

**UMATILLA CITY COUNCIL  
SPECIAL MEETING  
A G E N D A  
COUNCIL CHAMBERS  
JANUARY 25, 2019  
4:00 P.M.**

\*\*\*\*\*

**1. MEETING CALLED TO ORDER**

**2. ROLL CALL**

**3. NEW BUSINESS**

3.1 Resolution No. 39 – 2019 – A Resolution Authorizing the City Manager to Sign an Agreement with Vadata Sanitary Sewer Services for Property Located Along Lind Road Inside City Limits  
*pages 1 -38*

3.2 Resolution No. 40 – 2019 – A Resolution Authorizing the City Manager to Sign a Memorandum of Agreement with Vadata Establishing Parameters for Finalization of an Agreement for Improvements to Lind Road and Other Potential Corresponding Transportation Improvements  
*pages 39 - 44*

3.3 Public Hearing on Ordinance No. 831 – An Ordinance Granting the Port of Umatilla and the City of Hermiston (Collectively, “Grantee”) A Nonexclusive Franchise (“Franchise”) for the Privileges to Use Public Rights-of-Way to Provide Non-Potable Water Services within the City of Umatilla (The “City”) *pages 45 - 52*

3.4 Ordinance No. 831 - An Ordinance Granting the Port of Umatilla and the City of Hermiston (Collectively, “Grantee”) A Nonexclusive Franchise (“Franchise”) for the Privileges to Use Public Rights-of-Way to Provide Non-Potable Water Services within the City of Umatilla (The “City”) *pages 45 - 52*

**4. ADJOURN**

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CITY OF UMATILLA, OREGON

# AGENDA BILL

Agenda Title:

Resolution No. 39 - 2019

Meeting Date:

January 25, 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:

Yes.

Attachments to Agenda Packet Item:

- 1) Resolution No. 39 - 2019
- 2) Agreement

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:

**RESOLUTION NO. 39 – 2019**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH VADATA SANITARY SEWER SERVICES FOR PROPERTY LOCATED 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 UMATILLA CITY COUNCIL:**

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 25<sup>th</sup> day of January, 2019.

\_\_\_\_\_  
Mary Dedrick, Mayor

ATTEST:

\_\_\_\_\_  
Nanci Sandoval, City Recorder

**Sanitary Sewer Agreement  
by and between  
Vadata, Inc. and the City of Umatilla, Oregon  
dated as of January 25, 2019**

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**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 25th day of January 25, 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 that parcel of land on which the Data Center is located, which is further depicted as the “PDX-63 Development Area” (Tax Lot 200) on Exhibit A, and possessing a mailing address of 81712 Lind Road, Umatilla, OR 97838.

“**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(e).

**“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 Section 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. 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").

Within 30 days of the Effective Date of this Agreement, Vadata shall provide the City with responses to any remaining outstanding comments on the eighty percent (80%) Design Specifications provided by the City Engineer as set forth in the communications dated July 31, 2018 and January 21, 2019 (the “**80% Comments**”). Such responses shall be subject to the City’s review and approval within 30 days of the submission of such responses, which approval shall not be unreasonably withheld or conditioned. Vadata shall further provide the City ninety-five (95%) design plans by no later than April 30, 2019, which submittal shall also be subject to the City’s review and approval, with such approval to be provided within 30 days of the submission of such 95% design plans, which approval shall not be unreasonably withheld or conditioned. Any disputes regarding Vadata’s responses to the 80% Comments or the City’s review of the 95% design plans shall be subject to dispute resolution in accordance with **Section 10.6**. 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 such time frame as required to complete construction and place the Interconnection Facilities in operation on or before January 31, 2021.

(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 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 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, 2021 (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 two (2) hours 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](mailto: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: (541) 922-5758  
Email: scott@umatillacity.org

With a copy to:

*By U.S. Mail and email*  
Peter D. Mohr  
Jordan Ramis PC  
Two Centerpointe Dr., 6<sup>th</sup> Flr  
Lake Oswego, OR 97035  
peter.mohr@jordanramis.com

(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 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.

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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: \_\_\_\_\_

David Stockdale, City Manager

ATTEST:

By: \_\_\_\_\_

[name]

[Title]

\_\_\_\_\_

City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

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

See attached.

**Exhibit B – Design Specifications for Interconnection Facilities**

See attached.

**Exhibit C – Form of Construction Easement or Access Rights Agreement**

***Note: if the parties have not prepared and agreed upon a form of agreement, we can insert the following here: “Form of Construction Easement or Access Rights Agreement to be agreed to by the parties within 30 days of the Effective Date of this Agreement.”***

## **Exhibit D – Acceptance Tests for Interconnection Facilities**

1. The entire pipeline will be tested for water tightness by Vadata upon completion. Length of pipe sections to be tested will be determined in advance through consultations between 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 an operational 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 prior to the water tightness tests.
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) per the requirements listed in the 2018 Oregon Standard Specifications for Construction prepared by the Oregon Department of Transportation.
9. During the pressure test, each air release valve will be observed to document adequate operation.
10. Upon completion, the lift station shall be filled with water to the high alarm water level and held for one hour. The maximum allowable leakage shall be no more than 1/4 -inch per day.
11. The pumps shall be energized and operated to convey the water through the pipeline at the design pressure and flowrate conditions.
12. The pumps shall be operated to verify that the pumps automatically turn on and off based upon water elevations in the pump station.
13. The water levels will be adjusted to verify that the low and high water level alarms work and transmit signals to the City's SCADA system.
14. The pumps, after operation, shall be turned off, to verify that the plug and check valves operate as designed.

**Exhibit E – Map Showing Location of Interim Service Designated Manholes**

See attached.

**Exhibit F – Designated Interim Service Contact**

Scott Coleman, Public Works Director

Mobile: (509) 778-1978

Email: [scott@umatillacity.org](mailto:scott@umatillacity.org)

CITY OF UMATILLA, OREGON

# AGENDA BILL

<u>Agenda Title:</u> Resolution No. 40 – 2019	<u>Meeting Date:</u> January 25, 2019
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<u>Department:</u> Community Dev	<u>Director:</u> Tamra Mabbott	<u>Contact Person:</u> Tamra Mabbott	<u>Phone Number:</u> X101
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<u>Cost of Proposal:</u> Legal fees to prepare.	<u>Fund(s) Name and Number(s):</u> N/A City will use funds as match for Immediate Opportunity Fund (IOF) grant application, to be used to improve road(s).
<u>Amount Budgeted:</u> N/A	

<u>Reviewed by Finance Department:</u> Yes
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<u>Attachments to Agenda Packet Item:</u>  1) Resolution No. 40 – 2019 2) Agreement 3) Map of Lind Road 4) Conditions of Land Use Approval
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<u>Summary Statement:</u> 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.
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<u>Consistent with Council Goals:</u>
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**RESOLUTION NO. 40 – 2019**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A MEMORANDUM OF AGREEMENT WITH VADATA ESTABLISHING PARAMETERS FOR FINALIZATION OF AN AGREEMENT FOR IMPROVEMENTS TO LIND ROAD AND OTHER POTENTIAL CORRESPONDING TRANSPORTATION IMPROVEMENTS.**

**WHEREAS**, the City has permitted and supports Vadata “Developer,” development of data centers on property abutting Lind Road; and

**WHEREAS**, the City of Umatilla “City,” owns a portion of Lind Road; and

**WHEREAS**, Union Street is a public roadway providing essential connection between the data center development and Lind Road and state Highway 395; and

**WHEREAS**, Lind Road and Union Street are vital roadway connection between the data center development and State Highway 395; and

**WHEREAS**, Developer agreed to make improvements to Lind Road as a condition of their land use and Building Permits, and

**WHEREAS**, Developer is required to establish a schedule and parameters for completion of improvements to Lind Road prior to issuance of a certificate of occupancy; and

**WHEREAS**, Developer has requested the City issue a temporary certificate of occupancy immediately in order to avoid their critical situation and interrupt services; and

**WHEREAS**, the City and Developer agree to continue coordination and negotiation to resolve and finalize terms of the road improvement agreement after issuance of a temporary certificate of occupancy; and

**WHEREAS**, the City and Developer specifically agree to continue to work in good faith to make road improvements in the best interest of Developer and the City.

**NOW THEREFORE, BE IT RESOLVED BY THE UMATILLA CITY COUNCIL:**

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

**PASSED** by the City Council and **SIGNED** by the Mayor this 25<sup>th</sup> day of January, 2019.

---

Mary Dedrick, Mayor

ATTEST:

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Nanci Sandoval, City Recorder

## MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (this "Memorandum"), dated as of this \_\_\_ day of \_\_\_\_\_, 2019, is made by and between **VADATA, INC.**, a Delaware corporation ("Developer") and the **CITY OF UMATILLA, OREGON**, an Oregon municipal corporation ("City"), which are collectively referred to herein as the "Parties."

**1. PURPOSE:** The purpose of this Memorandum is to establish a schedule and parameters for completion of street improvements on Lind Road in order to satisfy Condition 2 of the City's approval of Developer's site plan review for development of a data center building and related facilities at 81712 Lind Road ("Property") (City File No. SP-3-18) ("Project") and to satisfy Condition 5 of the City's approval of the building permit for the Project (City File No. BP-45-18) sufficient to permit the City to issue a certificate of occupancy for the Project.

**2. REQUIRED STREET IMPROVEMENTS:** The currently known scope of improvements shall consist of full-street improvements for approximately 1,338 feet of Lind Road from the south side of the Property north to Union Street in accordance with the City's modified industrial arterial street standards applied to Beach Access Road immediately north of Highway 730 ("Street Improvements"), provided that the Parties understand the completion of additional improvements may be necessary, which may include, but not be limited to, the installation of further improvements at the Lind Rd./Union St. intersection, along the length of that portion of Union St. from Hwy 395 to Lind Rd., and along the transitional sections of road north of the Lind Rd./Union St. intersection and up to 200 feet south of the Property ("Additional Improvements").

**3. DESIGN, PERMITTING, AND CONSTRUCTION:** Developer will complete design, permitting, and construction of the Street Improvements, except as provided in Section 5 below. Before commencing the street design, the Parties will negotiate and agree upon which Party/Parties will be responsible for completing the design, permitting, and construction of the Additional Improvements.

**4. EXPENSES:** Developer will bear all design, permitting, and construction costs for the Street Improvements, except as provided in Section 5 below. Before commencing the street design, the Parties will negotiate and agree upon cost-sharing for the design, permitting, and construction costs for the Additional Improvements, provided that Developer will not be obligated to contribute more than its proportionate share for same.

**5. WETLAND PERMITTING:** If construction of the Street Improvements and/or Additional Improvements requires wetland delineations or permits affecting real

property owned by third parties, City will either obtain the written consent of all third-party landowners to such delineations and permits or acquire the properties/property rights from the third parties. Any reimbursement by Developer of expenses incurred by the City to secure such delineations, permits and/or properties/property rights will be negotiated by the Parties prior to City taking the steps to secure completion of the delineation, the issuance of applicable permits, or the acquisition of properties/property rights.

**6. CONSTRUCTION COMPLETION DATE:** Later of: (A) July 1, 2020; or (B) nine months after obtaining all required state and federal permits authorizing wetland impacts associated with the construction of the Street Improvements (and the Additional Improvements, as applicable).

**7. CITY ACCEPTANCE AND MAINTENANCE:** Upon final construction, City will accept dedication of the Street Improvements and all applicable Additional Improvements, and will, at City's expense, assume long term maintenance of the Street Improvements and such Additional Improvements according to City's standards.

**8. IMMEDIATE OPPORTUNITY FUNDS:** Developer will cooperate with City in pursuing State of Oregon Immediate Opportunity Fund grants for other street improvements in the surrounding area.

**9. COMPLIANCE WITH CONDITIONS:** City will find that mutual execution of this Memorandum satisfies Condition 5 of City File No. BP-45-18 sufficient to issue a certificate of occupancy for the Project.

**10. LEGAL EFFECT:** The Parties intend that neither shall have any contractual obligations to the other with respect to the matters referred to herein unless and until a definitive agreement has been fully executed and delivered by the Parties.

**DEVELOPER:**  
**VADATA, INC.,**  
a Delaware corporation

**CITY:**  
**CITY OF UMATILLA, OREGON,**  
an Oregon municipal corporation

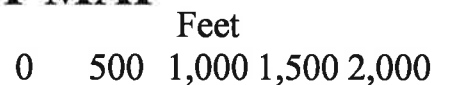
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: David Stockdale  
Title: City Manager  
Date: \_\_\_\_\_



# CITY OF UMATILLA TAX LOT MAP

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



## Legend

 Umatilla UGB



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 1/23/2019

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.

CITY OF UMATILLA, OREGON

**AGENDA BILL**

Agenda Title:

Ordinance No. 831 (RWS Agreement)

Meeting Date:

January 25, 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:

Ordinance No. 831

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. 831**

**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, the City does not currently have available sufficient non-potable water supply infrastructure to fully meet the industrial needs of 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 proposed data center to be located within the City along Lind Road; and

WHEREAS, Grantee will use City rights-of-way to provide such water service to a parcel located within the City 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 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 to that parcel currently identified as Tax Lot 200 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 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. 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) The franchise fee shall be paid on or before the 30<sup>th</sup> 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.

**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.** 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.

**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. 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 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 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**

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

**REGIONAL WATER SYSTEM**

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 this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Voting yes, Council Members: \_\_\_\_\_

\_\_\_\_\_

Voting no, Council Members: \_\_\_\_\_

\_\_\_\_\_

Absent Council Members: \_\_\_\_\_

Abstaining Council Members: \_\_\_\_\_

And SIGNED in authentication by the Mayor this \_\_\_\_\_ day of January, 2019

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ACCEPTANCE**

This franchise ordinance is accepted by the City of Umatilla, an Oregon municipal corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF UMATILLA, an Oregon municipal corporation

\_\_\_\_\_  
City Manager

This franchise ordinance is accepted by the Port of Umatilla, an Oregon municipal corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PORT OF UMATILLA, an Oregon municipal corporation

\_\_\_\_\_  
Executive Director

This franchise ordinance is accepted by the City of Hermiston, an Oregon municipal corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF HERMISTON, an Oregon municipal corporation

\_\_\_\_\_  
City Manager

# EXHIBIT A

