quarter of FY19, calls for service have increased by 46% from the second quarter of FY18, 2,057 to 3,003. We saw a decrease in Person Crimes/Incidents by 49% as well as a decrease in Property Crimes/Incidents by 43%. The most significant reduction in Person Crimes/Incidents was in Domestic Disturbances from 21 in FY18 to 8 in FY19. The most significant reductions in Property Crimes/Incidents were seen in Thefts from 44 in FY18 to 25 in FY19 and in UUMV/UEMV from 16 in FY18 to 4 in FY19. We are also seeing an increase in arrests by 32%.

- **Person Crimes/Incidents, - Second Quarter FY19/FY18.**

FY19	FY18
34	51

Person Crimes/Incidents include the following:

Abuse – both elder abuse and child abuse

Assaults – all types and severities

Domestic Disturbances

Harassment and stalking complaints

Robberies – all types and severities

Kidnapping

Menacing

- **Property Crimes/Incidents, - Second Quarter FY19/FY18.**

FY19	FY18
29	45

Property Crimes/Incidents include the following:

Fraud/Forgery

Burglary

Criminal Mischief

Drug Activity

DUII – Driving under the influence of intoxicants

Thefts – all types and severities

Trespass

UUMV/UEMV (Unlawful Use Motor Vehicle/Unlawful Entry Motor Vehicle)

Snapshot All Offenses - FY19		Snapshot All Offenses - FY18	
Offense	Amount	Offense	Amount
Assaults	8	Assaults	8
Burglary	6	Burglary	5
Criminal Mischief	9	Criminal Mischief	16
Drug/DUII	22	Drug/DUII	21
Warrants	12	Warrants	28
Forgery	10	Forgery	5
Theft	25	Theft	44
Trespass	22	Trespass	26
UEMV	1	UEMV	6
UUMV	3	UUMV	10
TOTAL	96	TOTAL	104
Arrests	54	Arrests	41
Assists	78	Assists	56

*(Note: The above table will be changed to better reflect future quarterly report information listed above. As presented here, the information is consistent with the summary reports that City Council has been receiving from 2010 through 2018.)

Arrests- Third quarter of FY19 indicates a 32% increase from third quarter of FY18.

FY19	FY18
54	41

Other notable items of interest:

Mental health – Officers continue to have contact with persons who are having mental health issues or are in crisis. Our FY19 number for calls dealing with mental/suicidal subjects are consistent with FY18, 11 and 12 respectively. I, along with many of my Chief colleagues, continue to have conversations with Senator Hansell and Representative Smith of the ongoing problems in dealing with this population in our community.



CITY MANAGER'S QUARTERLY REPORT

2nd Quarter

FY 2018-2019



INTRODUCTION TO CITY MANAGER'S REPORT

As part of our effort to be transparent and to effectively community with the public, and to ensure that all elected officials receive accurate and timely information, I provide to the City Council and to the residents and visitors of Umatilla this City Manager's Quarterly Report. This report provides performance and status updates, budget information, goal monitoring, and visioning information. The primary purpose is to provide an avenue for staff to report on current and upcoming projects, focus on outcome-based objectives in the current year and future years, celebrate accomplishments, update on progress of services and projects, and to deliver information that is informational and helpful to our residents and elected officials. The information in this report is compiled internally, analyzed, and then organized for presentation.

I genuinely hope that you find this report helpful and informative. It is also my hope that this report will be considered as an historical reporting of those items which are important to Umatilla City life and of the accomplishments and challenges of our great community!

Dave Stockdale
Umatilla City Manager

HIGHLIGHTED ACCOMPLISHMENTS & PROJECT STATUS UPDATES

This section is designed to report on all things happening throughout the City, such as public improvement projects, ongoing contract negotiations, transportation projects, technology investments, operational changes or improvements, community and economic development, general livability, and grants or awards.

WHAT'S HAPPENING (numbers are for reference only, not priority):

1. The City, in collaboration with the Umatilla Chamber and the community, hosted a "Meet the Candidates Forum" to select our new **City Manager**. Dave Stockdale was the unanimous selection by the City Council. His first day was October 16, 2018. Dave brings more than thirteen years of government experience as well as professional government consulting work, including work at the Oregon State Treasurer's Office, City of Coburg Oregon, Lane County Oregon, and Prosser Washington, and as the President and founder of CC&S Management Services.



2. The **Kiwanis Park Improvement Project** is moving forward nicely and is on budget and on schedule to be ready in spring. An all-new paved court has been installed as well as hoops and benches. Lighting is scheduled for installation in February/March. Play equipment has been purchased and received at the City Shops and is scheduled for installation in March/April. Consideration of an all-new restroom is being researched and plans to purchase and install such will



3. Staff held two rounds of interviews for the vacant **Public Works Director** position in October and December. Scott Coleman was selected as the new Director. Scott comes with more than 20 years of professional experience with his most recent experience of more than ten years as a manager and supervisor for Sunnyside Valley Irrigation District (Sunnyside, WA). His project management experience and his vast knowledge of water management will prove exceptionally beneficial to our City, particularly at this important time for growth. Scott was recommended as the unanimous candidate from the interview panel that consisted of six public works employees, other department directors, and the City Manager. I hope that we will all be sure to take the time to welcome Scott to our great team!



4. Work on the **6th Street Waterline Replacement Project** began in late October and is on budget and on schedule. Work is scheduled to be completed by mid-March. This project abandons the existing main waterline along areas of 6th St. and installs approximately 3,600 linear feet of all-new water main and replaces many hydrants and meters along the construction area. This

project is funded by Business Oregon Loan and will be submitted to the Oregon Bond Bank. Staff has worked closely with the contractor (Jesse Rodriguez Construction), our contracted engineer (JUB Engineering), Oregon Department of Transportation (ODOT), the State Historic Preservation Office (SHPO), and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in the coordination of this project. Construction was temporarily halted in late November to resolve a boundary issue regarding a SHPO protected area. That issue saw quick and exceptionally work by ODOT and SHPO staff to assist the City in getting to a positive resolution, resulting in no significant construction delays and with no additional costs to the City. We thank the exceptional, high level, and timely professionalism and response from each organization and for demonstrating their commitments to be a trusted and vital partner in our improvement efforts.



5. Work towards the completion of the **Phase I Industrial Wastewater (IWW) Line** continues. This project designs an industrial wastewater line to convey water from Vadata’s PDX2 campus to a nearby irrigation canal. This project is funded by Business Oregon’s Special Public Works Fund.



This quarter’s work focused on the necessity to realign the pipe due to our inability to procure all necessary easements along the originally preferred designed route. Staff reviewed with JUB whether an increase of the original 18” pipe design to a 24” pipe would be in the best interest of the City. It was determined that the 18” line is sufficient for current and significant future growth. This project has a \$320,000 budget, of which all has been spent. Future work according to

the original scope will continue until completion at no additional cost to the City per agreement with JUB (the task order has a not-to-exceed clause of \$320,000). However, additional survey, easement preparation, and redesign are necessary in order to properly complete this project. This work is outside of the original scope. Staff will be coming to Council in January/February to discuss this issue further and to request Authorization for Additional Services.

- Project Concerns include: 1) need for additional funds to cover costs associated with additional surveying, easement preparation, and redesign, 2) outfall construction timeline, and 3) impacts on our Wastewater Treatment Plant in

2019 since this project will not be completed until fall of 2019 rather than April as originally anticipated.

6. Planned construction for the **Phase I Industrial Wastewater Line** is scheduled to begin in late-summer. This project is funded by the Oregon Clean Water State Revolving Fund. Construction is delayed until late-summer rather than this winter due to the complexities of design and construction allowances from our partners (irrigation district, etc.).
7. The **Bonney Lane Industrial Discharge Facility Project** is also ongoing. This project utilizes the IWW to provide services to Vadata's PDX63 facility and also includes sanitary sewer lines. This project on budget with construction/timeline dependent upon the revised terms of our NPDES permit. The project is funded by City Sewer funds which will be reimbursed by Vadata.

8. For at least the 15th year in a row the Police Department coordinated with the Middle School for the annual **Shop with a Cop** event. \$1,500 was available for ten students (\$150/each). No City funds were spent on this event, with dollars coming from a Wal-Mart grant, the police officers' association, and through an anonymous donor. The event was well covered in the local paper and is a now long-cherished tradition of our Police Department.



9. The annual **Trick or Treat on Main Street** event was held in our community with more than 30 downtown businesses participating. Young people and their families came from throughout our community for the good time. It is estimated that at least 600 people participated this year. Nearly all businesses participated with fun and spooky Halloween themed decorations. City Hall was decorated to the hilt, courtesy of our amazing City Hall staff, in "Trolls" themed décor. It was a great way to directly interact with the public and just a terrific community event.



10. The City was **awarded multiple grants** for some very important projects.
 - In partnership with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) the City received a \$10,000 contribution from them toward the completion of a vegetation management plan for an area of Umatilla Village/Old Town.
 - The City was also awarded a "No-cost working relationship" award from the Department of Land Conservation and Development (DLCD) to assist the City with determining our housing needs and to specifically focus on increasing the supply of affordability of housing and to complete a Housing Needs Projects and Buildable Lands inventory.

- We received \$4,000 from the City of Hermiston for our newly created Subsidized Transportation Service for Senior and Disabled Citizens program.
- We received a \$1,000 grant from the Oregon Infrastructure Authority to assist the City in receiving current and future Community Development Block Grants
- We received \$800 from the Hermiston Kiwanis Club for the purchase of lights for the basketball courts at Kiwanis Park in McNary.

HIGHLIGHTED CHALLENGES & COMMITTED ACTIONS

This section is designed to report on some of the minor to significant current challenges of the City, to provide some insight on some of the day-to-day operational challenges of managing our City, and to demonstrate ways in which we are taking action to address these challenges.

1. The City is **weak in approved administrative policies**. The lack of some basic foundational policies like a Procurement Policy, Adopted Council Rules, Adopted Personnel Manual, and others may open the City up to some risk and liability. Staff will be bringing draft policies to Council for review and consideration during the 3rd Quarter.
2. **Rapid growth in Industrial, Commercial, and Residential is here**. The City lacks all the necessary resources to most efficiently manage and administratively meet this growth. The lack of our own Building Official/Inspector, likely insufficient software to adequately monitor processing documents/applications, and historical “Umatilla Specific” experience (the entire Community Development Department is less than 18 months old, the City Manager is less than three months at the City, the Public Works Director is less than 1 month at the City, etc.) is low (*though, it should be pointed out that the Community Development Director and City Planner have significant Umatilla County experience that is crucial and well received*). The City will need to grow in each of these weaknesses: invest in a Building Official position, explore/evaluate best technologies and software solutions, and continue to grow our Umatilla Specific experience.
3. **Public Trust is low to moderate**, but looks to be on the right track for improvement. The best way we can address this issue is to do just this... we need to admit and acknowledge that the City’s recent history has not bode well in securing and strengthening the Public’s Trust. Our new City Council is committed to providing higher accountability and increased transparency to our residents and visitors of our great community. Staff will be bringing some suggestions and solutions to Council in the 3rd Quarter on ways in which we can open up our local government and provide better access to documents, staff, elected officials, spending, plans, and much more.
4. In general, **resources are insufficient, but getting better**. Our Water Fund reserves are dangerously low and our lack in investment in vital infrastructure and equipment over the past decade or more is now starting to show its ugly consequences. Crucial equipment in Public Works is more than 35 years old in several instances and the costs and opportunity costs associated with use of this equipment is high. There are several pieces of equipment that the City should own, but does not. Staff will hire a Fleet Management consultant that will work closely with the Public Works Director and others to analyze our existing inventory and current and future needs.

5. There are **moderate to significant discrepancies in our City Charter and our City Code**. This often leads to confusion and frustration on how we operate and conduct business. Sometimes, resulting in the loss of private investment (think businesses and housing) in our community. Staff will be bringing suggested Code revisions to Council for consideration in 4th Quarter.
6. Some of our **relationships with our community partners and other government agencies are poor to moderate, but getting better**. Delays in communication and ambiguous communication at times, as well as poor follow-up or follow-through on the City's part in the recent past appear to be the major culprit here. Although, it should also be noted that some of our partners made and implemented significant decisions that had direct impacts on the City without involving or even consulting the City prior to making such decisions. As the City grows, we all must adjust and adapt, including our partners who are not used to interacting with Umatilla as a major contributor to the local government scene. Staff is committed, and has been for at least the past six months, to be better communicators with our partners and to be better with our follow-through. Significant improvements have been made in these relationships in the past six months and the future looks bright on continuing to improve these relationships.

REPORTS

Parks Vandalism/Graffiti:

There were zero instances of vandalism or graffiti in our Parks in the 2nd Quarter. To-date, there have been four (4) instances of graffiti removed throughout the City, including on private property. Any graffiti that is on city-owned property is immediately removed. On private property, if staff is able to reasonably cover up or remove, we contact the property owner and remove immediately with permission. We do this because we have found that any graffiti in our community that remains visible, often invites for additional vandalism. It is in the best interest of the City that any and all graffiti be removed as quickly as possible.

CHECKS/EFT PAYMENTS ISSUED

Quarter	# of Payments
1 st Quarter	396
2 nd Quarter	403
3 rd Quarter	
4 th Quarter	
TOTAL:	799

ELECTRONIC PAYMENTS RECEIVED

Quarter	Marina	All Others
1 st Quarter	1,559	6,638
2 nd Quarter	560	6,340
3 rd Quarter		
4 th Quarter		
TOTAL:	2,119	12,978

BILLS SENT OUT

Quarter	# Sent Out
1 st Quarter	5,027
2 nd Quarter	5,073
3 rd Quarter	
4 th Quarter	
TOTAL:	10,100

Domestic Water System Information

	Total (MG)		
	FY17	FY18	FY19
July	68.94	80.42	81.09
August	71.65	74.98	74.89
September	48.37	48.51	53.91
October	29.79	28.17	32.42
November	20.82	18.05	20.21
December	21.82	18.67	19.12
January	21.01	17.42	
February	18.05	15.63	
March	21.28	19.17	
April	25.89	28.25	
May	51.20	50.22	
June	66.48	59.49	
TOTAL:	465.30	458.98	281.64

Wastewater System Information

	Influent Flow (MG)			Effluent Flow (MG)		
	FY17	FY18	FY19	FY17	FY18	FY19
July	24.46	30.30	27.30	25.15	31.39	27.99
August	25.85	28.06	25.29	26.37	28.93	25.89
September	22.85	22.84	21.60	23.63	23.66	22.65
October	21.4	20.73	21.10	22.55	22.06	22.42
November	18.50	17.29	18.13	20.17	19.57	19.09
December	16.82	17.48	18.97	19.06	18.72	19.67
January	17.29	17.91		19.24	19.51	
February	16.28	16.00		18.26	17.23	
March	19.00	18.22		20.98	19.70	
April	19.53	19.96		21.35	21.18	
May	23.36	22.87		24.56	23.56	
June	26.03	22.77		27.27	23.47	
TOTAL:	251.37	254.43	132.39	268.59	268.98	109.72

Total Number of Solid Waste Customers

	FY17	FY18	FY19
Residential			1,392
Commercial/Industrial			98
Cardboard			9
Drop Box			68
TOTAL:			1,567

of Permits Issued

Quarter	# of Permits Issued	\$ Value	Fees Collected
1st Quarter	101	\$45,107,336	\$464,242
2nd Quarter	51	\$15,799,181	\$165,702
3rd Quarter			
4th Quarter			
TOTAL:	152	\$60,906,517	\$629,944

Development Analysis

Calendar Year	New Construction Value
2010	\$307,076
2011	\$9,007,825
2012	\$7,972,529
2013	\$11,771,353
2014	\$25,227,706
2015	\$18,568,537
2016	\$17,783,986
2017	\$27,534,381
2018	\$48,247,823

CITY OF UMATILLA, OREGON

AGENDA BILL

Agenda Title:

Res XX-2019 – A Resolution Defining City Council Policies and Procedures and Repealing Resolution 14-87

Meeting Date:

January 15, 2019

Department:

Administration

Director:

Dave Stockdale /
Melissa Ince

Contact Person:

Melissa Ince

Phone Number:

541-922-
3226x104

Cost of Proposal:

n/a

Amount Budgeted:

n/a

Fund(s) Name and Number(s):

n/a

Reviewed by Finance Department:

Yes – M.Ince

Attachments to Agenda Packet Item:

Draft Resolution XX-2019, City of Umatilla Council Policies & Procedures

Summary Statement:

Chapter III, Section 10 of the Umatilla Charter states that the Council will adopt rules to govern its meetings. The last set of approved policies and procedures was created in 1986. Both Council and staff recognize the need to update and provide a more comprehensive set of policies and procedures. Several department heads performed a comprehensive review of other agency policies and have compiled the best components into a single policy for your review.

Consistent with Council Goals:

RESOLUTION NO. XX-2019

**A RESOLUTION DEFINING CITY COUNCIL POLICIES AND PROCEDURES AND
REPEALING RESOLUTION NO. 14-87**

WHEREAS, Chapter III, Section 10 of the Umatilla Charter states that the Council will adopt rules to govern its meetings; and,

WHEREAS, the City Council last approved a set of Council policies and procedures on November 17, 1986; and,

WHEREAS, both the City Council and City staff recognize the need for an update to the current set of Council policies and procedures,

NOW, THEREFORE, BE IT RESOLVED that the following policies and procedures shall be adhered to by the legislative body of the City of Umatilla; and

RESOLVED that Resolution No. 14-87 is hereby repealed.

PASSED by the Council and **SIGNED** by the Mayor this 5th day of February, 2019.

Mary Dedrick, Mayor

ATTEST:

Nanci Sandoval, City Recorder

CITY OF UMATILLA

COUNCIL POLICIES & PROCEDURES

Adopted

Table of Contents

Agenda..... 3

Agenda Bill 3

Agenda Packet 3

Annual Report of Boards, Commissions, Committees, and Neighborhood Associations 3

Attendance 3

Bias and Disqualification 3

City Communications..... 4

City Manager Evaluation 4

Code of Conduct 4

Communication with Staff..... 4

Conferences and Seminars 5

Confidentiality 5

Conflict of Interest..... 5

Consent Agenda 6

Council Rules 6

Council Standing Committees 6

Emergency Meetings 6

Ethics and Professional Conduct 6

Ethics or Professional Conduct Violations..... 7

Executive Sessions 7

Exhibits 8

Ex Parte Communications..... 8

Ex-Parte Contacts and Disqualifications..... 8

Expenses and Reimbursement 8

Filling a Vacancy of the Mayor or Council 8

Filling Vacancies on Boards, Commissions and Committees..... 9

Flags, Signs and Posters..... 9

Gifts and Recognition 9

Legal Advice..... 10

Litigation..... 10

Mayor and City Council Reports 10

Meeting Staffing 10

Meeting Times	10
Minutes.....	10
Motions	11
News Media.....	12
Order and Decorum.....	12
Order of Business	13
Ordinance Reading and Adoption	13
Parliamentary Procedure	14
Planning Commission Member Testimony.....	14
Presiding Officer	14
Public Comment	14
Public Records	15
Questioning of Staff by Council Members.....	15
Quorum	15
Reconsideration of Actions Taken.....	15
Representing the City	15
Speaking by Council Members	16
Special Meetings.....	16
Testimony Forms	16
Voting	16
Workshops.....	16

Agenda. The City Manager will coordinate with the Mayor (or presiding officer) on the preparation of an agenda of the business to be presented at a regular Council meeting. No items will be added to or removed from the agenda after the agenda packet is published without the approval of the City Council, which shall vote to approve, including any modifications, the agenda at the beginning of each Council meeting.

- A. A Council member may place or remove an item on a Council agenda by motion at the beginning of each Council meeting, additions and deletions to the agenda must be approved by a majority of the Council. No action shall be taken on items that are not on the agenda without first modifying the agenda by motion. Council members will endeavor to have subjects they wish considered submitted in time to be placed on the agenda, and shall attempt to notify the City Manager in advance of proposing changes to the agenda.
- B. A Councilor who desires major policy or ordinance research should first raise the issue at a meeting under Council Business. The Council should consider items in light of City priorities and workload and agree to proceed with an issue or ordinance before staff time is spent preparing a report. The Councilor may present information or a position paper or ask for a department report or committee recommendation. Councilors who agree that staff time can be spent on a particular item are not bound to support the issue when it comes before the Council for a vote.

Agenda Bill. Each item of Council business requiring Council action shall be accompanied by an Agenda Bill in a format approved by the Council. In general, the contents of an Agenda Bill include, but are not limited to: Agenda Bill Summary Sheet, Attachments (contracts, policies, etc.), and the corresponding Resolution(s) or Ordinance(s).

Agenda Packet. The Agenda Packet is the accumulation of all Agenda Bills, Manager's Reports, and any other presentation or informational item included for discussion or action by the Council. Council agendas and agenda packets will be published the Friday prior to the meeting. The agenda packet will be available for the City Council and public by 4:00 pm the Friday prior to any Council meeting.

Annual Report of Boards, Commissions, Committees, and Neighborhood Associations. Each board, commission and committee will annually report to the Council on its activities for the previous year, including their recommendations. The report will be prepared in a format prescribed by the Council.

Attendance. Councilors will inform the Mayor and the City Manager if they are unable to attend any meeting. Additionally, the Mayor will inform the Council President and the City Manager regarding any absence by the Mayor. The Mayor, without a majority vote of the Council, may excuse the attendance of a member of the Council at any meeting for illness, vacation or other reasonable cause. Only a majority of the Council shall determine an absence is unexcused. The absence of a member of the Council shall be recorded in the minutes as either excused or unexcused. Three unexcused absences may result in the dismissal of the council member or Mayor upon majority vote.

Bias and Disqualification. Prior to the commencement of a quasi-judicial hearing, each Councilor must disclose his or her previous pre-judgment, personal interest or participation in any manner or action on the matter to be heard and shall state whether he or she can participate in the hearing without bias or prejudice. Any quasi-judicial hearing that presents a fiduciary or financial conflict is cause for recusal of any council member or the Mayor. If the Councilor deems him or herself unable to hear the matter

impartially, the Councilor has a duty to step down from the hearing and participate as a citizen, if so desired.

- A. Any person may challenge the qualifications or impartiality of any Councilor about to participate in the discussion and decision. The challenger must state facts relied upon from which the party has concluded that the Councilor will not likely participate and/or make a decision in an impartial manner. Such challenges shall be made at the beginning of the public hearing. The Mayor shall then give the challenged member an opportunity to respond. Any such challenge to a Councilor shall require a vote of the Council to accept or deny the challenge. The Councilor being challenged shall not vote unless required by the law of necessity to do so. Such challenges shall be recorded into the record of the hearing. If the City Council majority determines that the member is biased, it may disqualify the member by majority vote from participating in a decision. In which case, the Councilor may participate in the proceedings as a private citizen if the Councilor is a party with standing.

City Communications. As a general policy, the City communication tools (including, but not limited to: newsletter, website, mailers, postcards, bulletin boards, email newsletters and videos) should be used solely for City government related content. Events not sponsored entirely or partially by the City should not be allowed space in City communications. Requests for placement of articles in City communications shall be approved by the City Manager or designee.

City Manager Evaluation. The evaluation of the City Manager will be performed under the terms of the Manager's contract.

Code of Conduct. Council members commit to conduct themselves in a manner where the dignity and rights of the individual are respected and honored. Harassment in any form will not be tolerated by and between members of City Council, the City Attorney, the Municipal Judge, city boards, commissions and task forces, and persons appointed to service without pay. As to forms of harassment and other inappropriate conduct, the Council shall consult the City's Personnel Policies for City employees for guidance.

Communication with Staff. Mayor and Councilors shall respect the separation between policy making and administration by:

- A. Supporting the Council-Manager form of government by adhering to the policy of noninterference in the administration of day-to-day City business, which is directed by the City Manager.
- B. Attempting to work together with the staff as a team in a spirit of mutual confidence and support.
- C. At all times respecting the administrative functions of the City Manager and various department heads, and refraining from actions that would undermine the administrative authority of the City Manager or department heads. In all events, the Council will abide by the City Charter and Municipal Code when dealing with the City Manager.
- D. Limiting all inquiries and requests for information from staff or department heads to those questions that may be answered readily or with only the most minimal of research. Questions

of a more complex nature shall be addressed to the City Manager or City Attorney. Such questions should, whenever possible, be put in writing. Questions requiring significant staff time or resources (one hour or more) shall require the approval of the City Manager. All pertinent information given by the City Manager or City Attorney to the Mayor or a Councilor shall be distributed to all the Councilors.

- E. Limiting individual contacts with City officers and employees so as not to influence staff decisions or recommendations, to interfere with their work performance, to undermine the authority of supervisors or to prevent the full Council from having benefit of any information received.
- F. Respecting roles and responsibilities of staff when and if expressing criticism in a public meeting or through public electronic mail messages.

Conferences and Seminars. Members of the Council are urged to educate themselves about local government. To that end, and as funding allows, Councilors are urged to attend the League of Oregon Cities functions. Requests to attend other government related conferences, training seminars and meetings will be presented to the City Manager for approval. Members of the Council who serve on committees or the boards of the League of Oregon Cities, the National League of Cities or other such government group will be reimbursed for reasonable expenses not covered by the respective body. Councilors shall report on information received from their trainings and attended conferences at the next available Council meeting upon return.

Confidentiality. Councilors will keep all written materials marked as confidential in complete confidence to ensure that the City's position is not compromised. No mention of the information read or heard should be made to anyone other than other Councilors, the City Manager or City Attorney.

- A. If the Council, in executive session, provides direction or consensus to staff on proposed terms and conditions for any type of negotiation whether it be related to property acquisition or disposal, pending or likely claim or litigation, or employee negotiations, all contact with other parties shall be made by designated staff or representatives handling the negotiations or litigation. A Councilor will not have any contact or discussion with any other party or its representative nor communicate any executive session discussion.
- B. All public statements, information, or press releases relating to a confidential matter will be handled by designated staff, the Mayor, or a designated Councilor.
- C. The Council, by resolution, may censure a member who discloses a confidential matter.

Conflict of Interest. Councilors shall adhere to State laws concerning conflicts of interest. Conflicts of interest arise in situations where a Councilor has an actual or potential financial interest in the matter before the Council. Under state law, an actual conflict of interest is defined as one that would be to the private financial benefit of the Councilor, a relative or a business with which the Councilor is associated. ORS 244.020. A Councilor must publicly announce potential and actual conflicts of interest, and, in the case of actual conflict of interest, must refrain from participating in debate on the issue or from voting on the issue unless allowed by state law. ORS 244.120.

Consent Agenda. In order to make more efficient use of meeting time, the City Manager shall place all items of a routine nature on which no debate is expected on a consent agenda. Any item placed on the consent agenda shall be disposed of by a single motion "to adopt the consent agenda" which shall not be debatable. With the approval of the Council, any Councilor or the Mayor can remove an item from the Consent Agenda. An item removed from the consent agenda shall not receive public testimony unless agreed to by a majority of the quorum. Any item removed from the Consent Agenda will be discussed and considered as the first business item of the meeting.

Council Rules. Pursuant to Chapter III, Section 10, of the Umatilla City Charter, the Council shall adopt Council Rules. The Council shall review its rules no later than March 31st of every odd numbered year. Amendments shall be adopted by a majority vote. The Council rules are not intended to replace or supersede any applicable federal or state laws or regulations, City ordinances or policies, or provisions of the City Charter. These rules may be suspended upon an affirmative vote of the Council.

Council Standing Committees. The principles of good Council procedure indicate the value of standing committees by the City Council and as such, the following standing committees will be appointed by the Mayor at the first regular Council meeting each calendar year:

- A. Finance
- B. Police
- C. Streets and Lights
- D. Public Works
- E. Community Development
- F. Personnel
- G. Policy

Each committee will consist of two Councilmembers, the Mayor or a designated third Councilmember from another committee when overlapping issues are discussed, with the City Manager and appropriate staff.

Special (temporary) committees may be created by the Council for special assignments. When so created, such committees shall be appointed by the Mayor and shall terminate upon completion of their assignment, or they may be terminated by a majority vote of the Council attending at any regularly scheduled meeting.

Emergency Meetings. In the case of an emergency, an emergency meeting may be called by consent of all available Councilors upon such notice as is appropriate to the circumstances. The minutes of the emergency meeting shall describe the emergency justifying less than 24 hours' notice. The City shall attempt to contact the media and other interested persons to inform them of the meeting. Councilors are responsible to inform staff of how they can be reached when out of town.

Ethics and Professional Conduct. All members of the City Council shall constantly strive to meet the highest ethical standards in their role of City Councilor. Councilors are encouraged to conduct themselves so as to bring credit upon the City as a whole, and to set an example of good ethical conduct for all citizens of the community. Councilors should constantly bear in mind these responsibilities to the entire electorate, and refrain from actions benefitting any individual or special interest group at the expense of the City as a whole. Councilors should likewise do everything in their power to insure

impartial application of the law to all citizens, and equal treatment of each citizen before the law, without regard to race, national origin, sex, age, social station, or economic position.

Among these standards are:

- I. Councilors shall review and observe the requirements of the State Ethics Law (ORS 244.010 to 244.390) dealing with use of public office for private financial gain.
 - A. Councilors shall give public notice of any conflict of interest or potential conflicts of interest and the notice will be reported in the meeting minutes. In addition to matters of financial interest, Councilors shall maintain the highest standards of ethical conduct and assure fair and equal treatment of all persons, claims, and transactions coming before the Council. This general obligation includes the duty to refrain from:
 1. Disclosing confidential information or making use of special knowledge or information before it is made available to the general public.
 2. Making decisions involving business associates, customers, clients, and competitors.
 3. Promoting relatives, clients or employees for boards and commissions.
 4. Requesting preferential treatment for themselves, relatives, associates, clients, coworkers or friends.
 5. Seeking employment of relatives with the City.
 6. Actions benefiting special interest groups at the expense of the City as whole.
- II. Adhere to these approved Council Rules.

Ethics or Professional Conduct Violations.

- A. The Council has the inherent right to make and enforce its own rules and to ensure compliance with those laws generally applicable to public bodies. The Council, acting as a whole, may reprimand or discipline to the extent provided by law, any member(s) of the council, or any member(s) of a board, commission or committee directly associated with the City Council.
- B. To exercise such right, the alleged offender(s) must first be notified of a finding that reasonable ground exists that a substantial violation has occurred prior to referral for investigation of the Council. Council may hold an executive session to consider the complaints or charges unless the person requests an open hearing according to ORS 192.660(2)(b) Discipline of Public officers and employees.
- C. The accused member(s) shall have the right to present a defense to the allegations, including the right to have legal representation at such meeting.
- D. Upon finding that a substantial violation has occurred, the Council may, upon unanimous vote of the balance not accused, proceed with censure or impose a proper sanction.

Executive Sessions. An executive session (meeting closed to the public) may be held in accordance with the appropriate statutory limits of ORS 192.660(2). All executive sessions shall be audio recorded as

provided for in ORS 192.650(2) unless the Council determines that written minutes should be taken. Material discussed during an Executive Session should not be disclosed, as provided in ORS 192.610 and 192.660. Executive session subjects are limited to: hiring the City Manager or City Attorney, dismissal or discipline, labor negotiations, real property transactions, exempt public records, trade negotiations, consultation with City Attorney on litigation or potential litigation, City Manager or City Attorney evaluations, public investments, and any other topic allowed by State statute.

Exhibits. Exhibits presented before the Council in connection with its deliberations on a legislative, quasi-judicial or other substantive matter shall be accepted by the Council and made part of the record. The exhibit shall be marked for identification and referenced in the minutes. The exhibit or a copy thereof shall be provided to the meeting recorder.

Ex Parte Communications. When Council receives any ex parte communication, Council should inform the citizen that the Council is interested in his or her perspective; however, because the Council is hearing the associated land use application, Council are advised to refrain from reading and responding to information outside of the public hearing process. Council should inform the citizen that the information received is being forwarded to staff for inclusion in the public record. Council shall then forward all ex parte correspondence received to staff as soon as possible for inclusion in the land use file, and if possible, the record.

Ex-Parte Contacts and Disqualifications. In the case of quasi-judicial decisions, Ex-parte contacts consist of being party to any written or verbal communication by a party about a fact that relates to any issue of the hearing that occurs when other interested parties are not present or able to receive the information.

Councilors are advised to refrain from engaging in discussions about a pending quasi-judicial decision outside of the public hearing. However, if a Councilor partakes in or receives written or oral ex-parte contact prior to any such hearing, the Councilor shall disclose the communication for the record and/or reveal the contact and substance of the contact prior to the commencement of the hearing. The Councilor will state whether such contact affects his/her ability to vote on the matter in an impartial manner and whether he/she will participate or abstain. The presiding officer shall then announce the right of interested parties to rebut the substance of the communication. If the Council determines that the Councilor should step down for the hearing by a majority vote, the Councilor would then be allowed to participate in the proceedings as a private citizen.

Expenses and Reimbursement. Councilors will follow the same rules and procedures for reimbursement as those which apply to City employees, set forth in the policy manual. Councilor expenditures for other than routine reimbursable expenses (e.g. conference registration, travel, etc.) will require advance City Manager approval.

Filling a Vacancy of the Mayor or Council. A mayor or councilor vacancy will be filled by appointment by a majority of the remaining council members. The vacancy will be advertised and applications will be accepted. After the filing deadline has passed, the Council may conduct public interviews of applicants. The Council will make a decision to fill the vacancy in a public meeting. The appointee's term of office runs from appointment until the next general election when the appointee must run for office to fill the remaining term of office, if any, of that appointee's position. If a disability prevents a council member from attending council meetings or a member is absent from the city, a majority of the council may appoint a councilor pro tem.

Filling Vacancies on Boards, Commissions and Committees. When a vacancy occurs on any standing commission, board or committee, a public announcement of the vacancy will be made with sufficient time and information provided regarding the duties of the positions and the process of filing an application. The Council may interview applicants for all Boards and Committees. The Mayor, with the approval of the Council, shall fill all vacancies of City committees, boards and commissions.

With the consent of the Council, the Mayor may remove a citizen from a City committee or commission prior to the expiration of the term of office. Reasons for removal may include, but are not limited to: missing three consecutive regular meetings of the committee or commission, disruptive or inappropriate behavior prior to, during, or after committee or commission meetings which prohibit the advisory body from completing its business in a timely manner, or not acting in the best interest of the citizens or City. This includes preventing a committee or commission from carrying out its goals and objectives.

When the Mayor is satisfied that it would be in the best interest of the City and the committee or commission, a citizen may be removed from an advisory position by the following process:

- A. The Mayor will initiate the process by reporting his or her concerns to the City Manager in writing.
- B. Upon review by the City Manager, the Mayor will request the citizen to submit a letter of resignation within 10 days from the Mayor's notification to committee or commission member. The Mayor's letter will contain the reasons for requesting the resignation. The citizen may submit a letter of response as to why he or she should remain on the committee or commission. This letter will be reviewed by the Council prior to action on the removal request from the Mayor.
- C. The Mayor will request the item be placed on a regular Council meeting agenda for consideration for removal of the citizen from the committee or commission. The citizen will be notified of the Council meeting date when this issue will be discussed.
- D. If the Council approves the Mayor's request for removal, the Mayor will send a letter to the citizen informing him or her that he or she has been removed from the committee or commission.

Flags, Signs and Posters. No flags, posters, placards or signs may be carried or placed within the Council chambers in which the Council is officially meeting. This restriction shall not apply to arm bands, emblems, badges or other articles worn on personal clothing or individuals, provided that such devices do not interfere with the vision or hearing of other persons at the meeting or pose a safety hazard.

Gifts and Recognition. On occasion, and within the approved budget, the Council may wish to purchase a gift or memento for someone with City funds. Service awards or recognition certificates shall be prepared and presented, after service is completed, to all volunteers who served on the Council Standing Committees. More ornate plaques or similar service recognition awards shall be prepared and presented for all volunteers who have served for nine years or more. All other gifts or recognition awards shall receive prior approval from the Mayor or a consensus of the Council.

Legal Advice. Requests to the City Attorney for advice requiring more than fifteen minutes of legal research shall not be made by a Councilor or the Mayor except with the concurrence of the majority of the Council. Before requesting research or other action by the City Attorney, the Council is encouraged to consider consulting with the City Manager to ascertain whether the request or action can be accomplished more cost-effectively by alternate means. Outside a Council meeting, a Councilor should make requests of the City Attorney through the City Manager. Exceptions to this are issues related to the performance of the City Manager and unique and sensitive personal, yet City business-related requests. The City Attorney shall in either case provide any written response to the full Council and City Manager, except as noted above.

Litigation. The Council will meet in Executive Session with the City Manager and City Attorney within 30 days of the City's receipt of:

- A. A statutory notice of claim, or
- B. A judicial or administrative filing which initiates action against the City.

Mayor and City Council Reports. The Mayor and Councilors will report on the regional meetings they attend on behalf of the city.

Meeting Staffing. The City Manager shall attend all Council meetings unless excused. The City Manager may make recommendations to the Council and shall have the right to take part in all Council discussions but shall have no vote. The City Attorney shall attend Council meetings upon the request of the City Manager unless excused, and will, upon request, give an opinion, either written or oral, on legal questions. The City Attorney, if requested, shall act as the Council's parliamentarian. The City Recorder shall attend all Council meetings, unless excused, and shall keep the official journal (minutes) and perform such other duties as may be needed for the orderly conduct of meetings. Department directors or other staff will attend Council meetings upon request of the City Manager.

Meeting Times. In accordance with the Chapter III, Section 11 of the Umatilla City Charter, the City Council shall hold a regular meeting at least once each month. It is anticipated that this meeting will take place on the first Tuesday of each month beginning at 7:00 p.m. All other Council meetings will be either Work Shopss or Special Meetings and typically scheduled on the third Tuesday of each month beginning at 6:00 p.m. Council meetings which exceed three hours in length shall be continued to the following evening or the following Council meeting unless extended by majority vote of the Council. Should the need arise; any member of the Council may request a short break.

Minutes. Minutes will be taken in accordance with ORS 192.650 (1) which states that meetings of the Council shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. Minutes shall include the following information: (1) Members present; (2) Motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition; (3) Results of all votes and the vote of each member by name; (4) The substance of any discussion on any matter; and (5) A reference to any document discussed at the meeting. All City Council meetings shall be either audio or audio and video recorded unless the Council determines that written minutes are sufficient for a specific meeting. Staff will post Draft Minutes

online within two weeks of the meeting. Minutes will remain draft until approved. Minutes will be posted on the agenda for approval at the next regular business meeting.

Motions. When a motion is made, it shall be clearly and concisely stated by its maker. Councilors are encouraged to exercise their ability to make motions and to do so prior to debate in order to focus discussion on an issue and speed the Council's proceedings. The Presiding Officer will state the name of the Councilor who made the motion and the name of the Councilor who made the second. When the Council concurs or agrees to an item that does not require a formal motion, the Presiding Officer will summarize the agreement at the conclusion of discussion. The following rules shall apply to motions during proceedings of the Council:

- A. A motion may be withdrawn by the maker at any time without the consent of the Council.
- B. If a motion does not receive a second, it dies. All motions that must receive a second, must do so within three minutes or the motion is considered to have not received a second. Certain motions can proceed without a second, including nominations, withdrawal of motion and agenda order.
- C. When a motion is made, the mayor shall not vote except in case of a tie vote of the members of the council present at a meeting.
- D. A motion to table is not debatable unless made during a land-use hearing and precludes all amendments or debate of the issue under consideration. If the motion prevails, the matter may be taken from the table only by adding it to the agenda of a regular Council meeting scheduled within the next ninety days at which time discussion will continue. If an item is tabled, it cannot be reconsidered at the same meeting.
- E. A motion to postpone to a certain time is debatable and amendable, and may be reconsidered at the same meeting. The question being postponed shall be considered at a later time, at the same meeting, or at a specified time in the future. A motion to postpone indefinitely is debatable and is not amendable and may be reconsidered at the same meeting only if it received an affirmative vote. The object of this motion is not to postpone, but to reject the question without risking a direct vote when the maker of this motion is in doubt as to the outcome of the question.
- F. A motion to call for the question shall close the debate on the main motion and is not debatable. This motion must receive a second and fails without a majority vote. Debate is reopened if the motion fails.
- G. A motion to amend can be made to a motion that is on the floor and has been seconded. An amendment is made by inserting or adding, striking out, striking out and inserting, or substituting.
- H. Motions that cannot be amended include motion to adjourn, agenda order, lay on the table, reconsideration, and take from the table.
- I. A motion to amend an amendment is in order.
- J. Amendments are voted on first, then the main motion as amended.

- K. Council will discuss a motion only after the motion has been moved and seconded.
- L. The motion maker, Presiding Officer, or meeting recorder should repeat the motion prior to voting.
- M. A motion to continue or close a public hearing is debatable.
- N. A point of order, after being addressed by the Presiding Officer, may be appealed to the body.

News Media. The Council recognizes the important role of the news media in informing the public about the decisions, activities and priorities of government. Workspace may be provided for members of the press at Council meetings upon request so that they may observe and hear proceedings clearly. See also Executive Sessions. The terms "news media" "press" and "representative of the press" for the purpose of these rules are interchangeable and mean someone who:

- A. Represents an established channel of communication, such as a newspaper or magazine, radio or television station; and either
- B. Regularly reports on the activities of government or the governing body; or
- C. Regularly reports on the particular topic to be discussed by the governing body in executive session.

Order and Decorum. A law enforcement officer of the City may be Sergeant-at-Arms of the Council meetings. The Sergeant-at-Arms shall carry out all orders and instructions given by the Mayor for the purposes of maintaining order and decorum at the Council meeting.

- A. Any of the following shall be sufficient cause for the Sergeant-at-Arms to, at the direction of the Mayor, or by a majority of the Council present, remove any person from the Council chamber for the duration of the meeting:
 1. Use of unreasonably loud or disruptive language, including personal, offensive or slanderous remarks, or actions that are boisterous, threatening or personally abusive.
 2. Making of loud or disruptive noise, including applause.
 3. Engaging in violent or distracting action.
 4. Willful injury of furnishings or of the interior of the Council chambers.
 5. Refusal to obey the rules of conduct provided herein, including the limitations on occupancy and seating capacity.
 6. Refusal to obey an order of the Mayor or an order issued by a Councilor which has been approved by a majority of the Council present.
- B. Before the Sergeant-at-Arms is directed to remove any person from a Council meeting for conduct described in this section, that person shall be given a warning by the Mayor to cease his or her conduct. If a meeting is disrupted by members of the audience, the Mayor or a majority of the Council present may declare a recess and/or order that the Council chamber be cleared.

Order of Business. The City Manager shall have the authority to arrange the order of business as is deemed necessary to achieve an orderly and efficient meeting with final approval of the Mayor. In general, the order of business will be as follows:

Comment [M11]: Dave to review agenda format.

- A. Call to Order
- B. Roll Call
- C. Pledge of Allegiance
- D. Approval of Agenda
- E. Mayor and Committee Reports
- F. City Manager's Report
- G. Public Comment
- H. Consent Agenda
- I. New Business
 - a. Items Removed from the Consent Agenda
 - b. Public Hearings
 - c. Ordinances and Resolutions
 - d. Other Business
- J. Correspondence
- K. Public Comment
- L. Discussion Items
- M. Mayor's Message
- N. Council Information and Discussion
- O. Adjourn

The Mayor may use the gavel to commence the meeting, after each vote and to close the meeting.

Ordinance Reading and Adoption. All ordinances and resolutions shall be prepared under the supervision of the City Manager and reviewed and approved as to form by the City Attorney. Ordinances and resolutions may be introduced by a member of the Council, the City Manager, the City Attorney or any department head.

- A. Unless the motion for adoption provides otherwise, resolutions shall be adopted by reference to the title only and effective upon adoption.
- B. The Council may adopt an ordinance in any of the following circumstances:
 - 1. Before being considered for adoption, the ordinance has been read in full at two separate Council meetings.

2. At a single meeting by unanimous vote of the whole Council, after being read twice by title only.
 3. Any of the readings may be by title only if no Council member requests to have the ordinance read in full or if a copy of the ordinance is provided for each Council member and three copies are provided for public inspection at the City offices not later than one week before the first reading of the ordinance, and if notice of their availability is given forthwith upon the filing, by written notice posted at City Hall and two other public places in the City or by advertisement in a newspaper of general circulation in the City. An ordinance enacted after first being read by title alone may have no legal effect if it differs substantially from its terms as it was thus filed prior to such reading unless each section incorporating such a difference is read fully and distinctly in open Council meeting as finally amended prior to being approved by the Council.
 4. Upon the enactment of an ordinance the custodian of records shall sign it with the date of its passage and the endorser's name and title of office and thereafter the Mayor, or President of the Council acting pursuant to Chapter III, Section 9 of the Umatilla City Charter, shall sign it with the date of its passage and the endorser's name and title of office. Failure of the Mayor or the President of the Council to sign it shall not invalidate it.
- C. Ordinances shall be effective on the thirtieth (30th) day following the date of adoption, unless the ordinance provides that it will become effective at a later time. An emergency ordinance which includes a provision that the ordinance is necessary for immediate preservation of the public peace, property, health, safety or morals may provide that it will become effective upon adoption.
- D. Ordinances shall be adopted by roll-call vote.

Parliamentary Procedure. The Council will follow parliamentary procedure such as Robert's Rules.

Comment [M12]: Dave – 1-6-1-A of the Code refers to Robert's Rules. I know you had expressed that they aren't your favorite. Do you want to include this or modify the Code?

Planning Commission Member Testimony. In an effort to maintain the impartiality of the Planning Commission, especially in cases where issues can be remanded by the City Council back to the Planning Commission for review, the following rules are established. For legislative land use matters before the Council, Commissioners may testify as a Commissioner, as a Commission Representative if so designated by the Commission, or as a citizen. For quasi-judicial hearings or petitions for review before the Council, Commission members, who have participated in the preceding Commission decision, may not testify before the Council on the respective matter.

Presiding Officer. The Mayor shall be the Presiding Officer and conduct all meetings, preserve order, enforce the rules of the Council and determine the order and length of discussion on any matter before the Council, subject to these rules. The Council President shall preside in the absence of the Mayor. The Presiding Officer shall not be deprived of any of the rights and privileges of a Councilor. In case of the absence of the Mayor and the Council President, the City Manager shall call the meeting to order and the Council shall elect a chairperson for the meeting by majority vote.

Public Comment. General public comment is established to allow members of the public to speak for five minutes during two designated sections of each Council meeting on any community matter other

than specific agenda items. The Mayor may adjust comment time according to the length of the agenda or the number of requested speakers. Mayor may also, at his/her discretion, allow for an individual/organization to provide their comments during a specific item. Verbally abusive or slanderous comments are not allowed.

Councilors are not expected to engage in discussions while receiving comments; however, they may ask clarifying questions with the Presiding Officer's permission. Later, during the business portion of the meeting, Councilors may discuss concerns and direct questions to the City Manager with the understanding that answers from staff may not be immediately available.

Persons requesting to speak must first enter the requested information on the Sign-Up Sheet. A neighborhood representative may speak as an individual as well as the neighborhood representative when presenting items voted upon by the neighborhood association. When presenting items on behalf of the neighborhood association, the designated representative will be allowed up to 10 minutes for this testimony. When called upon, speakers shall first state their name and address for the record. Copies of written comments and materials are to be handed to the City Recorder to deliver to the Council and submit to the record. If a speaker wishes to show a presentation, the presentation must be delivered to City staff 48-hours prior to the meeting.

Public Records. The disposition of public records created or received by Councilors shall be in accordance with Oregon Public Records Law. Written information incidental to the official duties of a member of the City Council, including electronic mail messages, notes, memos and calendars (e.g., Outlook calendars and "Day timers") are public records and are subject to disclosure under the Public Records Law.

Questioning of Staff by Council Members. Every Council member desiring to question the staff during a Council meeting shall address the questions to the City Manager, who shall be entitled to either answer the inquiry or designate a staff member to do so.

Quorum. The quorum requirement for the conduct of Council business is three Council members.

Reconsideration of Actions Taken. A member who voted with the majority may move for a reconsideration of an action at the same or the next regular meeting. The second of a motion may be a member of the minority. Once a matter has been reconsidered, no motion for further reconsideration shall be made without unanimous consent of the Council.

Representing the City. When any member of the City Council represents the City before another governmental agency, before a community organization or media, the official should first indicate the majority position of the Council. Upon returning, a reasonable effort should be made by the Council to communicate any information or questions pertinent to City business to the full Council within a reasonable timeframe.

- A. The effectiveness of City lobbying in Salem or in Washington, D.C. depends on the clarity of the City's voice. When Councilors represent the City in a "lobbying" situation, it is appropriate that the Councilors avoid expressions of personal dissent from an adopted Council policy.
- B. When Councilors attend meetings of organizations such as the League of Oregon Cities or the National League of Cities and their boards and committees, they do so as individual elected

officials and are free to express their individual views. If the City Council has an adopted policy relating to an issue under discussion, the Councilor is expected to report that fact.

- C. By resolution, the Council may appoint one or two of its members to act as negotiators with groups, individuals, or other governmental entities. Any agreements made by such negotiators shall require approval of the Council as a whole to take effect.

Speaking by Council Members. Any Councilor desiring to be heard shall be recognized by the Mayor, but shall confine his or her remarks to the subject under consideration or to be considered. Councilors will be direct and candid. Councilors will speak one at a time, allowing one another to finish.

Special Meetings. The Mayor, or in the Mayor's absence the President of the Council, may, or at the request of two or more members of the Council, call a special meeting for the Council in accordance with state law. Special meetings are to be utilized only when absolutely necessary, and public comment shall be taken at all special meetings.

- A. Written notice of a special meeting shall be given to the Council, media and public, with as much advance (up to 10 days) notice as possible, and no less than 24 hours in advance of the meeting. The notice shall be served on each member personally or electronically, or if the Councilor is not found, left at his or her place of residence. All notice requirements of ORS 192.640 shall be satisfied before any special meeting can be conducted.
- B. Special meetings of the Council may also be held at any time by common consent of all members of the Council subject to notice requirements being met. Councilors shall keep the City Manager informed of their current telephone numbers.

Testimony Forms. The testimony forms for land use hearings will have a place for citizens to mark if they are for, against, or neutral on the topic.

Voting. Every Councilor, when a question is taken, shall vote. If a Councilor is planning to abstain, the Councilor must declare the intent to abstain prior to the vote.

- A. No Councilor shall be permitted to vote on any subject in which he or she has a conflict of interest.
- B. The concurrence of a majority of the Council members present at a Council meeting shall be necessary to decide any question before the Council. The meeting recorder shall call the roll, and the order of voting shall be rotated on each question such that each Councilor, excluding the Mayor, has an equal opportunity to vote first and second to last. Since the Mayor acts as chair, the Mayor in all instances shall vote last.

Workshops. Workshops of the City Council shall be held in accordance with the Oregon Public Meetings Law, ORS 192.630. Whenever circumstances require such a session, it shall be called by the Mayor, City Manager, or two or more Councilors. These workshops may be held for Council goal setting, new Councilor training, or longer workshops for planning programs or projects. Goal setting retreats may be held out of town so long as no decision-making or discussion toward decisions occurs. Any goals arrived at by any process should be confirmed in public at a regular Council meeting. The Council may decide if

the public is welcome at any of these meetings and they may be held without the opportunity for public input or comment.

DRAFT

CITY OF UMATILLA, OREGON

AGENDA BILL

Agenda Title:

Res YY-2019 – A Resolution Adopting a Policy for Public Contracting and Purchasing

Meeting Date:

January 15, 2019

Department:

Finance

Director:

Melissa Ince

Contact Person:

Melissa Ince

Phone Number:

541-922-3226x104

Cost of Proposal:

n/a

Amount Budgeted:

n/a

Fund(s) Name and Number(s):

n/a

Reviewed by Finance Department:

Yes – M.Ince

Attachments to Agenda Packet Item:

Draft Resolution YY-2019, City of Umatilla Policy for Public Contracting & Purchasing

Summary Statement:

In the absence of a specific City purchasing policy, the City has deferred to Model Rules adopted by the Oregon Attorney General. ORS 279A.065 gives cities the option to adopt their own rules which include portions of the Model Rules. This proposed policy is based off of a template provided by the League of Oregon Cities drafted by their Legal Services Division. Approval will allow City staff and Council to clearly understand their duties and work more efficiently, while assuring that we are complying with all State and Federal regulations.

Consistent with Council Goals:

RESOLUTION NO. YY-2019

A RESOLUTION ADOPTING A POLICY FOR PUBLIC CONTRACTING AND PURCHASING

WHEREAS, to ensure transparency in public purchasing, the Legislative Assembly requires all cities in Oregon to establish, implement and follow standardized procurement rules; and,

WHEREAS, ORS 279A.065 gives cities the option to prescribe their own rules which include portions of the Model Rules adopted by the Oregon Attorney General; and,

WHEREAS, the Council wishes to adopt a purchasing policy that will allow City staff and Council to work more efficiently, while assuring compliance with all State and Federal regulations,

NOW, THEREFORE, BE IT RESOLVED that the following policy for public contracting and purchasing shall be adhered to by the legislative body and staff of the City of Umatilla.

PASSED by the Council and **SIGNED** by the Mayor this 5th day of February, 2019.

Mary Dedrick, Mayor

ATTEST:

Nanci Sandoval, City Recorder

CITY OF UMATILLA

POLICY FOR PUBLIC CONTRACTING & PURCHASING

APPROVED

Table of Contents

I. Introduction 4

 A. Purpose of Purchasing Policy 4

 B. Interpretation of Purchasing Policy..... 5

 C. Specific Provisions Control over General Provisions..... 5

 D. Conflict with Federal Statutes and Regulations 5

II. Definitions 5

 A. Administering agency..... 6

 B. Affected person/offoror..... 6

 C. Architectural, engineering and land surveying services 6

 D. Award 6

 E. Bid 6

 F. Bidder 6

 G. Business with which a City employee is associated 6

 H. City 6

 I. City Manager 6

 J. Closing 6

 K. Contract..... 6

 M. Contract price..... 6

 N. Contracting agency..... 7

 O. Cooperative procurement..... 7

 P. Days 7

 Q. Emergency 7

 R. Findings 7

 S. Goods and/or services 7

 T. Grant 7

 U. Immediate family member 8

 V. Offer 8

 W. Offeror..... 8

 X. Openin..... 8

 Y. Original contract..... 8

 Z. Purchasing agency..... 8

AA.	Person	8
BB.	Personal services.....	9
CC.	Price agreement	9
DD.	Procurement	10
EE.	Professional services	10
FF.	Proposal.....	10
GG.	Proposer	10
HH.	Provider.....	10
II.	Public contract	10
JJ.	Public contracting.....	10
KK.	Public improvement.....	10
LL.	Public improvement contract.....	10
MM.	Recycled product.....	10
NN.	Related services	11
OO.	Request for proposals	12
PP.	Request for qualifications	12
QQ.	Revenue generating agreements.....	12
RR.	Scope.....	12
SS.	Signed or signature	12
TT.	Solicitation.....	12
UU.	Work.....	12
VV.	Written or in writing	12
III.	Authority.....	12
A.	City Council as Local Contract Review Board	13
B.	Application of Attorney General’s Model Rules of Procedure.....	13
C.	Inapplicability of Policy	13
D.	Authority of City Manager.....	14
E.	Favorable Terms.....	16
F.	Unauthorized Contracts or Purchases	16
G.	Purchasing from City Employees or Employees’ Immediate Family Prohibited.....	16
IV.	Preferences.....	16
A.	Discretionary Local Preference	16

B.	Mandatory Tie Breaker Preference	17
C.	Reciprocal Preference	17
D.	Preference for Recycled Materials and Supplies	17
V.	General Provisions.....	17
A.	Public Notice	17
B.	Procedure for Competitive Verbal Quotes and Proposals.....	17
C.	Procedure for Informal Written Solicitation	17
D.	Procurement Methods for Professional Services and Public Improvements	18
E.	Retroactive Approval.....	18
VI.	Source Selection Methods for Goods or Services, Other Than Personal or Professional Services.....	19
A.	Small Procurements	19
B.	Intermediate Procurements.....	19
C.	Large Procurements	20
VII.	Personal Services Contracts.....	20
A.	Classification of Services as Personal Services	20
B.	Requests for Qualifications	21
C.	Direct Negotiations	22
D.	Informal Written Solicitations.....	22
E.	Requests for Proposals.....	24
VIII.	Alternative Source Selection Methods for Goods or Services & Personal Services.....	26
A.	Sole-Source Procurements.....	26
B.	Special Procurements.....	27
C.	Contracts	28
D.	Emergency Procurements.....	30
E.	Cooperative Procurement Contracts	30
IX.	Surplus Property	30
A.	General Methods	30
B.	Disposal of Property with Minimal Value	31
C.	Personal-Use Items	31
D.	Conveyance to Purchaser.....	31
X.	Protest and Appeal Procedures.....	31
A.	Appeal of Debarment or Prequalification Decision	32

B. Protests and Judicial Review of Special Procurements..... 33
C. Protests and Judicial Review of Sole-Source Procurements..... 34
D. Protests and Judicial Review of Personal Services Procurements 35
E. Protests of Cooperative Procurements..... 37

DRAFT

Public Purchasing Policy

I. Introduction.

A. Purpose of Purchasing Policy. This policy is adopted by the City Council as the governing body of the City to establish the rules and procedures for contracts

entered into and purchases made by the City. It is the policy of the City in adopting this policy to utilize public contracting and purchasing practices and methods that maximize the efficient use of the City resources and the purchasing power of City funds by:

1. Promoting impartial and open competition;
2. Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
3. Taking full advantage of evolving procurement methods that suit the purchasing needs of the City as they emerge within various industries.

B. Interpretation of Purchasing Policy. Except as specifically provided in this policy, public contracts and purchases shall be awarded, administered and governed according to ORS Chapters 279A, 279B, and 279C (the “Public Contracting Code”) and the Attorney General’s Model Public Contract Rules (“Model Rules”), as they now exist.

1. In furtherance of the purposes of the objective set forth above in subsection A, it is the City’s intent that this policy be interpreted to authorize the full use of all contracting and purchasing powers described in ORS Chapters 279A, 279B, and 279C.
2. The Model Rules adopted under ORS 279A.065 shall apply to the contracts and purchases of the City to the extent they do not conflict with this policy and the rules and regulations adopted by the City.
3. In the event of a conflict between any provisions of this policy and the Model Rules, the provisions of this policy shall prevail.

C. Specific Provisions Control over General Provisions. In the event of a conflict between the provisions of this policy, the more specific provision shall take precedence over the more general provision.

D. Conflict with Federal Statutes and Regulations. Except as otherwise expressly provided in ORS Chapters 279A, 279B, and/or 279C, applicable federal statutes and regulations govern when federal funds are involved.

II. Definitions. Unless a different definition is specifically provided herein, or context clearly requires otherwise, the following terms have the meanings set forth herein. Additionally, any term defined in the singular includes the meaning of the plural, and vice-versa.

- A. **Administering agency.** The contracting agency that solicited and established the original contract in a cooperative procurement for goods, services, personal services, professional services or public improvements.
- B. **Affected person/offeror.** A person whose ability to participate in a procurement is adversely impaired by a City decision.
- C. **Architectural, engineering and land surveying services.** Professional services performed by an architect, engineer or land surveyor and includes architectural, engineering or land surveying services, separately or any combination thereof, as appropriate within the context of a section.
- D. **Award.** The decision to enter into a contract or purchase order with a specific offeror.
- E. **Bid.** A response to an invitation to bid.
- F. **Bidder.** A person who submits a bid in response to an invitation to bid.
- G. **Business with which a City employee is associated.** Any business in which a City employee is a director, officer, owner or employee, or any corporation in which a City employee owns or has owned ten percent (10%) or more of any class of stock at any point in the preceding calendar year.
- H. **City.** The city of Umatilla, a municipal corporation and a contracting and purchasing agency.
- I. **City Manager.** The person appointed by the City Council to the position of City Manager.
- J. **Closing.** The date and time announced in a solicitation document as the deadline for submitting bids or offers.
- K. **Contract.** See Public Contract.
- L. **Contractor.** The person who enters into a contract with the City.
- M. **Contract price.** As the context requires:
1. The maximum payment that the City will make under a contract if the contractor fully performs under the contract, including bonuses, incentives and contingency amounts;
 2. The maximum not-to-exceed payment specified in the contract; or

3. The unit prices set forth in the contract.
- N. **Contracting agency.** A public body authorized by law to conduct a procurement.
- O. **Cooperative procurement.** A procurement conducted by, or on behalf of, one or more contracting agencies.
- P. **Days.** Calendar days.
- Q. **Emergency.** Involves circumstances that:
1. Could not have been reasonably foreseen;
 2. Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
 3. Require prompt execution of a contract or amendment in order to remedy the condition.
- R. **Findings.** The justification for a conclusion. If the justification relates to a public improvement contract, findings may be based on information that includes, but is not limited to:
1. Operational, budget and financial data;
 2. Public benefits;
 3. Value engineering;
 4. Specialized expertise;
 5. Market conditions;
 6. Technical complexity; and
 7. Funding sources.
- S. **Goods and/or services.** Supplies, equipment, materials and services, other than personal services, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto. The term includes combinations of any of the items identified in the definition.
- T. **Grant.** An agreement under which:
1. The City receives moneys, property or other assistance, including but not limited to, federal assistance that is characterized as a grant by federal law

or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;

- a. The assistance received by the City is from a grantor for the purpose of supporting or stimulating a program or activity of the City; and
 - b. No substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions; or
2. The City provides moneys, property or other assistance, including but not limited to, federal assistance that is characterized as a grant by federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
- a. The assistance is given to the recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - b. No substantial involvement by the City is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions.
- U. **Immediate family member.** An employee's: spouse, and parents thereof; children, and spouses thereof; parents, and spouses thereof; siblings, and spouses thereof; grandparents and grandchildren, and spouses thereof; and domestic partner, and parents thereof.
- V. **Offer.** A bid, proposal, quote, or other response to a solicitation document.
- W. **Offeror.** A person who submits an offer.
- X. **Opening.** The date, time and place announced in the solicitation document for the public opening of written sealed offers.
- Y. **Original contract.** The initial contract or price agreement solicited and awarded during a cooperative procurement by an administering agency.
- Z. **Purchasing agency.** An agency that procures goods or services, personal services, or public improvements from a contractor based on the original contract established by an administering agency in a cooperative procurement.
- AA. **Person.** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public

body, public corporation or other legal or commercial entity, and any other person or entity with legal capacity to contract.

BB. Personal services. Services, other than professional services, that require specialized skill, knowledge and resources in the application of technical or scientific expertise or in the exercise of professional, artistic or management discretion or judgment.

1. Qualifications and performance history, expertise and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary.
2. Personal services contracts include, but are not limited to, the following classes of contracts:
 - a. Contracts for services performed in a professional capacity, including, but not limited to, services of an accountant, attorney, auditor, court reporter, information technology consultant, physician or broadcaster;
 - b. Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested;
 - c. Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, film maker, actor, director, painter, weaver or sculptor;
 - d. Contracts for services that are specialized, creative or research-oriented; and/or
 - e. Contracts for services as a consultant.

CC. Price agreement. A contract for the procurement of goods or services at a set price which has:

1. No guarantee of a minimum or maximum purchase; or
2. An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services with no guarantee of any minimum or maximum additional purchase.

- DD. Procurement.** The act of purchasing, leasing, renting or otherwise acquiring goods or services, personal services or professional services. It includes each function and procedure undertaken or required to be undertaken to enter into a contract, administer a contract and obtain the performance of a contract for goods or services, personal services or professional services.
- EE. Professional services.** Architectural, engineering, land surveying, photogrammetric, transportation planners or related services, or any combination of these services, provided by a consultant.
- FF. Proposal.** A response to a request for proposals.
- GG. Proposer.** A person that submits a proposal in response to a request for proposals.
- HH. Provider.** As the context requires, a supplier of goods or services, personal services, or professional services.
- II. Public contract.** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, goods or services, including personal services, professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. It does not include grants.
- JJ. Public contracting.** Procurement activities relating to obtaining, modifying or administering contracts or price agreements.
- KK. Public improvement.** A project for construction, reconstruction, or major renovation on real property, by or for the City. It does not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.
- LL. Public improvement contract.** A contract for a public improvement, but does not include a contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to maintain a public improvement.
- MM. Recycled product.** All materials, goods and supplies, not less than fifty percent (50%) of the total weight of which consists of secondary and post-consumer waste with not less than ten percent (10%) of its total weight consisting of post-consumer waste. It includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

NN. Related services. Personal services, other than architectural, engineering and land survey services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to:

1. Landscape architectural services;
2. Facilities planning services;
3. Energy planning services;
4. Space planning services;
5. Environmental impact studies;
6. Hazardous substances or hazardous waste or toxic substances testing services;
7. Wetland delineation studies;
8. Wetland mitigation services;
9. Native American studies;
10. Historical research services;
11. Endangered species studies;
12. Rare plant studies;
13. Biological services;
14. Archaeological services;
15. Cost estimating services;
16. Appraising services;
17. Material testing services;
18. Mechanical system balancing services;
19. Commissioning services;
20. Project management services;

21. Construction management services and owner's representatives service; and/or

22. Land-use planning services.

OO. Request for proposals. A solicitation document used for soliciting proposals.

PP. Request for qualifications. A written document issued by the City describing particular services to which potential contractors respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between a potential contractor on the list and the City.

QQ. Revenue generating agreements. Contracts or agreements for services that generate revenue and that are typically awarded to the offeror proposing the most advantageous or highest monetary return.

RR. Scope. The range and attributes of the goods or services described in a procurement document.

SS. Signed or signature. Any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person with the authority and intent to be bound.

TT. Solicitation. As the context requires:

1. A request for the purpose of soliciting offers, including an invitation for bid, a request for proposal, a request for quotation, a request for qualifications, or other similar documents;

2. The process of notifying prospective offerors of a request for offers; and/or

3. The solicitation document.

UU. Work. The furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a contract and successful completion of all duties and obligations imposed by the contract.

VV. Written or in writing. Conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words, and include electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

III. Authority.

- A. City Council as Local Contract Review Board.** The City Council is designated as the local contract review board of the City and has all the rights, powers and authority necessary to carry out the provisions of this policy, the Public Contracting Code, and/or the Model Rules.
- B. Application of Attorney General's Model Rules of Procedure.** Pursuant to ORS 279A.065(6), the City has elected to establish its own policy for public contracting and purchasing. Except as provided herein, the Model Rules do not apply to the City.
- C. Inapplicability of Policy.** This policy does not apply to the following:
1. Contracts or agreement to which the Public Contracting Code does not apply;
 2. Contracts, intergovernmental and interstate agreements entered into pursuant to ORS Chapter 190;
 3. Grants;
 4. Acquisitions or disposals of real property or interests in real property;
 5. Procurements from an Oregon Corrections Enterprise program;
 6. Contracts, agreements or other documents entered into, issued or established in connection with:
 - a. The incurring of debt, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
 - b. The making of program loans and similar extensions or advance of funds, aid or assistance by the City to a public or private person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
 - c. The investment of funds by the City as authorized by law; or
 - d. Banking, money management or other predominantly financial transactions that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the City Manager.

7. Contracts for employee benefit plans;
8. Contracts with newspapers and other publications for the placement of advertisements or public notices;
9. Contracts for items where the price is regulated and available from a single source or limited number of sources;
10. Insurance contracts;
11. Revenue generating agreements;
12. Federal agreements where applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or this policy, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or this policy.

D. Authority of City Manager. For contracts and purchases covered by this policy, the City Manager is authorized to:

1. Award contracts and amendments without specific authorization by the City Council whenever the contract amount is \$100,000 or less and the proposed expenditure is included in the current fiscal year budget.
2. Execute contracts and amendments with specific authorization by the City Council whenever the contract or amendment amount is greater than \$100,000 and the proposed expenditure is included in the current fiscal year budget.
3. As the purchasing agent for the City, the City Manager is authorized to:
 - a. Advertise for bids or proposals without specific authorization from the City Council, when the proposed purchase is included within the current fiscal year budget.
 - b. Advertise for bids or proposals when the proposed purchase is not included within the current fiscal year budget after the City Council approves the proposed budget transfer.
 - c. Purchase goods, services and/or property without specific authorization by the City Council whenever the amount is \$100,000 or less and the proposed expenditures are included in the current fiscal year budget.

- d. Purchase goods, services and/or property with specific authorization by the City Council whenever the amount is greater than \$100,000 and the proposed expenditure is included in the current fiscal year budget.
 - e. Delegate, in writing, the purchase authority described in the above subsection (2) and the purchasing powers described in this subsection (3).
 - f. Departments shall communicate purchase requirements to the City Manager and plan sufficiently in advance so that orders can be placed in economical quantities.
4. Delegate, in writing, the signature authority described in the above subsection (2) and the purchasing powers described in the above subsection (3). In the absence of a written delegation to the contrary, and in the absence of the City Manager, the signature authority described in the above subsection (2) and the purchasing powers described in the above subsection (3) are delegated in order as follows:
- a. Finance & Administrative Services Director;
 - b. Public Works Director
 - c. Community Development Director; and
 - d. Mayor.
5. Adopt forms, procedures, computer software, and administrative rules for all City purchases regardless of the amount.
- a. When adopting the forms, procedures, computer software, and/or administrative rules, the City Manager shall establish practices and policies that:
 - i. Do not encourage favoritism or substantially diminish competition; and
 - ii. Allow the City to take advantage of the cost-saving benefits of alternative contracting methods and practices;
 - b. The City shall use these forms, procedures, computer software and administrative rules unless they conflict with the policy.

- E. Favorable Terms.** Contracts and purchases shall be negotiated on the most favorable terms in accordance with this policy, other adopted ordinances, state and federal laws, policies and procedures.
- F. Unauthorized Contracts or Purchases.** Public contracts entered into or purchases made as authorized herein shall be voidable at the sole discretion of the City.
1. The City may take appropriate action in response to execution of contracts or purchases made contrary to this provision.
 2. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and/or holding individuals personally liable for such contracts or purchases.
- G. Purchasing from City Employees or Employees' Immediate Family Prohibited.** No contract shall be entered into with or purchase made from any City employee or employee's immediate family member, or any business with which the employee is associated, unless:
1. The contract or purchase is expressly authorized and approved by the City Council; or
 2. The need for the contract or purchase occurs during a state of emergency, and the City Manager finds, in writing, that the acquisition from the employee, employee's immediate family member or business with which the employee is associated is the most expeditious means to eliminate the threat to public health, safety and welfare.

IV. Preferences.

- A. Discretionary Local Preference.** If the solicitation is in writing, the City Manager may provide a specified percentage preference of not more than ten percent (10%) for goods fabricated or processed entirely in Oregon or services performed entirely in Oregon.
1. When a preference is provided under this subsection, and more than one offeror qualifies for the preference, the City Manager may give further preference to a qualifying offeror that resides in or is headquartered in Oregon.
 2. The City Manager may establish a preference percentage of ten percent (10%) or higher if the City manager makes a written determination that good cause exists to establish the higher percentage, explains the reasons, and provides evidence of good cause.

3. The preference described in this subsection cannot be applied to a contract for emergency work, minor alterations, and ordinary repairs or maintenance of public improvements.

B. Mandatory Tie Breaker Preference. If offers are identical in price, fitness, availability and the quality is identical, and the City desires to award the contract, the preferences provided in ORS 279A.120 shall be applied prior to contract award.

C. Reciprocal Preference. Reciprocal preferences must be given when evaluating bids, if applicable under ORS 279A.120.

D. Preference for Recycled Materials and Supplies. Preferences for recycled goods shall be given when comparing goods, if applicable under ORS 279A.125. The City Manager shall adopt standards to determine if goods are manufactured from recycled materials.

V. General Provisions.

A. Public Notice. Unless otherwise specifically provided by this policy, any notice required to be published by this policy may be published using any method the City Manager deems appropriate, including, but not limited to, mailing notice to persons that have requested notice in writing, placing notice on the City's website, or publishing in statewide trade or local publications.

B. Procedure for Competitive Verbal Quotes and Proposals. Where allowed by this policy, solicitations by competitive verbal quotes and proposals shall be based on a description of the quantity of goods or services to be provided, and may be solicited and received by phone, or facsimile or email if authorized by the City Manager.

1. A good faith effort shall be made to contact at least three (3) potential providers.

2. If three (3) potential providers are not reasonably available, fewer will suffice, provided the reasons three potential providers are not reasonably available is documented as part of the procurement file.

C. Procedure for Informal Written Solicitation. Where allowed by this policy, informal written solicitations shall be made by a solicitation document sent to not less than three (3) prospective providers.

1. The solicitation document shall request competitive price quotes or competitive proposals, and include:

a. The date, time, and place that price quotes or proposals are due;

- b. A description or quantity of the good or service required;
 - c. Any statement of period for which price quotes or proposals must remain firm, irrevocable, valid, and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - d. Any required contract terms or conditions; and
 - e. Any required bid form or proposed format.
2. Price quotes or proposals shall be received by the City Manager at the date, time, and place established in the solicitation document.
- a. The City Manager shall keep a written record of the sources of the quotes or proposals.
 - b. If three (3) quotes or proposals are not reasonably available, fewer shall suffice, but the City Manager shall make a written record of the effort made to obtain quotes or proposals as part of the procurement file.

D. Procurement Methods for Professional Services and Public Improvements. The City shall apply the Public Contracting Code and the Model Rules when procuring professional services and public improvements and processing protests thereof.

E. Retroactive Approval. Retroactive approval of a contract means the award or execution of a contract where work was commenced without final award or execution. The City Manager may make a retroactive approval of a contract only if the responsible employee submits a copy of the proposed contract to the City Manager, along with a written request for contract retroactive approval, that contains:

- 1. An explanation of the why work was commenced before the contract was finally awarded or executed;
- 2. A description of steps being taken to prevent similar occurrences in the future;
- 3. Evidence that, but for the failure to finally award or execute the contract, the employee complied with all other steps required to properly select a contractor and negotiate the contract; and
- 4. A proposed form of contract.

VI. Source Selection Methods for Goods or Services, Other Than Personal or Professional Services.

A. Small Procurements. Contracts for or purchases of goods or services with a contract price of \$25,000 or less are small procurements.

1. Purchases less than \$10,000. The City Manager may use any procurement method the City Manager deems practical or convenient, including direct negotiation or award, for small procurements of goods or services with a contract price of less than \$10,000.
2. Purchases between \$10,000 and \$25,000. The City Manager may use competitive verbal quotes or proposals, and informal written solicitations for small procurements of goods or services with a contract price between \$10,000 and \$25,000.
3. Negotiations. The City Manager may negotiate with an offeror to clarify competitive verbal quotes or proposals or informal written proposals, or to make modifications that will make the quote or proposal acceptable or more advantageous to the City.
4. Award. If a contract is awarded, the award shall be made to the offeror whose verbal quote or proposal the City Manager determines will best serve the interests of the City, taking into account price as well as any other relevant considerations, including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery, and contractor responsibility.
5. Amendments. Small procurement contracts may be amended if the cumulative amendments do not increase the total contract price to more than twenty-five percent (25%) of the original contract price and the cumulative amended price does not increase the total above \$25,000.
6. Public notice. No public notice of small procurements is required.

B. Intermediate Procurements. Contracts for goods or services with a contract price greater than \$25,000 and less than or equal to \$100,000 are intermediate procurements.

1. Intermediate procurements shall be by informal written solicitation.
2. Negotiations. The City Manager may negotiate with an offeror to clarify an informal written solicitation, or to make modifications that will make the quote, proposal or solicitation acceptable or more advantageous to the City.

3. Award. If a contract is awarded, the award shall be made to the offeror whose competitive verbal quote or proposal or informal written solicitation the City Manager determines will best serve the interests of the City, taking into account price, as well as any other relevant considerations, including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery, and contractor responsibility.
4. Amendments. Intermediate procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than twenty-five percent (25%) of the original contract price.
5. Public notice. Public notice is required for intermediate procurements with a contract price equal to or exceeding \$50,000.

C. Large Procurements. Contracts for goods or services with a contract price greater than \$100,000 are large procurements.

1. The City Manager may use competitive sealed bidding as set forth in ORS 279B.055, or competitive sealed proposals as set forth in ORS 279B.060.
2. When using either competitive sealed bidding or competitive sealed proposals, the City Manager shall follow the applicable procedures set out in the Model Rules.
3. The City shall apply the applicable procedure set out in the Model Rules for processing protests of large procurements.

VII. Personal Services Contracts.

A. Classification of Services as Personal Services. In addition to the classes of personal services contracts identified in the definition of Personal Services contracts, the City Manager may classify additional specific types of services as personal services. In determining whether a service is a personal service, the City Manager shall consider:

1. Whether the work requires specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment;
2. Whether the City intends to rely on the contractor's specialized skills, knowledge, and expertise to accomplish the work; and

3. Whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the City's needs and result in obtaining satisfactory contract performance and optimal value.
4. A service shall not be classified as personal services for the purposes of this policy if:
 - a. The work has traditionally been performed by contractors selected primarily on the basis of price; or
 - b. The services do not require specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

B. Requests for Qualifications. At the City Manager's discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for individual negotiation, informal written solicitations or requests for proposals.

1. A request for qualifications shall describe the particular type of personal services that will be sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance.
2. A request for qualifications may require information including, but not limited to:
 - a. The contractor's particular capability to perform the required personal services;
 - b. The number of experienced personnel available to perform the required personal services;
 - c. The specific qualifications and experience of personnel;
 - d. A list of similar personal services the contractor has completed;
 - e. References concerning past performance; and
 - f. Any other information necessary to evaluate the contractor's qualifications.

3. A voluntary or mandatory qualifications pre-submission meeting may be held for all interested contractors to discuss the proposed personal services. The request for qualifications shall include the date, time, and place of the meeting.
4. Unless the responses to a request for qualifications establish that competition does not exist, the request for qualifications is canceled, or all responses to the request for qualifications are rejected, all respondents who meet the qualifications set forth in the request for qualifications shall receive notice of any required personal services and have an opportunity to submit a proposal in response to request for proposals.

C. Direct Negotiations. Personal services may be procured through direct negotiations if:

1. The contract price does not exceed \$75,000 and the work is within a budgetary appropriation or approved by the City Council; or
2. The confidential personal services, including special counsel, or professional or expert witnesses or consultants, are necessary to assist with pending or threatened litigation or other legal matters in which the City may have an interest; or
3. The nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.
4. Amendments. Personal services contracts procured by direct negotiation pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price or above \$75,000; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
5. Public Notice. No public notice of personal services contracts procured by direct negotiations is required.

D. Informal Written Solicitations. An informal written solicitation process may be used for personal services when the contract price is less than \$125,000.

1. An informal written solicitation shall solicit proposals from at least three (3) qualified providers. If the City Manager determines three (3) qualified

providers are not reasonably available, fewer shall suffice, if the reasons three (3) providers are not reasonably available are documented in the procurement file.

2. The solicitation document shall include:
 - a. The date, time, and place that proposals are due;
 - b. A description of personal services sought, or the project to be undertaken;
 - c. Any statement of the time period for which proposals must remain firm, irrevocable, valid, and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - d. Any required contract terms or conditions; and
 - e. Any required bid form or proposal format.
3. Selection and ranking of proposals may be based on the following criteria:
 - a. Particular capability to perform the personal services required;
 - b. Experienced staff available to perform the personal services required, including the proposer's recent, current, and projected workloads;
 - c. Performance history;
 - d. Approach and philosophy used in providing personal services;
 - e. Fees or costs;
 - f. Geographic proximity to the project or the area where the services are to be performed; and
 - g. Such other factors deemed appropriate, including a desire to ensure an equitable distribution of work among highly qualified contractors.

4. The City Manager shall maintain written documentation of the solicitation, including solicitation attempts, responses, and provider names and addresses in the procurement file.
5. Amendments. Personal services contracts procured by informal written solicitations pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
6. Public Notice. No public notice of personal services contract procured by informal written solicitations pursuant to this section is required.

E. Requests for Proposals. A request for proposals shall be used to procure personal services when the contract price is \$125,000 or more or the complexity of the project requires the use of a formal competitive process to determine whether a particular proposal is most advantageous to the City.

1. Request for Proposal. The request for proposal shall include:
 - a. Notice of any pre-offer conference, including:
 - i. The time, date, and location;
 - ii. Whether attendance at the pre-offer conference is mandatory or voluntary; and
 - iii. A provision that statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by written addendum.
 - b. The form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received and any other special information, i.e., whether proposals may be submitted by electronic means;

- c. The name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
- d. A date, time, and place that pre-qualification applications, if any, must be filed and the classes of work, if any, for which proposers must be pre-qualified;
- e. A statement that the City may cancel the procurement or reject any or all proposals;
- f. The date, time, and place of opening;
- g. The office where the request for proposals may be reviewed;
- h. A description of the personal services to be procured;
- i. The evaluation criteria;
- j. The anticipated schedule, deadlines, evaluation process, and protest process;
- k. The form and amount of any proposal security deemed reasonable and prudent by the City Manager to protect the City's interests;
- l. A description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation factors used to rate the proposals;
- m. If more than one (1) tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
- n. If contracts will be awarded to more than one (1) personal services contractor, an identification of the manner in which the city will determine the number of contracts to be awarded, or that the manner will be left to the City's discretion at time of award;
- o. If contracts will be awarded to more than one (1) personal services contractor, the criteria to be used to choose from the multiple contracts when acquiring personal services shall be identified;

- p. All required contract terms and conditions, including the statutorily required provisions in ORS 279B.220, 279B.230 and 279B.235; and
 - q. Any terms and conditions authorized for negotiation.
 - 2. Public Notice. The City Manager shall provide public notice of a request for proposals for personal services.
 - a. Public notice shall be given not less than twenty-one (21) days prior to closing for the request for proposals, unless the City Manager determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition.
 - b. The City Manager shall document the specific reasons for shorter public notice period in the procurement file.
 - 3. Amendments. Personal services contracts procured by requests for proposals pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.

VIII. Alternative Source Selection Methods for Goods or Services & Personal Services.

- A. Sole-Source Procurements.** A contract may be awarded as a sole-source procurement without competition pursuant to this section.
 - 1. Determination of Sole Source. Before a sole-source contract may be awarded, the City Manager shall make written findings that the goods or services, personal services or professional services are available from only one source, based on one or more of the following criteria:
 - a. The efficient use of existing goods or services, personal services or professional services requires the acquisition of compatible goods or services, personal services or professional services that are available from only one (1) source;

- b. The goods or services, personal services or professional services are available from only one (1) source and required for the exchange of software or data with other public or private agencies;
 - c. The goods or services, personal services or professional services are available from only one (1) source, and are needed for use in a pilot or an experimental project; or
 - d. Other facts or circumstances exist that support the conclusion that the goods or services, personal services or professional services are available from only one source.
2. Negotiations. To the extent reasonably practical, contract terms advantageous to the City shall be negotiated with the sole source provider.
 3. Notice. The City Manager shall post notice of any determination that the sole source selection method will be used on the City's website, not less than ten (10) days prior to the date a sole source contract will be awarded. The notice shall describe the goods or services, personal services or professional services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole source selection method must be filed.

B. Special Procurements. In its capacity as Contract Review Board for the City, the City Council, upon its own initiative or upon request of the City Manager, may create special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

1. Basis for Approval. The approval of a special solicitation method or exemption from competition must be based upon a record before the City Council that contains the following:
 - a. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
 - b. The estimated contract price or cost of the project, if relevant;
 - c. Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
 - d. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise

substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;

- e. A description of the proposed alternative contracting methods to be employed; and
 - f. The estimated date by which it would be necessary to let the contract(s).
- 2. In making a determination regarding a special selection method, the City Council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.
 - 3. Hearing. The City shall approve the special solicitation or exemption after a public hearing before the City Council.
 - a. At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.
 - b. The City Council shall consider the findings and may approve the exemption as proposed or as modified by the City Council after providing an opportunity for public comment.

C. Contracts. Subject to award at the City Manager's Discretion. The following classes of contracts may be awarded in any manner that the City Manager deems appropriate to the City's needs, including by direct appointment or purchase. Except where otherwise provided the City Manager shall make a record of the method of award.

- 1. Amendments. Contract amendments shall not be considered to be separate contracts if made in accordance with the policy.
- 2. Copyrighted Materials; Library Materials. Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
- 3. Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

4. Government Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
5. Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.
6. Specialty Goods for Resale. Contracts for the purchase of specialty goods by the City for resale to consumers.
7. Sponsorship Agreements. Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
8. Structures. Contracts for the disposal of structures located on City-owned property.
9. Renewals. Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.
10. Temporary Extensions or Renewals. Contracts for a single period of one (1) year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
11. Temporary Use of City-Owned Property. The City may negotiate and enter into a license, permit or other contract for the temporary use of City-owned property without using a competitive selection process if:
 - a. The contract results from an unsolicited proposal to the City based on the unique attributes of the property or the unique needs of the proposer;
 - b. The proposed use of the property is consistent with the City's use of the property and the public interest; and
 - c. The City reserves the right to terminate the contract without penalty, in the event that the City determines that the contract is no longer consistent with the City's present or planned use of the property or the public interest.
12. Used Property. The City Manager may contract for the purchase of used property by negotiation if such property is suitable for the City's needs

and can be purchased for a lower cost than substantially similar new property.

- a. For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City.
- b. The City Manager shall record the findings that support the purchase.

13. Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
14. Conference/Meeting Room/Recreation Room Contracts. Contracts entered into for meeting room rental, hotel rooms, food and beverage, recreation rooms/spaces and incidental costs related to conferences and City-sponsored workshops and trainings.

D. Emergency Procurements. When the City Manager determines that immediate execution of a contract within the City Manager's authority is necessary to prevent substantial damage or injury to persons or property, the City Manager may execute the contract without competitive selection and award or City Council approval, but, where time permits, competitive quotes should be sought from at least three (3) providers.

1. When the City Manager enters into an emergency contract, the City Manager shall, as soon as possible, in light of the emergency circumstances, document the nature of the emergency, the method used for selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the City and the public.
2. The City Manager shall also notify the City Council of the facts and circumstances surrounding the emergency execution of the contract.

E. Cooperative Procurement Contracts. Cooperative procurements may be made without competitive solicitation as provided in the Public Contracting Code

IX. Surplus Property.

A. General Methods. Surplus property may be disposed of by any of the following methods upon a determination by the City Manager that the method of disposal is in the best interest of the City. Factors that may be considered by the City Manager include costs of sale, administrative costs, and public benefits to the City.

1. Governments. Without competition, by transfer or sale to another Government department or public agency.
2. Auction. By publicly advertised auction to the highest bidder.
3. Bids. By publicly advertised invitation to bid.
4. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with this {Code} for the award of personal services contracts.
5. Fixed Price Sale. The City Manager may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
6. Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
7. Donation. By donation to any organization operating within or providing a service to residents of the state of Oregon, which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

B. Disposal of Property with Minimal Value. Surplus property which has a current resale value \$500 or less, or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost-effective, including by disposal as waste. The employee making the disposal shall make a record of the value of the item and the manner of disposal. Disposal of property with minimal value can not be purchased by a City employee or elected official unless the property is disposed of by bid.

C. Personal-Use Items. An item (or indivisible set) of specialized and personal use with a current value of less than \$250 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the City Manager.

D. Conveyance to Purchaser. Upon the consummation of a sale of surplus personal property, the City shall make, execute and deliver, a bill of sale or similar instrument signed on behalf of the City, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

X. Protest and Appeal Procedures.

A. Appeal of Debarment or Prequalification Decision.

1. **Right to Hearing.** Any person who has been debarred from competing for the City's contracts or for whom prequalification has been denied, revoked or revised may appeal the City's decision to the City Council as provided in this section.
2. **Filing of Appeal.** The person shall file a written notice of appeal with the City Manager within five (5) business days after the prospective contractor's receipt of notice of the determination of debarment or denial of prequalification.
3. **Notification of City Council.** Immediately upon receipt of such notice of appeal, the City Manager shall notify the City Council of the appeal.
4. **Hearing.** The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:
 - a. Promptly upon receipt of notice of appeal, the City shall notify the appellant of the date, time, and place of the hearing;
 - b. The City Council shall conduct the hearing and decide the appeal within thirty (30) days after receiving notice of the appeal from the City Manager; and
 - c. At the hearing, the City Council shall reconsider, without regard to the underlying decision giving rise to the appeal, the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
5. **Decision.** The City Council shall set forth in writing the reasons for the decision.
6. **Costs.** The City Council may allocate its costs for the hearing between the appellant and the City.
 - a. The allocation shall be based upon facts found by the City Council and stated in the City Council's decision that, in the City Council's opinion, warrant such allocation of costs.

- b. If the City Council does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the City, if the decision is overturned.
- c. **Judicial Review.** The decision of the City Council may be reviewed only upon a petition in the circuit court of Umatilla filed within fifteen (15) days after the date of the City Council's decision. The appeal must be filed in accordance with all applicable state laws and trial court procedures.

B. Protests and Judicial Review of Special Procurements. An affected person may protest the request for approval of a special procurement as provided in this section.

- 1. **Delivery; Late Protests.** An affected person shall deliver a written protest to the City Manager within seven (7) days after the first date of public notice of a proposed special procurement, unless a different period is provided in the public notice.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.
 - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
- 2. **Content of Protest.** The written protest shall include:
 - a. Identification of the requested special procurement;
 - b. A detailed statement of the legal and factual grounds for the protest;
 - c. Evidence or documentation supporting the grounds on which the protest is based;
 - d. A description of the resulting harm to the affected person; and
 - e. The relief requested.
- 3. **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate,

by giving such persons written notice of the time and manner whereby any response shall be delivered.

4. City Response. The City Manager shall issue a written disposition of the protest in a timely manner.
 - a. If the City Manager upholds the protest, in whole or in part, the City Manager may, in the City Manager's sole discretion, implement the protest in the approval of the special procurement, deny the request for approval of the special procurement or revoke any approval of the special procurement.
 - b. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
5. Judicial Review. An affected person may not seek judicial review of a denial of a request for a special procurement.
 - a. Before seeking judicial review of the approval of a special procurement, an affected person shall exhaust all administrative remedies.
 - b. Judicial review shall be in accordance with ORS 279B.400.

C. Protests and Judicial Review of Sole-Source Procurements. An affected person may protest the determination that goods or services or a class of goods or services are available from only one (1) source as provided in this section.

1. Delivery; Late Protests. An affected person shall deliver a written protest to the City Manager within seven (7) days after the first date of public notice of a proposed sole source procurement is placed on the City's website, unless a different period is provided in the public notice.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.
 - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
2. Content of Protest. The written protest shall include:

- a. A detailed statement of the legal and factual grounds for the protest;
 - b. Evidence or documentation supporting the grounds on which the protest is based;
 - c. A description of the resulting harm to the affected person; and
 - d. The relief requested.
3. Additional Information. The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
 4. City Manager Response. The City Manager shall issue a written disposition of the protest in a timely manner.
 - a. If the City Manager upholds the protest, in whole or in part, the proposed sole-source contract shall not be awarded.
 - b. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
 5. Judicial Review. An affected person may not seek judicial review of an election not to make a sole-source procurement.
 - a. Before seeking judicial review of the approval of a sole-source procurement, an affected person shall exhaust all administrative remedies.
 - b. Judicial review shall be in accordance with ORS 279B.400.

D. Protests and Judicial Review of Personal Services Procurements. An affected person may protest the procurement of a personal services contract as provided in this section.

1. Delivery. Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the City Manager.

- a. The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.
- b. Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing.
- c. Protests to the award or an intent to award a personal services contract shall be made within seven (7) days after issuance of the intent to award, or if no notice of intent to award is given, within forty-eight (48) hours after award.
- d. Protests submitted after the timeframe established under this subsection are untimely and shall not be considered.

2. Contents of Protest. The written protest shall:

- a. Specify all legal or factual grounds for the protest as follows:
 - i. A person may protest the solicitation on the grounds that the contract is not a personal services contract or was otherwise in violation of this policy or applicable law. The protest shall identify the specific provision of this policy or applicable law that was violated.
 - ii. A person may protest award or intent to award for the reason that:
 - All proposals ranked higher than the affected person's are nonresponsive;
 - The City failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;
 - The City abused its discretion in rejecting the affected person's proposal as non-responsive; or
 - The evaluation of proposals or the subsequent determination of award is otherwise in violation of this policy or applicable law.

- iii. The protest shall identify the specific provision of this policy or applicable law that was violated by the City's evaluation or award;
 - b. Include evidence or supporting documentation that supports the grounds on which the protest is based;
 - c. A description of the resulting harm to the affected person; and
 - d. The relief requested.
 3. Additional Information. The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
 4. City Manager Response. The City Manager shall issue a written disposition of the protest in a timely manner.
 - a. If the City Manager upholds the protest, in whole or in part, the proposed personal services contract procurement shall be cancelled, or the contract shall not be awarded, as the case may be.
 - b. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
 5. Judicial Review. Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.
- E. Protests of Cooperative Procurements.** Protests of the cooperative procurement process, contents of a solicitation document, or award may be filed with the City only if the City is the administering agency and under the applicable procedure described herein.

CITY OF UMATILLA, OREGON

AGENDA BILL

Agenda Title:

Sanitary Sewer Agreement

Meeting Date:

January 15, 2019

Department:

Community Dev

Director:

Tamra Mabbott

Contact Person:

Tamra Mabbott

Phone Number:

X101

Cost of Proposal:

Legal fees to prepare.

Amount Budgeted:

Fund(s) Name and Number(s):

Reviewed by Finance Department:

Attachments to Agenda Packet Item:

- 1) Draft Agreement
- 2) Draft Resolution

Summary Statement:

Vadata will be constructing a new sanitary sewer line to connect the Vadata project on Lind Road (aka PDX 63) to city sewer. Vadata would like to install the sewer line at the same time as the Industrial Waste Water line to economize construction costs. The date for pipeline construction is not yet determined. Vadata will use a pump and haul in the interim period. Agreement establishes the terms of this proposal.

Consistent with Council Goals:

~~VADATA DRAFT-12/28/2018UMATILLA Rdltn 01.08.19~~

**Sanitary Sewer Agreement
by and between
Vadata, Inc. and the City of Umatilla, Oregon
dated as of [●], 2019**

53108-75177 3310970.1

Table of Contents

ARTICLE 1 – DEFINITIONS AND INTERPRETATION..... 1

1.1 Definitions..... 1

1.2 Interpretation..... 6

 (a) *Headings*..... 6

 (b) *Reference to Days*..... 6

 (c) *Conflict*..... 6

 (d) *Participation*..... 6

ARTICLE 2 – TERM, EFFECTIVE DATE, TERMINATION..... 6

2.1 Term..... 6

2.2 Termination by Vadata..... 6

2.3 Termination by the City..... 6

ARTICLE 3 – INTERCONNECTION FACILITY DESIGN AND CONSTRUCTION..... 7

3.1 Rights-of-Way..... 7

3.2 Environmental Conditions..... 7

3.3 Governmental Approvals..... 7

3.4 Design and Construction..... 87

 (a) *Responsibility*..... 87

 (b) *Access*..... 8

 (c) *Contractors*..... 8

 (d) *Start of Construction*..... 8

 (e) *Independent Engineer*..... 8

 (f) *Notice of Covering Construction Work / Inspection Rights*..... 989

 (g) *Tests*..... 9

 (h) *Monitoring of Construction*..... 9

 (i) *Acceptance Testing*..... 9

3.5 Turnover and Acceptance of Interconnection Facilities..... 109

3.6 Design, Construction, and Testing Costs..... 10

ARTICLE 4 – OPERATION AND MAINTENANCE OF THE INTERCONNECTION FACILITIES..... 10

VADATA DRAFT 12/28/2018 UMATILLA Rd In 01.08.19

4.1 City Operation and Maintenance Responsibilities. 10

4.2 City Responsible for Operation and Maintenance Costs. 10

4.3 Flushing of the Interconnection Facilities..... 10

 (a) *Flushing Schedule.* 114014

 (b) *City's Obligation to Reevaluate Flushing Requirements.* 11

 (c) *Flushing Not Subject to Sewage Rates.* 11

 (d) *Cessation of Flushing Obligations.* 11

4.4 Responsibility for Personnel and Contractors. 11

4.5 Liabilities. 11

ARTICLE 5 – RATES & PAYMENTS 121412

5.1 Sewer Rates..... 121412

5.2 Rate Discrimination Prohibited..... 121412

5.3 Measurement of Sewage Quantity..... 12

5.4 Water Meter Calibration and Inspection. 12

5.5 Billing, Payments and Appeals. 12

5.6 Latecomers Connection Charges..... 12

ARTICLE 6 – INTERIM SERVICE..... 13

6.1 Interim Service..... 13

6.2 Vadata Delivery of Sewage to Manholes..... 13

6.3 Vadata Responsibilities. 13

6.4 Notice to the City of Manhole Deliveries. 13

6.5 Records of Manhole Deliveries. 13

6.6 Interim Service Rates. 13

6.7 Billing, Payments and Appeals during the Interim Service Period..... 141314

ARTICLE 7 – UNCONTROLLABLE CIRCUMSTANCES 14

7.1 Relief..... 14

7.2 Notice and Mitigation. 14

ARTICLE 8 – INDEMNIFICATION 151415

8.1 Indemnification by Vadata..... 151415

8.2 Indemnification by the City 15

8.3 Defense of Claims 15

 (a) *Notice of Claims* 15

 (b) *Assumption of Defense* ~~16~~¹⁶¹⁵¹⁶

 (c) *Indemnified Party Defense* 16

 (d) *Cooperation* 16

8.4 Survival ~~17~~¹⁷¹⁶¹⁷

ARTICLE 9 – REPRESENTATIONS AND WARRANTIES 17

9.1 Vadata Representations and Warranties 17

9.2 City Representations and Warranties ~~18~~¹⁸¹⁷¹⁸

ARTICLE 10 – DEFAULT, REMEDIES, AND DISPUTE RESOLUTION ~~19~~¹⁹¹⁸¹⁹

10.1 Events of Default ~~19~~¹⁹¹⁸¹⁹

 (a) *Breach of Representations* 19

 (b) *Breach of Obligations* 19

 (c) *Reorganization or Insolvency* 19

10.2 Limitation of Damages 19

10.3 Remedies in General 19

10.4 No Limitation of Remedies 20

10.5 No Waiver 20

10.6 Dispute Resolution 20

 (a) *Invocation* 20

 (b) *Negotiations by Management Representatives* 20

 (c) *Non-Binding Mediation* 21

 (d) *Tolling of Statute of Limitations* 21

 (e) *Arbitration* 21

 (f) *Waiver of Trial by Jury* ~~21~~²¹²¹²²

10.7 Survival ~~22~~²²²¹²²

ARTICLE 11 – MISCELLANEOUS 22

11.1 Notices 22

 (a) *Methods and Addresses* 22

 (b) *Notices Given* 23

 (c) *Notices Received* 23

11.2 Severability..... 23
11.3 Assignment..... 23
11.4 Binding Effect and Benefit 242423
11.5 Entire Agreement..... 24
11.6 Amendment. 24
11.7 Governing Law..... 24
11.8 Counterparts. 25

List of Exhibits

- Exhibit A – Map Showing Location of Data Center Property and Interconnection Facilities
- Exhibit B – Design Specifications for Interconnection Facilities
- Exhibit C – Form of Construction Easement or Access Rights Agreement
- Exhibit D – Acceptance Tests for Interconnection Facilities
- Exhibit E – Map Showing Location of Interim Service Manholes
- Exhibit F – Designated Interim Service Contact

Sanitary Sewer Agreement

This SANITARY SEWER AGREEMENT (“Agreement”) is entered into as of this [●] day of [●], 2019 (“Effective Date”) by and between the City of Umatilla, Oregon, a municipal corporation with offices at 700 Sixth Street, Umatilla, OR 97882 (the “City”) and Vadata Inc., a Delaware corporation with offices at 410 Terry Avenue North, Seattle, WA 98109 (“Vadata”). The City and Vadata are each referred to as a “Party,” and collectively as the “Parties.”

RECITALS

- A. The City operates a sanitary sewer and wastewater treatment system (the “City Wastewater System”) that provides wastewater collection and treatment services to residents and businesses in the City of Umatilla.
- B. Vadata is in the process of developing a data center on the Data Center Property in the City of Umatilla (the “Data Center”), the construction and operation of which will generate Sanitary Sewage.
- C. The City desires to provide to Vadata, and Vadata desires to receive from the City, sanitary sewerage and wastewater treatment services for the Sanitary Sewage generated at the Data Center.
- D. The Parties desire to enter to an agreement that provides for: (a) the construction and operation of a new sanitary sewer line, lift station and ancillary facilities (the “Interconnection Facilities”) to connect the Data Center to the City Wastewater System; (b) the interim disposal of Sanitary Sewage generated at the Data Center until such time as the Interconnection Facilities are constructed and operational; and (c) the provision by the City of Sanitary Sewage services to the Data Center.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises, terms and understandings contained herein, and intending to be legally bound hereby, the Parties hereto do agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

“Acceptance Tests” means any tests conducted pursuant to Section 3.4(i).

“Adequate Flow” means a flow of at least 270 gallons per minute, occurring for at least 30 minutes in duration at least once per week.

“Affiliate” means any entity that directly or indirectly controls, is controlled by or is under common control with Vadata, including any direct or indirect subsidiary, parent, or sister company of Vadata. For the purposes of this definition, the term “control” means the power to direct or cause the direction of the management or policies, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

“Applicable Requirements” means the requirements of any Applicable Law.

“Applicable Law” means (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Authority having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate regulatory Governmental Authority if such interpretation is documented by such Governmental Authority and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or similar agreement with a Governmental Authority; in each case having the force of law and applicable from time to time to the siting, permitting, design, acquisition, construction, equipping, ownership, possession, start-up, testing, operation, maintenance, repair, replacement or management of sanitary sewerage systems.

“City Fault” means (1) any breach by the City of its representations, warranties and covenants, as set forth in this Agreement (including the untruth of any City representation or warranty herein set forth), and (2) any failure, non-performance or non-compliance by the City with respect to its obligations and responsibilities under this Agreement to the extent not directly attributable to any Uncontrollable Circumstance.

“City Indemnified Party” means the City and its officers, employees, agents, and representatives, and their respective successors and assigns.

“City Wastewater System” means the sanitary sewer and wastewater treatment system operated by the City.

“**Construction Work**” means everything required to be furnished and done for and relating to the construction of the Interconnection Facilities pursuant to the Design Specifications and this Agreement.

“**Damages**” means any loss, demand, claim, suit, action, assessment, damage, liability, cost, expense, fine, penalty, judgment, award or settlement, whether or not involving a Governmental Authority or third party claim, including related Fees and Costs, interest, and any amounts paid in investigation, defense or settlement of any of the foregoing. Except as specifically provided in this Agreement, “Damages” does not include, and neither Party shall be liable for, any loss of profit and any other incidental, consequential, exemplary, or punitive damages, including, without limitation, lost profits, lost production or lost revenues, except to the extent such damages are awarded and actually paid to a third party.

“**Data Center**” has the meaning set forth in the Recitals to this Agreement.

“**Data Center Property**” means those parcels of land on which the Data Center is located, which are further depicted as Tax Lots 200 and 201 on Exhibit A and possess with a mailing address of 81712 Lind Road, Umatilla, OR 97838, and depicted on Exhibit A.

Formatted: Font: Not Bold

“**Design Specifications**” has the meaning set forth in Section 6.2.

“**Designated Engineer**” means the professional engineer licensed in the State of Oregon and designated by the City.

“**Designated Interim Service Contact**” means a person identified by the City as listed in Exhibit F. The City may modify its respective Designated Interim Service Contact by providing notice to Vadata in accordance with Section 11.1.

“**Designated Manholes**” has the meaning set forth in Section 6.2.

“**Effective Date**” has the meaning as set forth in the opening paragraph of this Agreement.

“**Environmental Condition**” means the Release of any Regulated Substance or the presence of such Regulated Substance on, in, under or within any property, other than the presence of Regulated Substances in locations and at concentrations that are naturally occurring.

“Fees and Costs” means the reasonable fees and expenses of attorneys, experts, and other persons, and all court costs, fees, and related expenses incurred in connection with any arbitration, administrative, legal or equitable proceeding in any court, administrative body or arbitral forum.

“Good Engineering and Construction Practice” means the range of methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices followed in Oregon for the design, construction and improvement of capital assets in the wastewater treatment industry of a kind and nature similar to the Interconnection Facilities.

“Governmental Approval” means any permit, license, certificate, order, consent, authorization, franchise, registration, or other approval from, or required by, any Governmental Authority.

“Governmental Authority” means any federal, state, county, municipal, or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof, having jurisdiction.

“Independent Engineer” has the meaning set forth in Section 3.4(c).

“Indemnified Party” means a Vadata Indemnified Party or a City Indemnified Party.

“Interconnection Facilities” means those facilities consisting of a sanitary sewer line, lift station and ancillary facilities to be conveyed to and acquired by the City pursuant to Section 3.5 and as further depicted in Exhibit A.

“Interim Service Period” has the meaning set forth in Section 6.1.

“Latecomer” means any person who in the future connects and disposes wastewater to the City Wastewater System by and through the Interconnection Facilities.

“Latecomer Connection Charge” has the meaning set forth in Section 5.6.

“Prudent Industry Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as reasonably prudent operation, maintenance, repair, replacement and management practices in the wastewater treatment industry as followed in the northwestern region of the United States.

“Regulated Substance” means any contaminant, pollutant, waste, toxic, hazardous, or other chemical substance as defined in, or whose discharge, emission, disposal or release is regulated by, any Applicable Law.

“Release” means any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like of any Regulated Substance, including without limitation, the abandonment or discarding of barrels, containers and other receptacles containing any Regulated Substance, and the migration of such Regulated Substance through, into or upon, any land, soil, surface water, ground water or air, or otherwise entering into the environment.

“Sanitary Sewage” means water-carried human and animal wastes, including kitchen, bath and laundry wastes, together with such ground, surface and storm waters which may be present, but excluding industrial wastewater including, but not limited to, contact and non-contact cooling water.

“Uncontrollable Circumstance” means any act, event or condition that (1) is beyond the reasonable control of the Party relying on it as a justification for not performing an obligation or complying with any condition required of the party under this Agreement, and (2) materially adversely interferes with or delays the performance of such Party’s obligations under this Agreement, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of the Party claiming the occurrence of an Uncontrollable Circumstance.

“Vadata Fault” means (1) any breach by Vadata of its representations, warranties and covenants, as set forth in this Agreement (including the untruth of any Vadata representation or warranty herein set forth), and (2) any failure, non-performance or non-compliance by Vadata with respect to its obligations and responsibilities under this Agreement to the extent not directly attributable to any Uncontrollable Circumstance.

“**Vadata Indemnified Party**” means Vadata and its members and their respective shareholders, directors, officers, employees, agents, representatives, successors and assigns.

1.2 **Interpretation.** In this Agreement, unless the context otherwise requires:

(a) **Headings.** The table of contents and the headings preceding the text of articles and sections are solely for convenience of reference, and shall not constitute part of this Agreement, nor shall they affect its meaning, construction or effect.

(b) **Reference to Days.** Unless specified otherwise, all references to days are references to calendar days.

(c) **Conflict.** In the event of any conflict between the terms and conditions of the body of this Agreement with the terms and conditions of any Exhibit, the terms and conditions of the body of this Agreement shall control.

(d) **Participation.** Each Party has participated fully in the drafting and negotiation of this Agreement, with full benefit of counsel. Accordingly, this Agreement shall not be more strictly construed against either of the Parties.

ARTICLE 2 – TERM, EFFECTIVE DATE, TERMINATION

2.1 **Term.** This Agreement shall be in full force and effect from the Effective Date and for twenty (20) years thereafter (the “**Term**”). At the end of the Term, if and to the extent that the Data Center continues to require Sanitary Sewage services from the City, the Data Center shall be entitled to receive service in the same manner and under the same terms and conditions as any other customer of the City Wastewater System.

2.2 **Termination by Vadata.** Vadata may terminate this Agreement by providing written notice to the City at least ninety (90) days prior to the date of such termination.

2.3 **Termination by the City.** The City acknowledges the substantial investment to be made by Vadata in the Data Center, and that the operation of the Data Center is dependent upon the provision by the City of Sanitary Sewage collection and treatment services. Therefore, the City shall keep this Agreement in place and, therefore, not have a right to terminate this Agreement, it being acknowledged and understood that the City’s rights to secure specific performance and the other remedies set forth in this Agreement shall constitute adequate remedies for any breach by Vadata.

ARTICLE 3 – INTERCONNECTION FACILITY DESIGN AND CONSTRUCTION

3.1 **Rights-of-Way.** The City is responsible for obtaining the rights-of-way and easements necessary to construct and operate the Interconnection Facilities. All such rights-of-way or easements shall be acquired in the name of the City. The City agrees to provide to Vadata, without charge, all rights-of-way through and across property owned by the City required for installation of the Interconnection Facilities. Vadata agrees to cooperate with the City as necessary in obtaining any other rights-of-way across property owned by third parties. To the extent required, the City agrees to use its best efforts (including, if necessary, use of the City's eminent domain powers) to acquire such rights-of-way or easements from such third parties to accommodate the Interconnection Facilities.

3.2 **Environmental Conditions.** In the event that any Environmental Condition is discovered within any of the easements, rights-of-way or other properties where the Interconnection Facilities are planned, constructed or installed: (a) the Party discovering the Environmental Condition shall promptly provide notice of such discovery to the other Party; (b) each Party shall take all reasonable measures to avoid contributing to the migration or other exacerbation of such Environmental Condition; and (c) each of the Parties reserve all rights and defenses with respect to any such Environmental Condition, and the Parties agree to cooperate in pursuing any available remedies against the persons responsible for such Environmental Condition.

3.3 **Governmental Approvals.** ~~Except as provided in this subsection 3.3, Vadata shall prepare and submit in its name all applications, filings and reports necessary to obtain and maintain all Governmental Approvals (other than rights-of-way) required for the construction, startup and testing of the Interconnection Facilities. Vadata shall submit such applications in the City's name for those permits which the City must hold for ownership, construction and operation of the Interconnection Facilities; and shall submit in its own name such applications for those other permits as may be required for Vadata's construction of the Interconnection Facilities.~~ The City shall reasonably cooperate with Vadata in connection with such applications and Governmental Approvals, and shall provide to Vadata relevant data or documents within its control which are reasonably required for such purposes. To the extent required under Applicable Law that any of such Governmental Approvals, including those as may be required for the City's subsequent ownership and operation of the Interconnection Facilities, must be obtained in the name of the City, the City agrees to review, approve, and execute any applications for such Governmental Approvals in order that they be obtained in the name of the City.

3.4 **Design and Construction.**

(a) **Responsibility.** Vadata shall undertake and complete the design, construction, commissioning and acceptance testing of the Interconnection Facilities. Vadata shall construct the Interconnection Facilities at the locations depicted in **Exhibit A** and in accordance with the design specifications set forth in **Exhibit B** (the “**Design Specifications**”). Any material deviations from the Design Specifications shall be subject to review and approval by the City’s Designated Engineer, which approval shall not be unreasonably withheld, conditioned or delayed. The Parties acknowledge that the Design Specifications for the Interconnection Facilities may need to be adjusted in the event that Vadata decides to co-locate an industrial wastewater line within the same trench as the sanitary sewer line.

(b) **Access.** The City shall grant to Vadata a temporary easement or other form of access in the form attached hereto as **Exhibit C** or as otherwise agreed to by the parties, providing access in, along and across any property, easements or rights-of-way owned by the City, including the grant to Vadata and Vadata’s contractors and representatives of rights of access, ingress and egress, across any property, easements or rights-of-way owned by the City, to construct, install, commission and acceptance test the Interconnection Facilities as provided in this **Section 3.4**.

(c) **Contractors.** Vadata shall engage reputable contractors experienced in the construction, commissioning and acceptance testing of the Interconnection Facilities.

(d) **Start of Construction.** Vadata shall commence construction of the Interconnection Facilities within two (2) years of the Agreement Effective Date.

(e) **Independent Engineer.** Vadata shall engage and maintain an independent engineer licensed in the State of Oregon and experienced in sanitary sewerage and wastewater system design, construction, and operation to oversee and inspect construction of the Interconnection Facilities (the “**Independent Engineer**”). Selection of the Independent Engineer, and any replacement Independent Engineer, shall be subject to the approval of the City’s Designated Engineer, which approval shall not be unreasonably withheld, conditioned or delayed. If the City does not respond within seven days following receipt of a notice from Vadata proposing selection of the Independent Engineer or a replacement Independent Engineer, such Independent Engineer shall be deemed approved by the City. The Independent Engineer or qualified individuals under the supervision of the Independent Engineer shall (i) be present on a regular basis during the construction and testing of the Interconnection Facilities, (ii) be present

¹ NOTE TO DRAFT: The design has basically been completed, so a “design” by the Independent Engineer should not be required.

during all critical phases of the work, (iii) inspect all Construction Work prior to covering, and (iv) be present and observe all Acceptance Tests.

(f) **Notice of Covering Construction Work / Inspection Rights.** Vadata shall require its contractors to give the Independent Engineer and the City's Designated Engineer reasonable advance notice of the anticipated schedule for covering and completion of any Construction Work. The Independent Engineer and the City's Designated Engineer shall be provided with reasonable notice (a minimum of 48 hours) prior to covering of any Construction Work, in order to afford a reasonable opportunity to conduct an inspection of such Construction Work. Such notice requirement may be satisfied by the provision of a weekly schedule of anticipated work to be performed in the coming work week. If Vadata or its contractor fails to provide the Independent Engineer or the City's Designated Engineer with timely notice of such covering, then upon the request of the Independent Engineer or the City's Designated Engineer, Vadata or its contractor shall uncover such Construction Work for inspection. The Independent Engineer shall inspect all Construction Work prior to covering. The City's Designated Engineer shall have the right, but not the duty, to inspect Construction Work prior to covering.

(g) **Tests.** Vadata shall cause its contractors to conduct all tests of the Interconnection Facilities Construction Work and inspections required by Good Engineering and Construction Practice and Applicable Law. Vadata shall cause its contractors to give the Independent Engineer and the City's Designated Engineer reasonable advance notice (a minimum of 48 hours) of any on-site tests prior to the conduct thereof. The Independent Engineer shall observe any such tests. The City's Designated Engineer shall have the right, but not the duty, to observe any such tests.

(h) **Monitoring of Construction.** The City's Designated Engineer shall have the right, at any reasonable time and with reasonable notice, to conduct such observations and inspections as the City's Designated Engineer deems necessary or desirable to ascertain whether the Construction Work conforms to this Agreement. The observations, inspections and tests conducted by the City's Designated Engineer shall not interfere with the construction process or progress, and the cost of any such test shall be borne solely by the City.

(i) **Acceptance Testing.** Upon completion of the Interconnection Facilities Construction Work, the pipelines and lift station shall be tested in accordance with the standards listed in **Exhibit D**. Vadata or its contractor shall provide reasonable advance notice of at least 72 hours to the Independent Engineer and the City's Designated Engineer of the scheduled dates of such Acceptance Tests, and shall allow the Independent Engineer and the City's Designated Engineer to be present to witness such testing. The Independent Engineer shall be present for and observe all Acceptance Tests. The City's Designated Engineer shall have the right, but not the duty, to observe any such Acceptance Tests.

3.5 **Turnover and Acceptance of Interconnection Facilities.** Within thirty (30) days of the completion of construction and certification by the Independent Engineer of the successful completion of all required Acceptance Tests, Vadata shall turn over, assign, and convey to the City, and the City agrees to accept, all real and personal property interests related to the Interconnection Facilities including, but not limited to, documents identifying and/or confirming interests in real property, copies of Government Approvals, and as-built drawings related to the Interconnection Facilities up to the upstream side of the point of connection between the Interconnection Facilities and Vadata's own facilities on the Data Center Property, which point of connection is further depicted on **Exhibit A**. The Parties shall work cooperatively to transfer any Governmental Approvals held by Vadata that, under Applicable Law, must be held by the City in order for the City to operate the Interconnection Facilities.

3.6 **Design, Construction, and Testing Costs.** Vadata shall be responsible for payment of all costs it incurs in relation to designing, constructing and testing the Interconnection Facilities pursuant to this **Article 3**, including, but not limited to, costs associated with (i) preparing the Design Specifications, (ii) performing the Construction Work, including, but not limited to, payments to contractors and subcontractors, (iii) payment of the Independent Engineer, and (iv) performing tests and inspections, including, but not limited to, Acceptance Tests of the Construction Work, subject to the provisions of **Section 5.6**.

ARTICLE 4- OPERATION AND MAINTENANCE OF THE INTERCONNECTION FACILITIES

4.1 **City Operation and Maintenance Responsibilities.** With the exception of those Vadata obligations set forth in **Section 4.3**, the City shall be solely responsible for the operation, inspection, maintenance and repair of the Interconnection Facilities together with related costs following turnover in accordance with **Section 3.5**. The City shall carry out these responsibilities in a manner consistent with Prudent Industry Practice and in compliance with all applicable federal, state and local laws, rules, regulations, ordinances, and Governmental Approvals.

4.2 **City Responsible for Operation and Maintenance Costs.** With the exception of those Vadata expenses set forth in **Section 4.3**, the City shall be solely responsible for all costs of operating, inspecting, maintaining and repairing the Interconnection Facilities following turnover in accordance with **Section 3.5**.

4.3 **Flushing of the Interconnection Facilities.** Until such time as an Adequate Flow of wastewater is being regularly provided into and through the Interconnection Facilities by virtue of flows from the Data Center together with Latecomers connecting to and disposing of additional wastewater volumes through the Interconnection Facilities, but in no event for longer than the

Initial Term of this Agreement, Vadata shall at its own expense provide up to 20,000 gallons of water into the Interconnection Facilities on a weekly basis to flush the Interconnection Facilities.

(a) **Flushing Schedule.** Unless and until the City requests provision of a lesser quantity of water or less frequent flushing water deliveries, Vadata shall provide 10,000 gallons of water twice a week to flush the Interconnection Facilities. Vadata shall deliver this water into the Interconnection Facilities at regularly scheduled times mutually agreed to by the Parties. If for any reason Vadata is unable to make a flushing water delivery at its regularly scheduled time, Vadata shall notify the City and make the scheduled flushing water delivery as soon as practicable.

(b) **City's Obligation to Reevaluate Flushing Requirements.** At least once every six (6) months, the City shall reevaluate the quantity of water that Vadata needs to deliver into the Interconnection Facilities in order to maintain Adequate Flow. If the City determines that less than 20,000 gallons of water is needed from Vadata on a weekly basis in order to maintain Adequate Flow, the City shall request that Vadata provide that lesser amount, and Vadata shall only be obligated to provide that lesser amount, in accordance with a revised schedule mutually agreed to by the Parties. In no event shall Vadata be required to provide (i) more than 20,000 gallons per week of water to flush the Interconnection Facilities, or (ii) flushing water deliveries more frequently than twice a week.

(c) **Flushing Not Subject to Sewage Rates.** The City shall not charge Vadata the City's regular sewage rates (or any other amount) for quantities of water provided to flush the Interconnection Facilities pursuant to this Section 4.3.

(d) **Cessation of Flushing Obligations.** Vadata's obligation to provide water to flush the Interconnection Facilities pursuant to this Section 4.3 shall cease upon (i) expiration or termination of this Agreement pursuant to Article 2, or (ii) establishment of Adequate Flow through the Interconnection Facilities independent of Vadata's flushing water deliveries, whichever occurs sooner.

4.4 **Responsibility for Personnel and Contractors.** The City shall be solely responsible for providing and supervising all personnel, materials, contractors and other services necessary to carry out its obligations under this Agreement.

4.5 **Liabilities.** With the exception of its obligations set forth in this Agreement in relation to the Interconnection Facilities, Vadata shall have no obligations or liability of any type arising from or in any manner related to the ownership, operation, or maintenance of the City Wastewater System.

ARTICLE 5 – RATES & PAYMENTS

5.1 **Sewer Rates.** Vadata shall pay the City for Sanitary Sewage disposal services according to the City's current applicable uniform schedule of sewer rates and charges duly adopted pursuant to Section 7-4B (Sewer Use and Service) of the Umatilla City Code.

5.2 **Rate Discrimination Prohibited.** In the event that the City modifies its rate structure to establish different customer classes or proposes to adopt any other change in rates or charges that do not apply equally to all classes of customers, any such rates and charges shall be fairly and reasonably allocated to each customer class in relation to the cost of the City of providing service to such customer class.

5.3 **Measurement of Sewage Quantity.** To determine the quantity of Sanitary Sewage that Vadata contributes to the City Wastewater System through the Interconnection Facilities, Vadata shall meter the amount of Sanitary Sewage discharged to such facilities and self-report to the City on a monthly basis. On its monthly discharge reports, Vadata shall provide a log of the amounts of water for flushing provided pursuant to the flushing schedule established pursuant to **Section 4.3**, and Vadata shall be entitled to subtract all amounts of water it provides to flush the Interconnection Facilities pursuant to **Section 4.3(c)**. Vadata shall provide its monthly discharge report to the City within fifteen (15) days following the end of each calendar month. The City shall use Vadata's monthly discharge reports as the basis for preparation of Vadata's monthly sewer service bills. Such meter shall be installed at or near the point of connection of the Interconnection Facilities to Vadata's facilities located on the Data Center Property.

5.4 **Water Meter Calibration and Inspection.** Vadata's water meter shall be of a type sufficient to meet all applicable accuracy, precision and calibration standards established by all Applicable Laws. Vadata shall be responsible for calibrating the water meter at least every three (3) years. The City shall have the right to inspect Vadata's water meter, at its own cost, upon providing at least 24 hours notice to Vadata.

5.5 **Billing, Payments and Appeals.** The City's and Vadata's obligations with respect to billing, payments, appeals, and delinquencies shall be governed by Section 7-4B (Sewer Use and Service) of the Umatilla City Code (including any amendments thereto that the City may from time-to-time duly adopt).

5.6 **Latecomers Connection Charges.** The City shall collect a sewer connection charge from any and all Latecomers that connect to the Interconnection Facilities ("**Latecomer Connection Charge**") prior to allowing the Latecomer to connect to the Interconnection Facilities. The Latecomer Connection Charge shall be based on the amount of sewage capacity consumed by the Latecomer (measured in equivalent residential units ("**ERUs**")). For each ERU consumed, the Latecomer shall pay a connection charge equal to following calculation: Vadata's design,

construction and testing costs pursuant to Section 3.6, divided by the total sewage conveyance capacity of the Interconnection Facilities. (For instance, if Vadata's costs pursuant to Section 3.6 are \$500,000, and the total sewage conveyance capacity of the Interconnection Facilities is 500 ERUs, the Latecomer Connection Charge would be \$500,000 / 500 ERUs = \$1,000 per ERU.) The City shall pay to Vadata the full amount of any and all Latecomer Connection Charges collected pursuant to this Section within thirty (30) days of receipt from the Latecomer.

ARTICLE 6 – INTERIM SERVICE

6.1 **Interim Service.** From the Effective Date until such time as the Interconnection Facilities are turned over to and brought into operation by the City, but in no event later than January 31, 2022 (the “**Interim Service Period**”), the City shall provide interim Sanitary Sewage treatment services to Vadata as set forth in this Article.

6.2 **Vadata Delivery of Sewage to Manholes.** During the Interim Service Period, the City shall permit Vadata to dispose of Sanitary Sewage generated at the Data Center into any of the manholes identified on the map included in Exhibit E (the “**Designated Manholes**”).

6.3 **Vadata Responsibilities.** Vadata shall be responsible for entering into an agreement with a qualified contractor to transport and dispose of Sanitary Sewage generated at the Data Center into the Designated Manholes. Vadata and its contractor shall be responsible for obtaining all required Governmental Approvals and complying with all Applicable Laws relating to the transportation and disposal of Sanitary Sewage in the Designated Manholes.

6.4 **Notice to the City of Manhole Deliveries.** Vadata or its contractor shall provide notice to the City's Designated Interim Service Contact at least one (1) hour in advance of any delivery of Sanitary Sewage to a Designated Manhole during the Interim Service Period.

6.5 **Records of Manhole Deliveries.** Vadata shall keep or maintain access to records of the amount and time of all deliveries of Sanitary Sewage to a Designated Manhole during the Interim Service Period. Within fifteen (15) days following the end of each calendar month, Vadata shall provide to the City records of all manhole deliveries during the preceding month. During the Interim Service Period, the City shall use these records as the basis for preparation of Vadata's monthly sewer service bills.

6.6 **Interim Service Rates.** During the Interim Service Period, Vadata shall pay the City for interim sewer service based on the quantity of sewage it delivers to the manholes on a monthly basis in accordance with the City's current uniform schedule of sewer rates and charges duly adopted pursuant to Section 7-4B (Sewer Use and Service) of the Umatilla City Code.

6.7 **Billing, Payments and Appeals during the Interim Service Period.** The City's and Vadata's obligations with respect to billing, payments, appeals, and delinquencies during the Interim Service Period shall be governed by Section 7-4B (Sewer Use and Service) of the Umatilla City Code (including any amendments thereto that the City may from time-to-time duly adopt).

ARTICLE 7 – UNCONTROLLABLE CIRCUMSTANCES

7.1 **Relief.** The Parties to this Agreement shall be excused from performing any obligation under this Agreement to the extent such failure by a Party to perform directly results from an Uncontrollable Circumstance. The Parties agree that the relief for an Uncontrollable Circumstance described in this Article shall apply to all affected obligations in this Agreement, except to the extent specifically provided otherwise, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Agreement but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance.

7.2 **Notice and Mitigation.** A Party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other Party by telephone or facsimile, on or promptly after the date the Party experiencing such Uncontrollable Circumstance first knew of the occurrence thereof, followed within five (5) days by a written description of: (1) the Uncontrollable Circumstance and the cause thereof (to the extent known); and (2) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such Party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of an Uncontrollable Circumstance, the asserting Party shall also provide the other Party with a description of the steps being taken to mitigate and correct the effects of such Uncontrollable Circumstance. The asserting Party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever an Uncontrollable Circumstance shall occur, the asserting Party shall, as promptly as practicable, use all reasonable efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. While the Uncontrollable Circumstance continues, the asserting Party shall give notice to the other Party, before the first day of each succeeding month, updating the information previously submitted. The Party asserting an Uncontrollable Circumstance shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other Party.

ARTICLE 8 – INDEMNIFICATION

8.1 **Indemnification by Vadata.** Vadata agrees to indemnify, defend, and save harmless the City Indemnified Parties, from and against any and all Damages arising or resulting from: (1) a material breach of any representations made by Vadata in **Section 9.1** of this Agreement, (2) the negligence or willful misconduct of Vadata or any of Vadata’s officers, employees, agents, representatives, contractors, in connection with performance of Vadata’s obligations under this Agreement; (3) the failure by Vadata to fulfill any of its obligations under this Agreement, unless such failure has been excused in accordance with the provisions of this Agreement; (4) any violation of Applicable Law arising from the activities of Vadata or any of Vadata’s officers, employees, agents, representatives, contractors, in connection with performance of Vadata’s obligations under this Agreement (including, but not limited to, Vadata’s construction of the Interconnection Facilities); (5) any claims relating to the procurement, contracting for and performance of the Interconnection Facilities construction work to be constructed by Vadata pursuant to **Article 3**; *except that* the City Indemnified Parties shall not be indemnified hereunder to the extent that such Damages arise or result from the negligence or willful misconduct of any City Indemnified Party or the unexcused breach by the City of any of its obligations under this Agreement.

8.2 **Indemnification by the City.** The City agrees to indemnify, defend, and save harmless the Vadata Indemnified Parties from and against any and all Damages arising or resulting from: (1) a material breach of any representation made by the City in **Section 9.2** of this Agreement; (2) the negligence or willful conduct or other fault of the City or any of its officers, employees, agents, representatives, or contractors, in connection with performance of the City’s obligations under this Agreement; (3) any violation of Applicable Law arising from the activities of the City or any of the City’s officers, employees, agents, representatives, contractors, in connection with performance of the City’s obligations under this Agreement; (4) the failure by the City to fulfill any of its obligations under this Agreement, unless such failure has been excused in accordance with the provisions of this Agreement; *except that* the Vadata Indemnified Parties shall not be indemnified hereunder to the extent that such Damages arise or result from the negligence or willful misconduct of any Vadata Indemnified Party or the unexcused breach by Vadata of any of its obligations under this Agreement.

8.3 **Defense of Claims.**

(a) **Notice of Claims.** If any Indemnified Party believes that it has suffered or incurred, or will suffer or incur, any Damages for which it is entitled to indemnification under **Sections 8.1** or **8.2**, such Indemnified Party shall notify the Party obligated to provide such indemnification (the “**Indemnitor**”). Such notice shall specify the factual basis of the claim in reasonable detail in light of the circumstances then existing. If any Legal Proceeding is instituted

by or against a third party with respect to which any Indemnified Party intends to claim any Damages, such Indemnified Party shall promptly notify the Indemnitor of such action or suit. The failure of an Indemnified Party to give any notice required by this section shall not affect any of such Indemnified Party's rights under Sections 8.1 or 8.2, except and to the extent that such failure is actually prejudicial to the rights or obligations of Indemnitor.

(b) **Assumption of Defense.** If an Indemnified Party gives notice to the Indemnitor pursuant to Section 8.3(a) of the assertion of a third-party claim, the Indemnitor shall be entitled to participate in the defense of such third-party claim and, to the extent that it wishes to, assume the defense of such third-party claim with counsel selected by the Indemnitor reasonably satisfactory to the Indemnified Party. After notice from the Indemnitor to the Indemnified Party of Indemnitor's election to assume the defense of such third-party claim, Indemnitor shall not, so long as it diligently conducts such defense, be liable to the Indemnified Party for any fees of other counsel or any other expenses with respect to the defense of such third-party claim, in each case subsequently incurred by the Indemnified Party in connection with the defense of such third-party claim. If the Indemnitor assumes the defense of a third-party claim, no compromise or settlement of such third-party claims may be effected by Indemnitor without the Indemnified Party's consent, unless (i) there is no finding or admission of any violation of legal requirement or any violation of the rights of any person; (ii) the sole relief provided is monetary damages that are paid in full by Indemnitor; and (iii) the Indemnified Party shall have no liability with respect to any compromise or settlement of such third-party claims effected without its consent.

(c) **Indemnified Party Defense.** If Indemnitor does not assume the defense of, or after assuming such defense, Indemnitor fails to defend, any third-party claim, then (i) the Indemnified Party may defend against such claim or action in such manner as it may deem appropriate (provided that the Indemnitor may participate in such defense at its own expense); (ii) the Indemnified Party may settle such claim on such terms as it may deem appropriate, provided that the Indemnified Party shall provide such notice to, and obtain such approval from, the applicable insurers providing any Required Insurance, as is necessary to obtain coverage from such insurers for the settlement; and (iii) the Indemnitor shall promptly reimburse the Indemnified Party for the amount of all Fees and Costs reasonably and necessarily incurred by the Indemnified Party in connection with the defense against and settlement of such claim. If no settlement of such third-party claim is made, Indemnitor shall satisfy any judgment rendered with respect to such claim before the Indemnified Party is required to do so, and pay all Fees and Costs reasonably and necessarily incurred by the Indemnified Party in connection with the defense against such claim.

(d) **Cooperation.** With respect to any third-party claim subject to indemnification under Sections 8.1 or 8.2, (i) both the Indemnitor and the Indemnified Party, as

the case may be, shall keep the other party informed of the status of such third-party claim and any related proceedings at all stages thereof where such person is not represented by its own counsel, and (ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate with each other in order to ensure the proper and adequate defense of any third-party claim.

8.4 **Survival.** This provisions of this **Article 8** shall survive termination of this Agreement.

ARTICLE 9 – REPRESENTATIONS AND WARRANTIES

9.1 **Vadata Representations and Warranties.** Vadata represents and warrants that:

(A) Vadata is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with its principal office and place of business at the location set forth in **Section 11.1**, with all requisite power and authority to enter into and perform its obligations under this Agreement.

(B) This Agreement has been duly authorized, executed and delivered by all necessary action of Vadata and constitutes a legal, valid and binding obligation of Vadata, subject to general equity principles, enforceable against Vadata in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

(C) Neither the execution nor delivery by Vadata of this Agreement, nor the performance by Vadata of its obligations in connection with the transactions contemplated hereby or the fulfillment by Vadata of the terms or conditions hereof: (i) conflicts with, violates or results in a breach of any Applicable Law applicable to Vadata; or (ii) conflicts with, violates or results in the breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which Vadata is a party or by which Vadata or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) There is no action, lawsuit, claim, demand or proceeding pending before any court, arbitrator, private alternative dispute resolution system or Governmental Authority, or, to the best of Vadata's knowledge, threatened, the outcome of which, if determined in a manner adverse to Vadata, could reasonably be expected to have a material adverse effect on the execution and delivery of this Agreement or any other agreement or instrument entered into by Vadata in connection with the transactions contemplated hereby, the validity, legality or

enforceability of this Agreement, or any other agreement or instrument entered into by Vadata in connection with the transactions contemplated hereby, or which would adversely affect the ability of Vadata to perform its obligations hereunder or under any such other agreement or instrument.

9.2 **City Representations and Warranties.** The City represents and warrants that:

(A) The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Oregon, with its principal office and place of business at the location set forth in **Section 11.1**, with all requisite power and authority to enter into and perform its obligations under this Agreement.

(B) This Agreement has been duly authorized, executed and delivered by all necessary action of the City and constitutes a legal, valid and binding obligation of the City, subject to general equity principles, enforceable against the City in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

(C) Neither the execution nor delivery by the City of this Agreement, nor the performance by the City of its obligations in connection with the transactions contemplated hereby or the fulfillment by the City of the terms or conditions hereof: (i) conflicts with, violates or results in a breach of any Applicable Law applicable to the City; or (ii) conflicts with, violates or results in the breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) There is no action, lawsuit, claim, demand or proceeding pending before any court, arbitrator, private alternative dispute resolution system or Governmental Authority, or, to the best of the City's knowledge, threatened, the outcome of which, if determined in a manner adverse to the City, could reasonably be expected to have a material adverse effect on the execution and delivery of this Agreement or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby, the validity, legality or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby, or which would adversely affect the ability of the City to perform its obligations hereunder or under any such other agreement or instrument.

ARTICLE 10 – DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

10.1 **Events of Default.** The following shall constitute an Event of Default by a Party to this Agreement:

(a) **Breach of Representations.** If any representation or warranty of such Party hereunder was false or inaccurate in any material respect when made.

(b) **Breach of Obligations.** Such Party's failure to keep and perform any of its material obligations and covenants under this Agreement, which failure or breach continues for thirty (30) days after written notice thereof to that Party, unless the nature of the failure or breach is such that more than thirty (30) days is reasonably required for its cure and the obligated Party has commenced such cure within such thirty (30) days period and thereafter diligently prosecutes the same to completion, provided that any such cure shall be completed within ninety (90) days after such written notice.

(c) **Reorganization or Insolvency.** If such Party: (i) makes an assignment for the benefit of creditors; (ii) files or acquiesces in a petition in any court (whether or not pursuant to any statute of the United States or of any state) in bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, or makes an application in any such proceedings for, or acquiesces in, the appointment of a trustee or receiver for it or over all or any portion of its property; or (iii) becomes subject to any petition filed against such Party in any court (whether or not pursuant to any statute of the United States or of any state) in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings where: (x) the Party shall thereafter be adjudicated as bankrupt or insolvent, or (y) such petition shall be approved by any such court, or (z) such proceedings shall not be dismissed, discontinued or vacated within ninety (90) days after such petition is filed.

10.2 **Limitation of Damages.** Damages payable under this Agreement shall be limited to direct Damages or damages awarded and actually paid to a third party, in either case net of insurance proceeds actually received. Neither Party shall be liable for any other Damage such as, without limitation, indirect, special, consequential, incidental, exemplary, or punitive damages including, without limitation, lost profits, lost production, or lost revenues, except for any such Damages awarded and actually paid to a third party.

10.3 **Remedies in General.** In the event of any Event of Default under this Agreement, each Party shall have a right to obtain specific performance of the obligations set forth in this Agreement, it being acknowledged and understood that damages and other remedies at law are not adequate. Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover damages for

any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate.

10.4 **No Limitation of Remedies.** Except as provided in Section 2.3, the foregoing remedies shall be in addition to, and not in limitation of, all available remedies at law or equity. Such available remedies shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

10.5 **No Waiver.** A Party's failure, at any time or times, to require strict performance by the other Party of any provision of this Agreement shall not waive, affect or diminish any right of such Party thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. None of the undertakings, agreements, warranties, covenants and representations of any Party contained in this Agreement and no Default or Event of Default by any Party shall be deemed to have been suspended or waived by the other Party, unless such waiver or suspension is by an instrument in writing signed by an officer or other authorized employee of such Party specifying such suspension or waiver.

10.6 **Dispute Resolution.** Except as otherwise specifically provided in this Agreement, disputes arising under this Agreement shall be subject to the following alternative dispute resolution process:

(a) **Invocation.** The resolution procedures shall be invoked when any Party sends a written notice to the other Party (the "**Dispute Notice**"). The notice shall describe the nature of the dispute and the Party's position with respect to such dispute. The Parties shall expeditiously schedule consultations or a meeting to discuss the dispute informally in accordance with Section 10.6(b).

(b) **Negotiations by Management Representatives.** Upon delivery of a Dispute Notice, each party shall identify a Management Representative to whom the dispute shall be initially referred for informal negotiation. The Management Representatives shall meet in person or by conference call within seven (7) days of delivery of a Dispute Notice. The period of informal negotiations shall not extend beyond thirty (30) days from the date of the Dispute Notice, unless the Parties agree in writing to extend this period. The Management Representatives

may request the assistance of an independent mediator if they believe that such a mediator would be of assistance to the efficient resolution of the dispute.

(c) **Non-Binding Mediation.** In the event that the Management Representatives are unable to resolve any dispute within the period provided in **Section 10.6(b)**, in an effort to resolve any conflict, such dispute shall be submitted to non-binding mediation unless the Parties mutually agree otherwise. The Parties shall agree upon a mediator within seven (7) days following expiration of the period provided under **Section 10.6(b)**. Each Party shall pay 50% of the costs of the mediator. Such mediation shall be concluded within 60 days after selection of the mediator unless the Parties otherwise agree in writing (the "**Mediation Period**").

(d) **Tolling of Statute of Limitations.** The Parties agree that with respect to any dispute under this Agreement, the period commencing on the date of the Dispute Notice and ending on the day after the conclusion of the Mediation Period (the "**Tolling Period**"), shall not be included in computing the running of any statute of limitations potentially applicable to any action relating to the subject matter of such dispute; and any defenses of laches, estoppel, or waiver, or other similar equitable defenses related to the subject matter of such dispute based upon the running or expiration of any time period shall not include the Tolling Period.

(e) **Arbitration.** If non-binding mediation is not successful, the Parties agree that any claim arising under this Agreement shall be submitted to and settled exclusively by final and binding arbitration in Portland, Oregon, before a panel of three neutral and impartial arbitrators, in accordance with the Commercial Arbitration Rules (the "**Arbitration Rules**") of the American Arbitration Association then in effect. The Parties shall each appoint one arbitrator within thirty (30) days of receipt by respondent of the demand for arbitration. The two Party-appointed arbitrators shall have fifteen (15) days from the appointment of the second arbitrator to agree on a third arbitrator who shall chair the arbitral tribunal. At the request of any Party, any arbitrator not timely appointed shall be selected in accordance with the listing, striking and ranking procedure in the Arbitration Rules. The decision of the arbitrators will be final and binding upon the Parties, and the judgment of a court of competent jurisdiction may be entered thereon. All arbitration hearings shall be conducted on an expedited schedule with the hearing, if possible, commencing not later than 120 days following selection of the arbitrators, and all proceedings shall be confidential. Either Party, at its expense, may make a stenographic record thereof. Each Party shall pay its own expenses and each Party shall pay one-half of the costs and expenses of the arbitrators and the American Arbitration Association.

(f) **Waiver of Trial by Jury.** EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT OT MAY HAVE TO A TRIAL BY JURY.

10.7 **Survival.** This provisions of this **Article 10** shall survive termination of this Agreement.

ARTICLE 11 – MISCELLANEOUS

11.1 Notices.

(a) Methods and Addresses. All notices, demands, requests or other communications required by this Agreement (collectively “**Notices**”) shall be in writing and given as follows by: (i) personal delivery; (ii) established overnight commercial courier with delivery charges prepaid or duly charged; (iii) electronic transmittal via facsimile machine; (iv) via electronic mail; or (v) certified mail, return receipt requested, postage prepaid. All Notices shall be addressed to the applicable addresses and facsimile machine telephone numbers set forth below, or to any other address or addressee as a Party entitled to receive Notices shall designate, from time to time, by Notice given to the other Party in the manner provided in this Section.

If to Vadata:

Vadata, Inc.
410 Terry Avenue North
Seattle, WA 98109
Fax: 206-266-7010
Email: Infraenergy@amazon.com

With a copy to:

By mail:
c/o Amazon.com
P.O. Box 81226
Seattle, WA 98108-1226
Attn: General Counsel (AWS)

By courier or personal delivery:
c/o Amazon.com
410 Terry Avenue North
Seattle, WA 98109-5210 U.S.A.
Attention: General Counsel (AWS)

By e-mail:
contracts-legal@amazon.com or infraenergy@amazon.com
Attention: General Counsel (AWS)

If to the City: [•]

City of Umatilla
Attn: City Manager
P.O. Box 130
Umatilla, OR 97882

Fax:

Email:

Formatted: Highlight

With a copy to:

[•] *By U.S. Mail and email*

Peter D. Mohr

Jordan Ramis PC

Two Centerpointe Dr., 6th Flr

Lake Oswego, OR 97035

peter.mohr@jordanramis.com

Formatted: Font: Italic

Formatted: Superscript

(b) **Notices Given.** Notices shall be deemed “given”: (i) by personal delivery, electronic mail or facsimile machine, when received pursuant to **Section 11.1(c)**; (ii) when accepted by overnight commercial courier; or (iii) when deposited into the United States Postal Service.

(c) **Notices Received.** Notices given by personal delivery shall be presumed to have been received upon tender to the applicable natural person designated above to receive Notices. Notices given by facsimile machine transmittal shall be presumed to have been received upon confirmation of successful transmittal by the sender’s facsimile machine. Notices given by electronic mail shall be presumed to have been received upon confirmation of receipt via electronic message or telephone confirmation from the recipient. Notices given by overnight commercial courier shall be presumed to have been received the next business day after acceptance by such overnight commercial courier. Notices given by mail shall be presumed to have been received by the third business day after deposit into the United States Postal Service. All copies to the applicable persons or entity(ies) designated above to receive copies shall be given in the same manner as the original Notice.

11.2 **Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

11.3 **Assignment.** This Agreement shall be assignable by Vadata to an Affiliate of Vadata upon providing thirty (30) days prior notice to the City. This Agreement shall be assignable

~~VADATA DRAFT 12/28/2018~~UMATILLA RdIn 01.08.19

by Vadata to an assignee who is not an Affiliate of Vadata with the written approval of the City, which approval shall not be unreasonably withheld, delayed, or conditioned.

11.4 **Binding Effect and Benefit.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and their permitted assigns.

11.5 **Entire Agreement.** This Agreement represents the entire agreement between and among the Parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings and commitments, whether oral or written, with respect thereto.

11.6 **Amendment.** This Agreement may be amended only by a written instrument signed by the Parties.

11.7 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon, without regard to conflict of laws.

REMAINDER OF PAGE INTENTIONALLY BLANK

~~VADATA DRAFT 12/28/2018~~UMATILLA Rdln 01.08.19

11.8 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound, the duly authorized representatives of the Parties have caused this Agreement to be executed as of the date first written above:

CITY OF UMATILLA

VADATA, INC.

By: _____
[name]
[Title]

By: _____
[name]
[Title]

VADATA DRAFT 12/28/2018 UMATILLA Rd In 01.08.19

Exhibit A – Map Showing Location of Data Center Property and Interconnection Facilities

See attached.²

² NOTE TO DRAFT: Vadata to provide this map, which is being prepared by HDR in conjunction with Design Specs.

53108-75177 3310970.1

Exhibit B – Design Specifications for Interconnection Facilities

See attached.³

³ NOTE TO DRAFT: Vadata to provide Design Specs, which are being prepared by HDR.

~~VADATA DRAFT 12/28/2018~~UMATILLA Rdln 01.08.19

Exhibit C – Form of Construction Easement or Access Rights Agreement

See attached.⁴

⁴ NOTE TO DRAFT: City to provide this exhibit.

Exhibit D – Acceptance Tests for Interconnection Facilities

1. The entire pipeline will be tested for water tightness upon completion. Length of pipe sections to be tested will be determined in advance through consultations between the Vadata, the Independent Engineer and the City's Designated Engineer
2. Vadata shall be responsible to make arrangements for water to perform the testing of the pipeline.
3. The test shall be conducted in the presence of the Independent Engineer and the City's Designated Engineer.
4. The prime importance is that the final product shall be water tight pipelines and pump station.
5. Vadata's contractor shall furnish and install all temporary piping, valves, corporations, fittings, hose, and appurtenances which may be necessary to properly flush the pipelines for the purposes of air release, pressurization, and flushing.
6. All piping shall be flushed thoroughly with water after backfilling is complete.
7. Vadata's contractor shall fill the line completely with water, all air shall be expelled prior to testing.
8. Piping shall be pressure tested prior to being put into service. Pressure testing shall be completed for each pipe section (between isolation valves), and shall consist of a test at not less than one-and-one-half times working pressure for two hours. Maximum allowable leakage is 2 quarts per hour per 100 joints.
9. During the pressure test, each air release valve will be observed to document adequate operation.
10. After the pump test is complete, each section of pipeline will be drained, starting at the downstream end in order to check operation of the isolation valves.⁵

NOTE TO DRAFT: Vadata to add appropriate acceptance tests for the lift station facilities, which are being prepared by HDR.

~~VADATA DRAFT 12/28/2018~~UMATILLA Rdln 01.08.19

Exhibit E – Map Showing Location of Interim Service Designated Manholes

See attached.

53108-75177 3310970.1

Exhibit F – Designated Interim Service Contact

[•]⁶

⁶ **NOTE TO DRAFT: City to identify Designated Interim Service Contact.**

RESOLUTION NO. – 2019

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH VADATA SANITARY SERVICES FOR PROPERTY LOCATION ALONG LIND ROAD INSIDE CITY LIMITS

WHEREAS, the City of Umatilla “City,” has the capacity to serve lands with sanitary sewer services; and

WHEREAS, the City believes that commercial development of data centers is a benefit to the citizens of the City; and

WHEREAS, the City does not currently have a sanitary sewer pipeline available to property located along Lind Road within the City; and

WHEREAS, Grantee has agreed to construct a sanitary sewer line connecting their property located along Lind Road with the city sewer line located to the north; and

WHEREAS, Grantee has requested an interim service for development located within the City along Lind Road; and

WHEREAS, the City and Grantee now wish to establish the terms by which Grantee may utilize city sewer in the interim and after the sewer line is constructed.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNSEL OF THE CITY OF UMATILLA:

1. The City Manager is authorized to sign the Sanitary Sewer Agreement by and between Vadata, Inc. and the City of Umatilla.

PASSED by the City Council and **SIGNED** by the Mayor this 5th day of February, 2019.

Mary Dedrick, Mayor

ATTEST:

Nanci Sandoval, City Recorder

CITY OF UMATILLA, OREGON

AGENDA BILL

Agenda Title:

RWS Franchise Agreement (Ordinance)

Meeting Date:

January 15, 2019

Department:

Community Dev

Director:

Tamra Mabbott

Contact Person:

Tamra Mabbott

Phone Number:

X101

Cost of Proposal:

Legal fees to prepare.
Franchise revenue will equal 5% of gross revenue collected by Regional Water System. Approximation is \$3,700 for the first year, increasing over time as project is built out.

Amount Budgeted:

N/A

Fund(s) Name and Number(s):

To be determined through budget process.

Reviewed by Finance Department:

Yes

Attachments to Agenda Packet Item:

Draft Ordinance

Summary Statement:

Franchise Agreement (Ordinance) is required in order to allow the owners of the Regional Water System, Port of Umatilla and City of Umatilla, to provide water to property within city limits located along Lind Road.

Consistent with Council Goals:

ORDINANCE NO. _____

AN ORDINANCE GRANTING THE PORT OF UMATILLA AND THE CITY OF HERMISTON (COLLECTIVELY, "GRANTEE") A NONEXCLUSIVE FRANCHISE ("FRANCHISE") FOR THE PRIVILEGE TO USE PUBLIC RIGHTS-OF-WAY TO PROVIDE NON-POTABLE WATER SERVICES WITHIN THE CITY OF UMATILLA (THE "CITY").

WHEREAS, the City regulates and generally provides water services within the City; and,

WHEREAS, the City has the authority to regulate, and require a franchise, license or other use agreement to manage the use of public rights-of-way within the City; and

WHEREAS, the City believes that commercial development of data centers is a benefit to the citizens of the City; and

~~WHEREAS, VaData, Inc., a Delaware corporation, currently owns and is seeking to develop specified property within the City limits for use as data centers; and~~

WHEREAS, the City does not currently have available sufficient non-potable water supply infrastructure to fully meet the industrial needs of ~~VaData, Inc.'s proposed data centers~~ users along that portion of Lind Road located within the City; and

WHEREAS, Grantee has executed an Agreement to provide non-potable water service to a ~~VaData Inc. property~~ proposed data center to be located within the City along Lind Road; and

WHEREAS, ~~the~~ Grantee will use City rights-of-way to provide such water service to a parcel located within the City to specified VaData, Inc. property along Lind Road; and

WHEREAS, the City and Grantee (collectively, the "Parties") now wish to establish the terms by which Grantee may use and occupy the public rights-of-way to provide such water service.

THE CITY OF UMATILLA, OREGON ORDAINS AS FOLLOWS:

SECTION 1. FRANCHISE GRANTED. Subject to the terms and conditions provided in this Franchise and further subject to the ~~generally~~ applicable rules, regulations and ordinances of the City, the City hereby grants to Grantee the nonexclusive right and privilege to occupy public rights-of-way along Lind Road to provide and maintain non-potable water supply and delivery service ~~within the City~~ to that parcel the Va Data, Inc. facility located at 81710 Lind Road, on currently identified as Tax Lot 200 ~~of on Umatilla County~~ Assessors Map 5N 28 21, and which parcel is further depicted on the attached Exhibit A (the "Parcel").

It is expressly understood that certain streets, roads and public rights-of-way within the City are or may be under the jurisdiction of either the State of Oregon or Umatilla County. This Franchise does not intend to convey rights on, under or over property or facilities not within the City's jurisdiction.

SECTION 2. FRANCHISE NONEXCLUSIVE. The right and privilege hereby granted shall not be exclusive. The City expressly reserves the right, at any time during the Franchise, to grant rights or franchises similar to or different from those granted herein to other persons or corporations on a nondiscriminatory basis, as well as the right in its own name as a municipality to use said streets and roads for whatever purposes the City determines to be necessary, including the provision of municipal services to entities and person within the City. Notwithstanding the rights and privileges hereby granted, the siting of any new water lines or related infrastructure within public rights-of-way shall be subject to the applicable rules, and regulations of the City. Further, nothing in this Franchise shall be deemed a

waiver by the City under Oregon's Territorial Allocation Statutes currently set forth in ORS Chapter 758. This Ordinance does not confer on Grantee any right, title or interest in any public rights-of-way beyond that expressly conferred herein, or confer any right or privilege to use or occupy any other property of the City or any other entity.

SECTION 3. PERFORMANCE BY GRANTEE. Grantees shall provide sufficient water conveyance infrastructure to provide non-potable water to the Parcel.

SECTION 4. TERM. As of the "Effective Date," which is defined in Section 18 below. This Franchise shall be in full force and effect expire in twenty(20) years from the Effective Date, which is defined in Section ___ below for an initial period of ten (10) years and will thereafter automatically renew for up to two (2) additional five (5)-year periods unless the City receives written notice of Grantee's intention to terminate no later than twelve (12) months prior to the date of expiration of the then applicable term period.

SECTION 5. FRANCHISE FEES.

(a) Grantee shall pay to the City a franchise fee or charge equivalent to five percent (5%) of Grantee's "Gross Operating Revenue," which shall mean the gross revenues actually received by Grantee from the sale of water and water services to the public within the corporate limits of the City using the public rights-of-way as defined herein. The amount of the fee or charge may not be increased by the City during the Term. The percentage of Gross Operating Revenues to be assessed by the City under this Section may be increased during the first and second 5-year periods of the Term so long as (1) the City provides Grantee notice of such amendment no less than fourteen (14) months prior to the next automatic renewal of this Franchise, (2) such increase is issued on a non-discriminatory basis, and (3) at no time during the Term shall such fee assessment exceed 7.5% of Grantee's "Gross Operating Revenue."

~~(b) "Gross Operating Revenue" means Grantee's gross revenues actually received by Grantee from the sale and uses of water and water services provided to parties to the public within the corporate limits of the City using the public rights-of-way.~~

~~(b) The franchise fee shall be paid on or before the 30th of each April, July, October and January during the Term, beginning on January 30, 2019. The franchise fee shall be calculated based upon the Gross Operating Revenue received during the previous calendar quarter.~~

~~(c) Grantee is voluntarily agreeing to pay the franchise fees set forth herein as fair and reasonable consideration for Grantee's use of public rights-of-way. Grantee's agreement to pay such fees shall not be construed as an admission that the payment such fees may be lawfully compelled by the City absent Grantee's agreement. Grantee reserves the right to contest the obligation to pay and/or the amount of any such fees or taxes, howsoever construed, that the City may seek to impose upon Grantee following the expiration or termination of this Franchise or outside the scope of this Franchise.~~

SECTION 6. INSURANCE REQUIREMENTS. Grantee shall provide and keep in force liability insurance in the amount of not less than one million dollars (\$1,000,000) for injury to a single person, one million dollars (\$1,000,000) to a group of persons and two million dollars (\$2,000,000) property damage, all relating to a single occurrence which shall be evidenced by a certificate of insurance filed with the City Finance Director. Said Certificate shall name the City as additional insured.

SECTION 7. SUCCESSORS. This Franchise shall be binding on all Grantee's authorized successors and assigns.

SECTION 8. LOCATION, INSTALLATION AND MAINTENANCE. The location, methods of installation, and maintenance of any infrastructure located by Grantee within public rights-of-way for the delivery of water shall be subject at all times to reasonable regulation by the Council of the City on a non-discriminatory basis; and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. All such facilities shall be installed in accordance with any applicable federal, state, or local laws and shall be maintained in good repair by Grantee.

SECTION 9. STREET EXCAVATIONS AND RESTORATIONS.

(a) Subject to the provisions of this Franchise, Grantee may make necessary excavations in public rights-of-way for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinary maintenance on private property, prior to making an excavation in the traveled portion of any right of way, bridge or public place, and, when required by the City, in any untraveled portion of any right of way, bridge, or any public place, Grantee shall obtain from the City approval of the proposed excavation and of its location, which approval shall not be unreasonably delayed, conditioned or withheld. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work in public rights-of-way and as soon as is practicable after the commencement of work performed under emergency conditions.

(b) When any excavation is made by Grantee pursuant to this Franchise, Grantee shall promptly restore the affected portion of the public right of way, bridge or public place to the same condition it was in prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If Grantee fails to promptly restore the affected portion of a public right of way to the same condition it was in prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

SECTION 10. INDEMNITY; ~~COMPLIANCE WITH CITY ORDINANCES.~~ To the extent allowed by law, Grantee shall indemnify and hold harmless the City, its officers, employees and agents, against and from any and all property damage and any and all third party claims, including all expenses of litigation, court costs and attorney fees arising from or caused by any wrongful or negligent act or omission of Grantee, its agents or employees with regards to construction, maintenance, operation, or repair of Grantee's use or occupation of the public rights of way pursuant to this Franchise. ~~'property or any use thereof,' and Grantees shall at all time comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of City rights-of-way.~~

SECTION 11. ASSIGNMENT OF FRANCHISE. Grantee may not assign or otherwise transfer its interest in this Franchise without the prior written consent of the City. ~~Grantees may not pledge, or encumber this franchise as part of a reorganization, financing or refinancing activity without the City's prior knowledge and approval. Any assignment or transfer of this franchise shall be subject to the written consent of the City and shall be subject to the~~ Any approved successor or assignee shall sign an acceptance of this Franchise and shall file such written acceptance with the City within thirty (30) days of the assignment or transfer. Grantee may pledge or encumber this Franchise as part of a reorganization, financing or refinancing activity without consent but upon giving prior notice to the City.

SECTION 12. DEFAULT.

(a) It shall be an Event of Default by Grantee if, after the City has provided thirty (30) days written notice to Grantee and has given Grantee an opportunity to cure:

1. Grantee violates any material term of the Franchise; or

2. Grantee commits any act of fraud or deceit toward the City; or
3. Grantee fails to obtain or maintain any permit required by, or otherwise fails to comply with, any applicable state laws, federal laws, or City ordinances adopted heretofore or hereafter during the Term of this Franchise, that are directly related to Grantee's use of the public rights of way pursuant to this Franchise.

(b) The foregoing shall not constitute a substantial breach if the violation occurs without the fault of Grantee or occurs as a result of circumstances beyond Grantee's reasonable control. Grantee shall not be excused by mere economic hardship, nor misfeasance or malfeasance of its directors, officers or employees.

SECTION 13. REMEDIES OF DEFAULT. Upon an Event of Default that's not timely cured by Grantee as allowed under this Franchise (or upon Grantee's failure to initiate and diligently pursue the cure if it cannot reasonably be completed within the thirty (30) day notice period), the City may terminate this Franchise and extinguish all rights and privileges of Grantee under this Franchise.

SECTION 14. REMOVAL OF GRANTEE'S PROPERTY, ESCHEAT. All property and materials placed by Grantee pursuant to this Franchise in, on, upon, over, under or beneath any public rights-of-way, including highways, streets or alleys of this City, shall be removed by Grantee within one year after the expiration or termination of this Franchise, unless further time is granted by the City. Except as otherwise provided herein, if any of Grantee's property and materials are not timely removed, such remaining property shall be forfeited by Grantee and shall escheat to the City. The City may notify Grantee, however, that it waives forfeiture and escheat under this section and may thereafter bring legal action to compel such removal and restoration by Grantee or the payment of all the cost thereof by the Grantee.

SECTION 15. FEE NOT A TAX. The City Council determines that any fee imposed by this Franchise is not a tax subject to the property tax limitations of Article XI, Section 1(b) of the Oregon Constitution.

SECTION 16. SEVERABILITY. The invalidity of any section, clause sentence or provision of this Franchise shall not affect the validity of any other provision of this Franchise, which can be given effect without reference to the invalid part or parts. If any material portion of the Franchise becomes illegal, null or void so that the intent of the Franchise is frustrated, the Parties agree to negotiate in good faith replacement provisions to fulfill the intent of the Franchise consistent with applicable law.

SECTION 17. GOVERNING LAW. The laws of the State of Oregon shall govern this Franchise including its interpretation, performance and enforcement. Venue for resolution of any dispute arising under this Franchise shall be in the state circuit court located in Umatilla County, Oregon.

SECTION 18. EFFECTIVE DATE. This Franchise shall take effect thirty (30) days after its enactment by the Council of the City and approval by the Mayor-City Manager ("Effective Date"), but shall become null and void unless, within sixty (60) days after such Effective Date, Grantee files written acceptance of the terms, conditions and obligations to be complied with or performed by it hereunder.

SECTION 19. NOTICES. All notices required under the terms of this Franchise to be given by any party shall be in writing and, unless otherwise specified in writing, shall be sent to the Parties at the following addresses:

CITY OF UMATILLA

~~Russell Pelleberg~~, City Manager
City of Umatilla
P.O. Box 130
Umatilla, OR 97882

REGIONAL WATER SYSTEM

~~Kim Puzey~~, Executive Director
Port of Umatilla
P.O. Box 879
Umatilla, OR 97882

Manager
City of Hermiston
180 NE 2nd St.
Hermiston, OR 97838

PASSED and ADOPTED by the City Council the ____ day of _____ 2018

Voting yes, Council Members: _____

Voting no, Council Members: _____

Absent Council Members: _____

Abstaining Council Members: _____

And SIGNED in authentication by the Mayor this ____ day of _____ 2018.

~~Daren Dufloth~~, Mayor

PASSED and ADOPTED this _____ day of _____, 2019.

City Manager

ATTEST:

City Recorder

APPROVED AS TO FORM:

City Attorney

ACCEPTANCE

This franchise ordinance is accepted by the Port of Umatilla, an Oregon municipal corporation, this _____ day of _____, 20189.

PORT OF UMATILLA, an Oregon municipal corporation

~~Kim Puzey, Executive Director, Port of Umatilla~~

This franchise ordinance is accepted by the City of Hermiston, an Oregon municipal corporation, this _____ day of _____, 20189.

CITY OF HERMISTON, an Oregon municipal corporation

~~City Manager City of Hermiston~~

CITY OF UMATILLA, OREGON

AGENDA BILL

Agenda Title:

Easement for Cascade Natural Gas

Meeting Date:

January 15, 2019

Department:

Community Dev

Director:

Tamra Mabbott

Contact Person:

Tamra Mabbott

Phone Number:

X101

Cost of Proposal:

Legal fees to prepare.
\$3,000 from CNGC

Fund(s) Name and Number(s):

N/A
General Fund 01-6175

Amount Budgeted:

N/A

Reviewed by Finance Department:

Yes

Attachments to Agenda Packet Item:

- 1) Easement
- 2) Map of utilities

Summary Statement:

CNGC has requested a utility easement to construct, install, operate and maintain a natural gas pipeline and regulation devices on a parcel of land owned by city, (Anacapa land parcel) located at the southwest intersection of Highway 730, Highway 395 and Lind Road.

Consistent with Council Goals:

<p><i>After Recording Return To:</i> KUHN LAW OFFICES 410 E. HURLBURT AVENUE HERMISTON, OR 97838</p> <p><i>Address of Grantor(s):</i> CITY OF UMATILLA 700 6TH ST. P.O. BOX 130 UMATILLA, OR 97882</p> <p><i>Address of Grantee(s):</i> CASCADE NATURAL GAS CORPORATION 8113 W. GRANDRIDGE BLVD. KENNEWICK, WA 99336</p> <p><i>Until a change is requested, all tax statements shall be sent to the following address:</i> NO CHANGE</p>	<p>(Space Reserved for Recorder's Use)</p> <p><i>Consideration:</i> \$ _____</p>
--	--

UTILITY EASEMENT AGREEMENT

This Utility Easement Agreement ("Agreement") is made this ____ day of January, 2019 ("Effective Date") by and between the City of Umatilla, an Oregon municipal corporation ("Grantor"), and Cascade Natural Gas Corporation, a Washington corporation ("Grantee").

RECITALS

A. Grantor is the recorded owner of real property known as Tax Lot 100 of Section 15, Township 5 North, Range 28 East in the records of Umatilla County, State of Oregon, ("Grantor's Property") and legally described as follows:

All that portion of the Southwest Quarter of the Northwest Quarter of Section 15, Township 5 North, Range 28, East of the Willamette Meridian, Umatilla County, Oregon, lying Southerly of the Southerly right-of-way line of Highway No. 730 and Westerly of the Westerly right-of-way line of Highway No. 395;

Excepting therefrom that tract of land conveyed to Wilbur L. Duncan, etux by deed recorded in Book 184, Page 286, Deed Records;

Also excepting therefrom that tract of land conveyed to James L. Schell, etux by deed recording in Instrument No. 2005-4800537, Office of Umatilla County Records;

Also excepting therefrom any portion lying within the Highway and County Road rights-of-ways.

B. Grantee needs a permanent utility easement to be located on and within portions of Grantor's Property for Grantee to: (a) construct, install, inspect, operate, maintain, repair, and replace a natural gas pipeline or pipelines, regulation devices, and metering equipment, under, over, through and across the above described property. The Grantee is further granted an easement for the nonexclusive right of access to and from said property for the purpose of utilizing the rights herein granted.

C. Grantor agrees to grant to Grantee permanent and temporary easements of a nature described above on and across Grantor's Property pursuant to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the performance by Grantor and Grantee of the covenants, agreements, conditions and stipulations contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually agreed by and between the parties as follows:

1. **Grant of Permanent Utility Easement.** Grantor hereby grants to Grantee a permanent utility as set forth in attached *Exhibit A*. ("Utility Easement Area").
2. **Scope of Permanent Utility Easement.** Grantee and its agents, employees, officers, consultants, and contractors of Grantee (collectively, "Grantee Parties") shall have rights of ingress and egress across Grantor's Property to access, enter upon, and use the Utility Easement Area to: (a) install, operate, inspect, maintain, repair, reconstruct, and replace natural gas pipeline or pipelines. Grantee or Grantee Parties may remove trees, shrubs, brush, other plants and vegetation, or other obstructions and other materials within the Utility Easement Area to the extent they unreasonably interfere with Grantee's rights conveyed herein.
3. **Consideration.** At Grantor's request, the parties agree that Grantee shall compensate Grantor for the easements conveyed herein by paying Grantor \$3,000.00 the sufficiency of which is hereby acknowledged by Grantor in exchange for Grantor's conveyance to Grantee of the easements described herein.
4. **Term of Easements.**

4.1 **Utility Easement.** The Utility Easement granted herein is perpetual, will be effective on the Effective Date, and will continue in perpetuity until such time as the parties agree in writing to terminate the Utility Easement for reasons that the purpose for which such easement was created no longer exists.

4.2 **Reversion.** Should Grantee abandon the easement or cease using the easement for its intended purpose for a period of ten (10) years, the easement will revert back to the Grantor or the then property owner of the above described property. It shall be Grantee's obligation to remove all pipelines, devices, improvements, structures and other equipment Grantor has placed

on the property and the property shall be returned to substantially the same condition as it was on the Effective Date.

5. Exclusive Grant. Grantee's rights under this Agreement, and the easements granted herein, are exclusive to Grantee and the Grantee Parties.

6. Maintenance. While this Agreement is in effect, Grantee shall maintain its improvements on and within the Utility Easement Area.

7. Restoration. To the extent Grantee alters portions of the Utility Easement Area where Grantee has not installed any permanent improvements including, but not limited to, shrubs, other plants, and vegetation consistent with or as required by any applicable permit governing the completion of such permanent improvements, Grantee will restore such portions of the Utility Easement Area to like kind or better condition as existed as of the Effective Date.

8. Applicable Law. Grantee shall comply with all local, state, and federal rules, laws, ordinances, and requirements regarding its maintenance and use of the Utility Easement Area and must obtain any and all required permits and licenses at its sole cost and expense.

9. Indemnification; Limitation of Liability. Subject to the limits of the Oregon Tort Claims Act, Grantee will indemnify, defend and hold Grantor harmless from and against any and all claims arising from or in connection with use of or damage to the Utility Easement Area. This indemnification will not apply to the extent the claim or loss is attributed to the negligent or intentionally harmful acts of Grantor or Grantor's agents, contractors, consultants, licensees or invitees.

10. Insurance. During the term of this Easement, Grantee shall carry, and require its agents and contractors to carry, worker's compensation insurance as required by applicable law and commercially reasonable comprehensive liability coverage in connection with any and all of Grantee's acts and/or omissions including, without limitation, for injury to or death of any person or persons and for damage to property occasioned by or arising out of any act, omission, and/or use of the Utility Easement Area by Grantee or Grantee Parties.

11. Breach of Obligation. Neither party shall be considered in default under this Agreement for a failure to perform its obligations under this Agreement unless such failure continues more than ten (10) days after written notice to the other party of its failure to perform its obligations under this Agreement. To the extent the failure is of the type that cannot be cured within the ten (10) days, the party shall not be considered in default if the failure is not cured within the ten (10) days after such notice provided that the party commences to cure such failure within such period and diligently and continuously completes the cure of such failure within a reasonable period of time. If any party shall be in default of such party's obligations under this Agreement, the other party shall be entitled to require performance of the obligations by suit for specific performance or, where appropriate through injunctive relief, or an action for damages or amounts due but not paid. Such remedies shall be in addition to any other remedies afforded under Oregon law.

12. Notices. All notices, approvals, consents or requests given or made pursuant to this Agreement shall be deemed delivered (a) upon receipt by personal delivery when written acknowledgment of receipt thereof is given, (b) if given by United States mail, certified mail,

return receipt requested, with postage prepaid, two days after it is deposited in the mail, or (c) if given by a nationally recognized overnight carrier prepaid for next business day delivery ("Delivery Date"). Notices shall be addressed as follows until a new address for notices shall be designated by notice in the manner provided in this paragraph to all other parties:

If to Grantor: City of Umatilla
Attn: City Manager
700 6th Street
P.O. Box 130
Umatilla, OR 97882

If to Grantee: Cascade Natural Gas Corporation
Attn: _____
8113 W. Grandridge Blvd.
Kennewick, WA 99336

- 13. Incorporation of Recitals.** The foregoing Recitals are true and correct and are hereby incorporated into this Agreement by this reference.
- 14. Authority.** Each person executing this Agreement represents and warrants that he or she has authority to execute this Agreement.
- 15. Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by a party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.
- 16. Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision, to any other person or circumstance shall not be affected thereby. The remainder of this Agreement shall be given effect as if such invalid or inoperative portion had not been included. It shall not be deemed that any such invalid provision affects the consideration for this Agreement.
- 17. Recording.** This Agreement will be recorded in the real property records of Umatilla County, Oregon. Grantee will pay the recording fees.
- 18. Amendment.** This Agreement may be amended only by an instrument in writing signed by both Grantor and Grantee.
- 19. Attorneys' Fees.** In the event of any action by the parties concerning the subject matter of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its costs and expenses of enforcing its rights hereunder, including actual experts', consultants', and attorneys' fees, and all professional fees incurred by the prevailing party with respect to such action.
- 20. Applicable Law.** This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of laws.

21. Runs With the Land; Time of the Essence. This Agreement shall run with the land and be binding upon, inure to the benefit of, and be enforceable by the parties and the respective successors and assigns of the parties to this Agreement. Time is of the essence with respect to the performance of the obligations of this Agreement.

DATED this _____ day of _____, 2019.

GRANTOR:

CITY OF UMATILLA,
an Oregon municipal corporation

GRANTEE:

CASCADE NATURAL GAS
CORPORATION, a Washington
corporation

David Stockdale, City Manager
City of Umatilla,
an Oregon Municipal Corporation

By: _____
Cascade Natural Gas Corporation,
a Washington corporation

State of OREGON
County of Umatilla

This record was acknowledged before me on _____, 2019 by David Stockdale, City Manager of the City of Umatilla, an Oregon municipal corporation.

Notary Public – State of Oregon

State of _____
County of _____

This record was acknowledged before me on _____, 2019 by _____, Cascade Natural Gas Corporation, a Washington corporation.

Notary Public – State of Oregon

UMATILLA/CALPINE/CASCADE NATURAL GAS EASEMENT

EXHIBIT A

VARYING WIDTH NATURAL GAS EASEMENT DESCRIPTION

A natural gas pipeline and regulation station easement lying in a portion of Tract 1 of the Anacapa Land Company, LLC parcels as described under Auditor File No. 2003-4450295, Records of Umatilla County, Oregon, lying in a portion of the Southwest quarter of the Southwest quarter of the Northwest quarter of Section 15, Township 5 North, Range 28 East, Willamette Meridian, City of Umatilla, Umatilla County, Oregon, being more particularly described as follows:

A natural gas pipeline and regulation station easement for the installation, operation, maintenance, renewal and replacement of pipelines, structures and equipment over, under and across the following described parcel of land;

Beginning at a Brass Cap marking the Southwest corner of the Northwest quarter of said Section 15 and the centerline of County Road 1281 (aka Lind Road), from which a Brass Cap marking the Northwest corner of the Northwest quarter of said Section 15 bears North 00°45'25" West, 2672.15 feet;

Thence North 00°45'25" West, along the West line of the Northwest quarter of said Section 15 and centerline of said County Road 1281 for a distance of 213.58 feet ;

Thence leaving the West line of the Northwest quarter of said Section 15 and centerline of said County Road 1281, North 89°14'35" East, 33.00 feet to the Easterly right-of-way line of said County Road 1281, said point being 33.00 feet Easterly of the centerline thereof, when measured at right angles, said point also being on the centerline of an existing canal at the Northwest corner of that certain parcel of land as shown on Boundary Line Adjustment Survey 02-13-B, Records of Umatilla County, Oregon;

Thence leaving the Northwest corner of said parcel and the centerline of said canal, North 00°45'25" West along the Easterly right-of-way line of said County Road 1281 for a distance of 21.78 feet to the Northwest corner of said canal right-of-way and the **TRUE POINT OF BEGINNING** of the easement to be described;

Thence leaving the Easterly right-of-way line of said County Road 1281, North 65°56'36" East, along the Northerly right-of-way line of said canal for a distance of 495.77 feet to Northeasterly corner of said canal right-of-way, said point being on the Westerly right-of-way line of U.S. Highway 395 at a point 50.00 feet Westerly of the centerline thereof, when measured at right angles;

Thence leaving the Northerly right-of-way line of said canal, North 11°17'31" West along the Westerly right-of-way line of said U.S. Highway 395 for a distance of 14.95 feet;

Thence Northwesterly along the Westerly right-of-way line of said U.S. Highway 395 and the arc of a 508.15-foot radius, non-tangent curve to the left (the radius point of which bears South 78°36'18" West) through a central angle of 4°03'57" for an arc length of 36.06 feet, the long cord of which bears North 13°19'30" West, 36.05 feet;

Thence leaving the Westerly right-of-line of said U.S. Highway 395, South 65°56'36" West, 47.75 feet;

Thence South 24°03'24" East, 40.00 feet;

Thence South 65°56'36" West, 453.73 feet to the Easterly right-of-way line of said County Road 1281, said point being 33.00 feet Easterly of the centerline thereof, when measured at right angles;

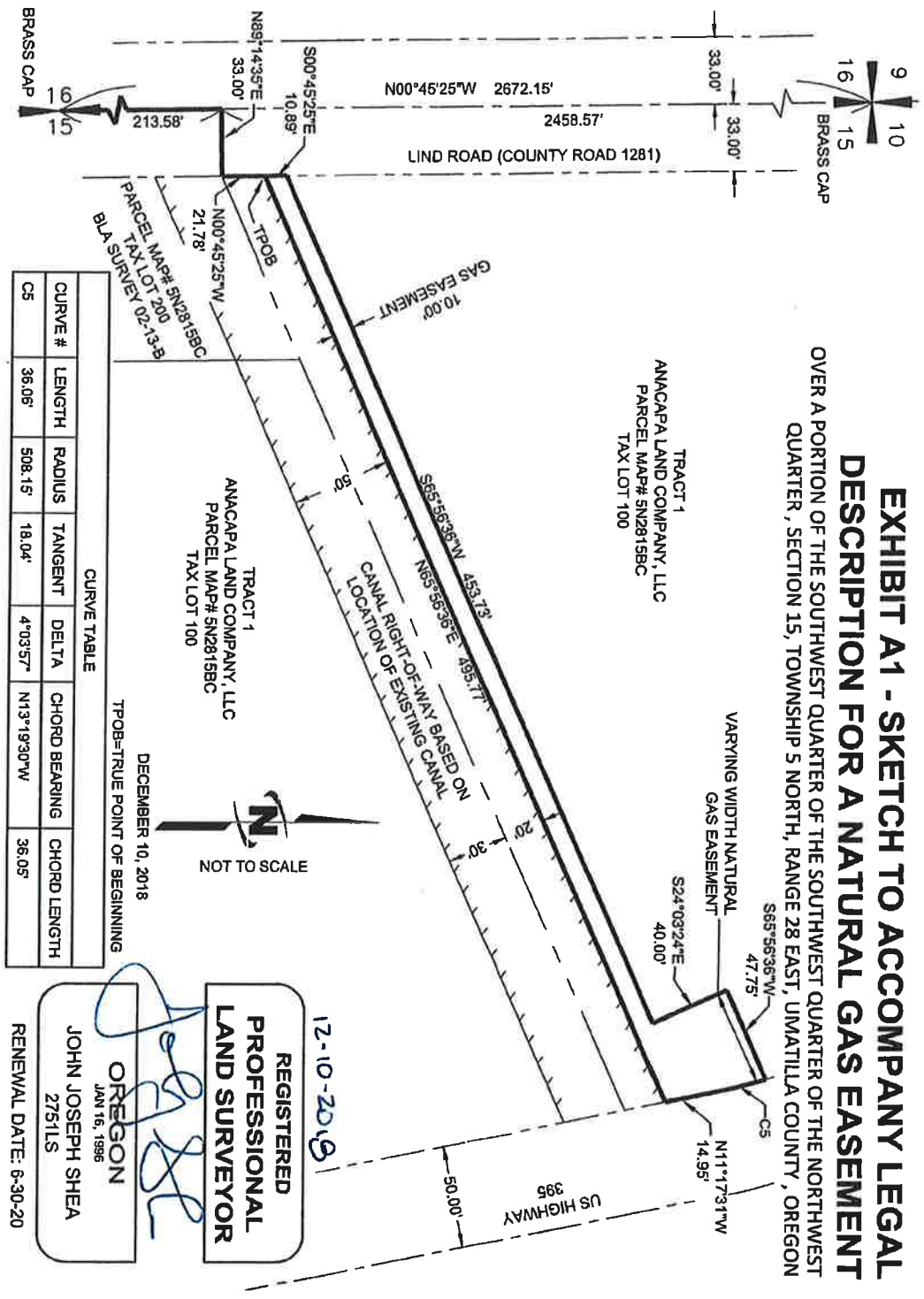
Thence South 00°45'25" East along the Easterly right-of-way line of said County Road 1281 for a distance of 10.89 feet to **THE TRUE POINT OF BEGINNING** and the end of this easement description.

Containing; 6713.19 square feet (0.15 acres), more or less

ALSO TOGETHER WITH AND SUBJECT TO easements, reservations, covenants and restrictions apparent or of record.



EXHIBIT A1 - SKETCH TO ACCOMPANY LEGAL DESCRIPTION FOR A NATURAL GAS EASEMENT OVER A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 15, TOWNSHIP 5 NORTH, RANGE 28 EAST, UMATILLA COUNTY, OREGON



BLA SURVEY 02-21-3-B

PARCEL MAP# 5N2815BC TAX LOT 200

TRACT 1 ANACAPA LAND COMPANY, LLC PARCEL MAP# 5N2815BC TAX LOT 100

TRACT 1 ANACAPA LAND COMPANY, LLC PARCEL MAP# 5N2815BC TAX LOT 100

DECEMBER 10, 2018

TPOB=TRUE POINT OF BEGINNING

NOT TO SCALE

CURVE TABLE						
CURVE #	LENGTH	RADIUS	TANGENT	DELTA	CHORD BEARING	CHORD LENGTH
CS	36.06'	508.15'	18.04'	4°03'57"	N13°19'30"W	36.05'

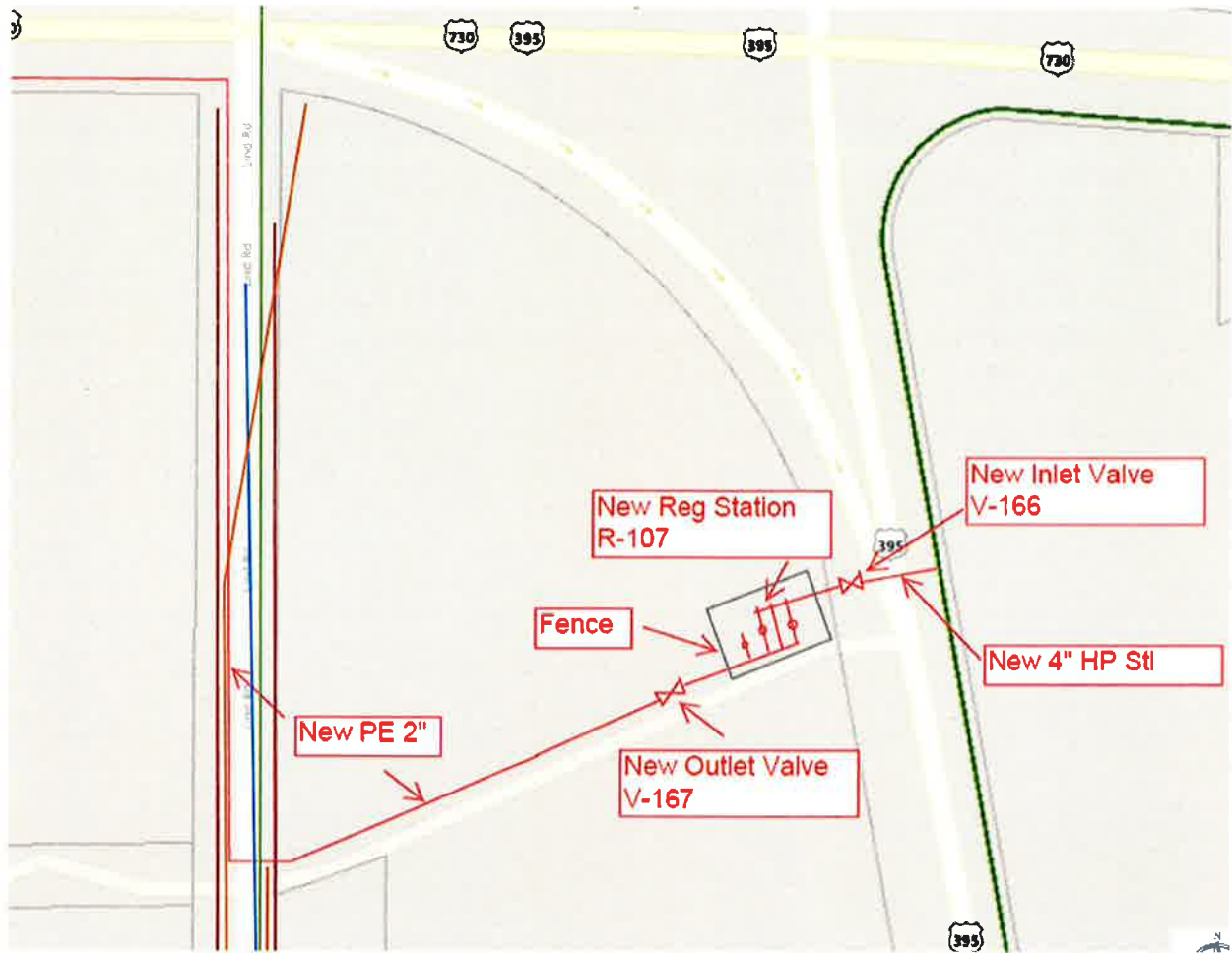
12-10-2018

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JAN 16, 1996

JOHN JOSEPH SHEA
2751LS

RENEWAL DATE: 6-30-20



Review Comments by Shae Talley, JUB Engineers

The proposed IWW and domestic sewer lines are located on the east side of Lind Road per HDR's design. Where the gas line is shown in red below is generally a good location based on utilities shown on the Cascade Natural Gas and HDR plans. Be sure the line is located on the west side of the roadway to ensure it will not conflict with the proposed sewer lines. They will have several utilities and utility crossings to deal with. See the figure above. Deep red is overhead power, blue is water, orange is fiber optic, and green is the proposed IWW and domestic sewer lines. They will want to make sure they have a utility survey done to figure out the best alignment for their gas line as they are missing several utilities on their preliminary plans. I'm assuming the City will review and approve these final plans?

CITY OF UMATILLA, OREGON

AGENDA BILL

Agenda Title:

Anacapa Land - Accept Deed for parcel of land

Meeting Date:

January 15, 2019

Department:

Community Dev

Director:

Tamra Mabbott

Contact Person:

Tamra Mabbott

Phone Number:

X101

Cost of Proposal:

Legal fees to prepare.
Termination of MOA \$7,500

Fund(s) Name and Number(s):

General Fund 01-6143

Amount Budgeted:

\$10,000 for 2018-19 will be received.

Reviewed by Finance Department:

Yes

Attachments to Agenda Packet Item:

- 1) Deed
- 2) Map
- 3) Termination of MOA

Summary Statement:

Calpine Corporation offered two parcels of land to city in exchange for cancellation of an MOA and forgiveness of mitigation funds. The MOA was established in 1995 to offset impacts of transmission lines located within city limits. Council approved the MOA termination on December 4, 2018. Property includes two tax lots zoned C-1 and F-2, located at the southwest intersection of Hwy 730, Lind Road and Highway 395. Total acreage is approximately 27.48 acres. Land may be used by city for a variety of uses such as a temporary park

& ride for public transit, for wetland mitigation bank and for future commercial development.

RMV of land is estimated by County Assessor at \$427,180 (\$201,260 Account #133122 and \$225,920 Account #133140.

Consistent with Council Goals:

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Calpine Corporation
717 Texas Ave., Suite 1000
Houston, Texas 77002

Attn: Jackie Thomas, Director of Land

(Space above this line for Recorder's use)

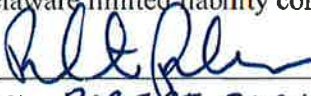
Tax Account Nos. 133122 and 133140

QUITCLAIM DEED

For Valuable Consideration, receipt of which is hereby acknowledged, ANACAPA LAND COMPANY, LLC, a Delaware limited liability company ("Grantor"), hereby remises, releases and forever quitclaims to The City of Umatilla, all of Grantor's right, title and interest in and to, if any, the real property located in the County of Umatilla, State of Oregon, described on Exhibit A attached hereto and made a part hereof (the "Real Property").

Executed as of the 8th day of January, 2019.

GRANTOR: ANACAPA LAND COMPANY, LLC,
a Delaware limited liability company

By: 
Name: ROBERT PARVIER KP
Title: VP WEST OPERATIONS

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)
) ss.
COUNTY OF Alameda)

On January 8, 2019, before me, Shaenine Turner, notary, personally appeared Robert Nelson Parker, 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 Shaenine Turner (Seal)

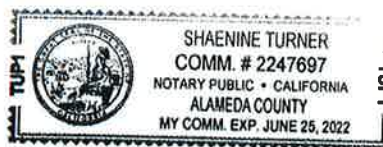


EXHIBIT A

TRACT I (aka Tax Account #133122):

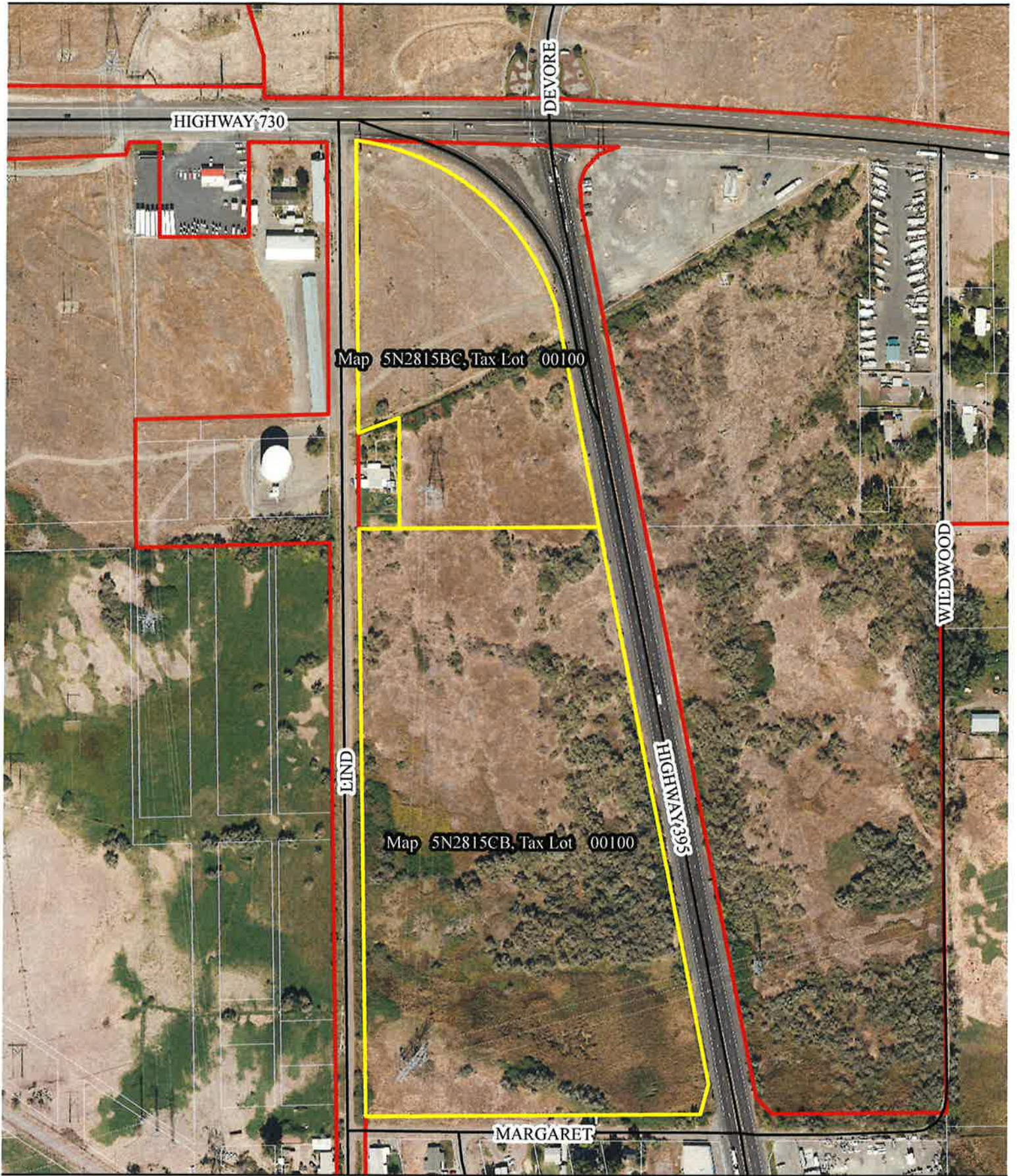
All that portion of the Southwest Quarter of the Northwest Quarter of Section 15, Township 5 North, Range 28 East of the Willamette Meridian, Umatilla County, Oregon, lying Southerly of Southerly right of way line of Highway No. 730 and Westerly of Westerly right of way line of Highway No. 395.

EXCEPTING therefrom that tract of land conveyed to Wilbur L. Duncan, et ux, by deed recorded in Book 184, page 286, Deed Records, Umatilla County, Oregon.

ALSO EXCEPTING THEREFROM that portion lying within County Road No. 1281.

TRACT II (aka Tax Account #133140):

Parcel 1 of PARTITION PLAT NO. 2001-32 located in the Northwest Quarter of the Southwest Quarter of Section 15, Township 5 North, Range 28 East of the Willamette Meridian, Umatilla County, Oregon.



TERMINATION OF MEMORANDUM OF AGREEMENT

This TERMINATION OF MEMORANDUM OF AGREEMENT (this "**Termination Agreement**"), dated as of January 8, 2019 ("**Effective Date**"), is made by and between HERMISTON POWER, LLC, a Delaware limited liability company ("**HP**"), and CITY OF UMATILLA, an Oregon Municipal Corporation ("**Umatilla**").

Recitals

A. HP's predecessor-in-interest, Hermiston Power Partnership, and Umatilla executed that certain Memorandum of Agreement dated as of June 20, 1995 (the "**Agreement**"), pursuant to which certain agreements were reached with respect to various transmission lines located within property owned by and/or falling within the regulatory authority of Umatilla.

B. The parties desire to terminate the Agreement upon the terms and conditions hereinafter set forth.

Agreement

NOW, THEREFORE, in consideration of the mutual promises contained in this Termination Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, HP and Umatilla agree as follows:

1. Termination of Agreement. The Agreement is deemed fully satisfied, and is hereby canceled and terminated effective as of January 8, 2019 (the "**Termination Date**"), notwithstanding anything to the contrary contained in the Agreement. As of the Termination Date, neither HP nor Umatilla shall have any further rights or obligations under the Agreement. Notwithstanding the foregoing, HP agrees that it will (a) pay in full any 2018 property taxes for the accounts numbered 133140 and 133122 that have not yet been fully paid, which payment shall be made on or before January 31, 2019; and (b) pay the mitigation payment that would otherwise be due and payable under the Agreement with respect to calendar year 2018 in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00), which payment shall be made on or before January 31, 2019.


2. Release. HP and Umatilla hereby forever release each other from any and all claims, demands, obligations, liabilities, and causes of action which either party may have against the other arising from or in any way connected with the Agreement.

3. Representations as to Authority. HP and Umatilla represent and warrant to each other that each has full authority to enter into and perform this Termination Agreement without the consent or approval of any other person or entity including, without limitation, any mortgagees, partners, ground lessors, or other superior interest holders or interested parties. The persons signing this Termination Agreement on behalf of HP and Umatilla represent and warrant that they have the full and complete authority, corporate, partnership or otherwise, to bind HP and Umatilla, respectively, to this Termination Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement as of the Effective Date.


HP:

HERMISTON POWER, LLC,
a Delaware limited liability company

By: 
Name: Robert Parker
Title: Vice President

Umatilla:

CITY OF UMATILLA,
an Oregon Municipal Corporation

By: 
Name: David Stockdale
Title: City Manager

CITY OF UMATILLA, OREGON

AGENDA BILL

Agenda Title:

Lind Road Agreement

Meeting Date:

January 15, 2019

Department:

Community Dev

Director:

Tamra Mabbott

Contact Person:

Tamra Mabbott

Phone Number:

X101

Cost of Proposal:

Legal fees to prepare.

Amount Budgeted:

N/A

Fund(s) Name and Number(s):

N/A

City will use funds as match for Immediate Opportunity Fund (IOF) grant application, to be used to improve road(s).

Reviewed by Finance Department:

Yes

Attachments to Agenda Packet Item:

- 1) Draft Agreement (pending, may be available at meeting)
- 2) Map of Lind Road
- 3) Conditions of Land Use Approval

Summary Statement:

As a condition of land use approval, Vadata agreed to pay for improvements for their proportionate share of Lind Road, 1,338 lineal feet for development of the first building, PDX 63, at the Lind Road campus.

Consistent with Council Goals:



CITY OF UMATILLA TAX LOT MAP

Lind Road Total = 8,844 Ft (1.67 Miles)

Feet

0 500 1,000 1,500 2,000

Legend

Tax Lots (10/1/18)



Not Part

~~-148-~~

IOF Section



Umatilla UGB



Vadata Section



City Section



MAP DISCLAIMER: No warranty is made as to the accuracy, reliability or completeness of this data. Map should be used for reference purposes only.

Not survey grade or for legal use.
Created by Brandon Seitz, on 10/17/2018

RE: VADData - PDX 63 Building 1 Conditions of Permit Approval (BP-45-18)

1. Applicant shall submit a written statement confirming that the existing on-site well may be used for such purpose with supporting documentation from the appropriate state agencies as applicable prior to issuance of a certificate of occupancy.
2. Applicant shall submit a statement confirming that VADATA has entered into an agreement to source process water from the Regional Water System owned and operated by the Port of Umatilla and the City of Hermiston with a copy of the applicable water supply agreement or such other document from the water supplier confirming its obligation to provide water to the site prior to issuance of a certificate of occupancy.
3. Applicant shall submit a statement confirming VADATA will (a) secure sanitary sewer services from the City of Umatilla once such facilities, pressure main and lift station, controls, etc., have been constructed and installed and are operational, with said facilities to be dedicated to the City upon completion and (b) documentation confirming that VADATA has entered into such agreement(s) as necessary which will provide for the interim disposal of sanitary sewer, to a City facility/manhole, until the new sanitary sewer line/system is constructed, operational prior to issuance of a certificate of occupancy.
4. Applicant shall submit a copy of an agreement between the City and VADATA providing for the interim disposal of discharge wastewater, IWW, until the new IWW system, pressure main and lift station, controls, etc., have been constructed and installed and are operational with said system to be dedicated to the City upon completion prior to issuance of a certificate of occupancy.
5. An agreement establishing a schedule and parameters for completion of improvements to Lind Road will be required prior to issuance of a certificate of occupancy.