

AGENDA

SPECIAL CITY COUNCIL MEETING

August 4, 2015

5:30 p.m.

CITY HALL COUNCIL CHAMBER

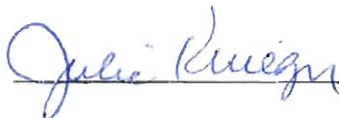
313 COURT STREET

THE DALLES, OREGON

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. ACTION ITEMS
 - A. Approval of Enterprise Zone Tax Abatement Agreement With Design LLC for Taylor Lake Site
 - B. Resolution No. 15-032 Initiating a Street Vacation Procedure for a Portion of River Trail Way
5. ADJOURNMENT

This meeting conducted in a handicap accessible room.

Prepared by/
Julie Krueger, MMC
City Clerk



CITY OF THE DALLES

"By working together, we will provide services that enhance the vitality of The Dalles"



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
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AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
August 4, 2015	Action Item 4, A	

TO: Mayor and City Council

FROM: Nolan K. Young, City Manager

DATE: July 28, 2015

ISSUE: Approval of Enterprise Zone Tax Abatement Agreement with Design, LLC for the Taylor Lake Site

RELATED COUNCIL GOAL: D: Maintain a balanced budget that will provide for sustained City operations and capital improvements, while assuring an adequate contingency fund. 2: During fiscal year 2015-16 budget process consider level and type of resources to make available to economic development with emphasis on manufacturing jobs and revitalization of the downtown, and then implement that plan.

BACKGROUND: Wasco County and the City of The Dalles sponsor an Oregon Enterprise Zone in The Dalles. One of the tools available to an enterprise zone is to enter into a long term (15 year) property tax exemption with businesses that invest in the community and create jobs. The benefiting business also pays enterprise zone fees to the zone sponsors.

Google has previously signed two fifteen year agreements with the Wasco County and the City of The Dalles. The first agreement signed in 2005, is in its ninth year of property tax waivers. The second agreement signed in 2013 will be its fifteen year period in 2016.

Google, who does business in The Dalles as Design, LLC, has requested a third enterprise zone agreement to construct a new development on 23 acres in the Port of The Dalles new Columbia Gorge Industrial Center (agreement attached).

The enterprise zone agreement provides Google with a 15 year tax exemption on any new development on the proposed site. In return, Google must invest a minimum of \$200 million and create a minimum of 10 new jobs. Google has indicated that it will exceed both of those numbers, anticipating that the site will employ over 50 employees. In addition, Google is required to pay an enterprise zone fee to the County and City. Because Google does not yet know the exact size of the building the enterprise zone fee is based on a unit cost, with a minimum amount. The minimum initial fee is \$1.45 million to be paid to the City and County, with an additional \$250,000 to be paid to the Port of The Dalles for the development of additional industrial land. The minimum annual fee that will begin the tax year following the new facility going online will be \$1 million.

The initial fee unit cost is 16 cents per cubic foot for industrial buildings. This excludes electrical substations, cooling towers, and the like. As an example if Google built the exact same facility that they just completed on the current site the initial fee would be around \$1.7 million, plus \$250,000 to the Port of The Dalles, this is about a 68% increase over the initial fee for the last building. The annual fee is 11.4 cents per cubic foot, and if the exact same building is built the annual fee will be around \$1,200,000, about a 50% increase over the prior fee. The minimum initial fee increase is 42% and the annual minimum fee increase is 25% over the fees for the prior building.

The City and County as cosponsors of the enterprise zone will make the decision on how the new enterprise zone fees will be used to address significant community issues. The flexibility of the enterprise zone fees is one of the benefits of these agreements. Attached is a summary of benefits the community is or has received as a result of Google being in the community.

The City and County will be holding a public hearing to take comments on this agreement on Monday, August 3 at 5:30 p.m. at the Wasco County Courthouse, Circuit Courtroom on the Third Floor. Following the public hearing the City Council will be considering adoption of the enterprise zone agreement at a special meeting at 5:30 p.m. on August 4; and the County Commission will be considering adoption during their regular meeting on August 5. Both need to adopt this agreement for it to be in effect.

BUDGET IMPLICATIONS: The City and the County will receive both an initial fee and an annual fee if this agreement is approved by both the City and the County.

COUNCIL ALTERNATIVES:

1. *Adopt the proposed Enterprise Zone Tax Abatement Agreement with Design, LLC for the Taylor Lakes property.*
2. Postpone action to allow for further research.
3. Decline to approve proposed agreement.

Proposed Long Term Enterprise Zone Agreement

Executive Summary

Wasco County and the City of The Dalles sponsor an Oregon Enterprise Zone in The Dalles. One of the tools available to an enterprise zone is to enter into a long term (15 year) property tax exemption with businesses that invest in the community and create jobs. The benefiting business also pays enterprise zone fees to the zone sponsors.

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Benefit to The Dalles Area Community from Google Data Centers

- ✓ Google and other large data center companies in Oregon are locating only in enterprise zones or other areas where they can receive reduction in taxes. Because of the large personal property value of the machinery located in the data centers it is cost prohibitive for them to do otherwise. Without an enterprise zone Google would not have the three buildings they currently have in The Dalles, nor would they build the fourth building proposed under this new enterprise zone agreement.
- ✓ The Google data centers are located in an enterprise zone that other commercial industrial businesses locate in. Most of these businesses experience a three to five year property tax exemption without requiring long term enterprise zone agreements.
- ✓ The average property tax amount per acre paid by businesses located in the west port industrial area, where these data centers are located, is \$12,447/acre. The average of the top five was \$23,573. The highest amount paid for any development is \$34,305/acre. For its' almost 31 acres, Google pays for both enterprise zone fees and property taxes for land and improvements prior to the enterprise zone. The total Google pays equal \$35,772 per acre.
- ✓ The proposed enterprise zone agreement includes an initial and an annual enterprise zone fee that will be paid by Google. It is based on a volume unit amount. This means the more Google invests in the primary structures the more fees will be paid. This allows the fee to be related to investment, similar to what the property tax would be.
- ✓ The community will at a minimum receive an initial fee of \$1.7 million and an annual fee of \$1 million. That is a 42% and 20% increase over the fees to be paid on the newly constructed facility.
- ✓ Attached is a list of the top ten property taxpayers in Wasco County. We have inserted Google into that list using the enterprise zone fee and taxes they pay for the three current building they have and the minimum they will be paying for the new facility proposed under this agreement. The amount they pay is more than any tax payer in Wasco County.
- ✓ In addition to the enterprise zone fee, the community will be receiving the following current and additional benefits:
 - The fees to be paid under the proposed enterprise zone agreement will allow the County and City to address their road and street problems with no new taxes.
 - The initial facility that opened in 2007 currently employs 80 Google employees and a total of 150 employees including contractors. Over 50 % of the Google employees live in Wasco County with 80% living in the Columbia River Gorge. A good number of the contractor employees at the current site live in the Columbia River Gorge.
 - There may be fewer jobs at a data center than another industry, but at a much higher wage. The current average salary of the 80 employees at the current site exceeds the requirement to be at least 150% of the average salary in Wasco County. .
 - The facility proposed under this agreement will employ up to another 50 jobs.
 - The user revenue the City's water and sewer utilities receive allows us to increase resources available to all users at a lower cost to individual customers.

- Google is one of the largest customer of the four utilities this community owns; water, wastewater, broadband (QLife), and electric. The utility fees that they pay significantly impacts rates for the whole community. If they were not in the community purchasing at the volume they do rates to the individual rate payer would be higher.

- Franchise fees: the City of The Dalles charges a 3% franchise fee on gross revenue that Northern Wasco County PUD gets from all customers. This franchise fee helps fund city services, in particular the City's police department, which costs more to operate than the property taxes the City receives. Without the franchise fee paid by the Google data center we would most likely have fewer officers on the streets of the community.

- Beginning this year the City Council has started using General Fund revenues to help maintain streets. Without construction of Building #2 that would not have been possible without cutting other General Fund services. The franchise fees payments resulting from the data center covered by this agreement will help further solidify the health of the City's General Fund, and allow the City to spend additional funds to improve the quality of its City Streets.

- The enterprise zone fees that the City of The Dalles and Wasco County have received in the past have been used to enhance public broadband utility, provide programs at Columbia Gorge Community College, further the City and County's economic development activities, provide an additional staffed fire station and future training tower for Mid-Columbia Fire and Rescue, and help pay for amenities at the newly constructed community pool.

- Annual fees from the second enterprise zone agreement will help with County and City services, assist Mid-Columbia Fire and Rescue with a training tower and a student intern program for staffing, provide assistance to Columbia Gorge Community College, and assist Northern Wasco School District 21 with facility maintenance.

- In the next fiscal year the City and County will each receive a total of \$405,000 from the existing annual enterprise zone fees. This amount equal 6% of the current City General Fund operating costs and 15% of what the City receives in property taxes.

- Northern Wasco County School District 21 will be receiving \$240,000 a year beginning in 2016 for exterior "curb appeal" maintenance projects.

- Since 2011 Google has awarded several grants under its focus areas of 1) STEM (Science, Technology, Engineering and Math) education, 2) Bridging the Digital Divide, 3) Carbon Reduction, and 4) Increasing the Tech capacity of Non-Profits. Grants given to Wasco County Schools and non-profits totaling \$1.2 million. An additional \$350,000 was provided to The Dalles Public Wi Fi.

- In addition Google employees volunteer their time, energy and talents to many non-profits in the Gorge Area, individually and as a group with the support and encouragement of their employer.

The Dalles and surrounding area have a better quality of life, better education system and better community services than they would have if Google was not located here. Without these enterprise zone agreements, Google would not be located here.

Top Taxpayers for Tax Year 2014

Wasco County

#	Name	Amount
1	UNION PACIFIC RAILROAD CO	\$532,998
2	BNSF RAILWAY CO	\$450,793
3	NORTHERN WASCO CO PUD	\$306,307
4	CENTURYLINK	\$299,919
5	METROPOLITAN LIFE INSURANCE CO (Fred Meyer)	\$249,933
6	GAS TRANSMISSION NW CORP	\$224,807
7	OREGON CHERRY GROWERS INC	\$219,083
8	CHARTER COMMUNICATIONS	\$169,255
9	HOME DEPOT USA INC	\$167,430
10	ORCHARD VIEW FARMS INC	\$165,907
Average of Top Ten		\$278,643

Google's Enterprise Zone Payments

2005 Agreement Annual Fee	\$250,000
2013 Agreement Annual Fee	\$800,000
Executed Agreements Total	\$1,050,000

Relative to Top Tax Payer	97%
Relative to Top Ten Average	277%

Minimum of Proposed New Agreement	\$1,000,000
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ENTERPRISE ZONE TAX ABATEMENT AGREEMENT

This Enterprise Zone Tax Abatement Agreement (this "Agreement") is entered into as of the date of the last signature below (the "Effective Date") between the City of The Dalles (the "City"), Wasco County (the "County"), and Design, LLC, a Delaware limited liability company (the "Company").

RECITALS

A. City and County (the "Sponsor") jointly sponsor a nonurban enterprise zone under ORS 285C.400 to 285C.420 (the "Statutes") known as The Dalles/Wasco County Enterprise Zone (the "Zone"). The current population of Wasco County is less than 40,000.

B. Company has constructed and operates a project (the "First Steelhead Facility") that supports Company's internet business. The First Steelhead Facility is located on the land specified in Exhibit A.1 (the "First Steelhead Facility Site"). For purposes of this Agreement, the First Steelhead Facility is composed of (i) the First Steelhead Facility Site and (ii) any real property improvements and personal property installed, constructed, added, or otherwise placed at the First Steelhead Facility Site. City, County, and Company executed an Enterprise Zone Tax Abatement Agreement on April 25, 2005 with respect to the First Steelhead Facility (the "First Steelhead Facility Agreement"), and the real property improvements and personal property of the First Steelhead Facility have been exempt from property tax pursuant to the First Steelhead Facility Agreement and ORS 285C.409.

C. Company has constructed another project (the "Second Steelhead Facility") that supports Company's internet business. The Second Steelhead Facility is located on the land specified in Exhibit A.2 (the "Second Steelhead Facility Site"). For purposes of this Agreement, the Second Steelhead Facility is composed of (i) the Second Steelhead Facility Site and (ii) any real property improvements and personal property installed, constructed, added, or otherwise placed at the Second Steelhead Facility Site. City, County, and Company executed an Enterprise Zone Tax Abatement Agreement on September 25, 2013 with respect to the Second Steelhead Facility (the "Second Steelhead Facility Agreement"), and the real property improvements and personal property of the Second Steelhead Facility have been exempt from property tax pursuant to the Second Steelhead Facility Agreement and ORS 285C.409.

D. Company proposes to construct and operate the Taylor Lake Facility (as defined below), which will support Company's internet business and will be located on the Taylor Lake Site (as defined below). A number of persons will be employed and compensated at the Taylor Lake Site on average at substantially more than the average annual wage within the County.

E. Sponsor has found that the construction and operation of the Taylor Lake Facility will foster desirable economic development in the Zone and its local area and will be in the best interest of Sponsor.

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F. Sponsor and Company desire to enter into a property tax abatement with respect to the Taylor Lake Facility.

G. Company has timely and properly filed a Certification Application for Long-Term Rural Oregon Tax Incentive, Form 150-310-073 with respect to the Taylor Lake Facility (the "Application").

H. Company may seek approval from the Governor for excise tax credits under ORS 317.124 to 317.131.

TERMS AND CONDITIONS

As an incentive for Company to locate the Taylor Lake Facility (as defined below) within the Zone and in accordance with ORS 285C.403(3)(b) and (c), the parties agree as follows:

I. PROPERTY TAX EXEMPTION

A. Taylor Lake Facility and Taylor Lake Site.

1. "Taylor Lake Site" shall mean (i) the land specified in Exhibit B as the "Primary Site" (the "Primary Site") and (ii) additional land located within one mile of the Primary Site on which Company will construct a warehouse and related infrastructure, including temporary buildings (the "Ancillary Site"). After Company has identified the Ancillary Site, Company shall provide to Sponsor a legal description of the Ancillary Site, which shall be incorporated into Exhibit C of this Agreement and thereby made a part of this Agreement. Company and Sponsor may agree in writing (pursuant to an amendment to this Agreement, a subsequent enterprise zone tax abatement agreement, or otherwise) to include additional land as part of the Taylor Lake Site.

2. "Taylor Lake Facility" shall mean (i) the Taylor Lake Site, (ii) a new building or buildings, associated mechanical and electrical plant, and related property located at, in, or upon the Taylor Lake Site, and (iii) any other real property improvements and personal property installed, constructed, added, or otherwise placed at the Taylor Lake Site. Unless the Sponsor and Company otherwise agree in writing, the Taylor Lake Facility shall not include a data center constructed at the Ancillary Site.

B. Coordination of Exemptions for the First Steelhead Facility, the Second Steelhead Facility, and the Taylor Lake Facility

1. The First Steelhead Facility Agreement shall govern the exemption of real property improvements and personal property for the First Steelhead Facility.

2. The Second Steelhead Facility Agreement shall govern the exemption of real property improvements and personal property for the Second Steelhead Facility.

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3. Subject to Section II.A, this Agreement shall govern the exemption of real property improvements and personal property in the Taylor Lake Facility.

C. Exemption for the Taylor Lake Facility. Subject to the terms and provisions of the Statutes and this Agreement, and to approval of Company's Application, City and County shall grant a 100% *ad valorem* tax exemption to all qualifying property of the Taylor Lake Facility pursuant to ORS 285C.409(1), as follows:

1. for the first tax year following the calendar year in which Company is certified or after which construction of the Taylor Lake Facility commences, whichever is later;

2. for each subsequent tax year in which the Taylor Lake Facility is not yet in service as of the January 1 preceding the tax year (the "Assessment Date") for the tax year; and

3. for a period of 15 additional tax years, beginning with the first tax year in which the Taylor Lake Facility is in service as of the Assessment Date for the tax year (the "15-Year Exemption Period").

II. OBLIGATIONS OF ENTITY

A. Conditions

All obligations of Company described in this Agreement arise solely on account of, depend entirely upon, and are subject to satisfaction of the following:

1. Company's development and the placement in service of the Taylor Lake Facility.

2. Company's ability to obtain a 100% *ad valorem* property tax exemption for all qualifying property of the Taylor Lake Facility under ORS 285C.409(1) for all periods described in Section I.C of this Agreement.

If either condition is not satisfied for any reason, Company may rescind this Agreement, subject to any potential liability for back taxes under ORS 285C.420(3).

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B. Statutory Obligations

1. Pursuant to ORS 285C.403, for the Taylor Lake Facility to qualify for the property tax exemption described in Part I, Company must, “before the commencement of construction or installation of property or improvements [in the Zone] and before the hiring of employees, apply for certification with [the Sponsor] and with the [County assessor].” Sponsor acknowledges that Company has satisfied the requirement of ORS 285C.403 for the Taylor Lake Facility by submitting the Application.

2. For property in the Taylor Lake Facility to qualify for the property tax exemption described in Part I after the Taylor Lake Facility is placed in service, Company must comply with ORS 285C.412(5) and 285C.420 as follows:

a. By the end of the calendar year when the Taylor Lake Facility is placed in service, the total cost of the Taylor Lake Facility must exceed \$200 million.

b. When Company is certified, the location of the Taylor Lake Facility must be 10 or more miles from Interstate Highway 5, as measured between the two closest points between the Taylor Lake Facility and anywhere along that interstate highway.

c. By the end of the third calendar year following the year when the Taylor Lake Facility is placed in service, at least 10 full-time employees must have been hired at the Taylor Lake Facility as determined pursuant to ORS 285C.412(5) and OAR 123-690-4200. The Sponsor and Company acknowledge that the Oregon Business Development Department is considering amending OAR 123-690-4200 and that the amendments, if adopted, would allow the Sponsor and the Company to agree on the date on which the base number of employees at the Taylor Lake Facility Site is determined. The Sponsor and Company shall determine the employment increase at the Taylor Lake Facility Site by reference to the base number of employees at the Taylor Lake Facility Site on the date on which the Application was filed rather than the date 12 months before property subject to exemption is first placed in service, if permitted by OAR 123-690-4200, as amended. Subject to Section II.C.9, pursuant to OAR 123-690-5200, Company will submit an annual report for the Taylor Lake Facility demonstrating that at least 10 full-time employees have been hired and are associated with the Taylor Lake Facility. Employees hired to meet Company’s obligation under this Section II.B.2.c will perform their jobs within the Zone.

d. For at least one of the five calendar years following the year when the Taylor Lake Facility is placed in service (the “Measuring Year”), the average annual compensation (as determined in accordance with OAR 123-690-4600) of all employees working at the Taylor Lake Facility must equal or exceed 150 percent of the average annual wage for employees in all industries in Wasco

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County, based on the most recent such figure that is available from the Oregon Employment Department as of the Measuring Year. For each calendar year after the fifth calendar year following the year when the Taylor Lake Facility is placed in service, annual average compensation at the Taylor Lake Facility must equal or exceed 150 percent of the average wage in Wasco County for the Measuring Year.

C. Additional Obligations

1. Capitalized terms used but not otherwise defined in this Section II.C have the following meanings:

“Building” means a structure that is fully enclosed by walls, is covered by a roof, and is located at the Taylor Lake Facility. For the avoidance of doubt, an equipment platform or a covered parking structure is not a Building because it does not enclose a space.

“Building Volume” means, with respect to any Building, the volume of the Building expressed in cubic feet as determined by Revit or other building design software. Building Volume excludes foundations, a central utility building or other building the primary purpose of which is to provide utility service (e.g., mechanical, electrical, cooling) for the Taylor Lake Facility, cooling towers and basins, temporary buildings that stay on the Taylor Lake Site for less than four years, fuel storage, water storage, substations, transformers, equipment enclosures, generators in their own enclosure, parking lots, roads, walkways, and open-air loading areas. The volume of property excluded from Building Volume pursuant to the previous sentence is excluded even if it is physically connected to a Building. For instance, the volume of a utility building is excluded from Building Volume even if it shares an interior wall with a Building.

“Final Building Volume” has the meaning set forth in Section II.C.5.

“First Initial Project Fee Permit” or “First IPF Permit” means the first IPF Permit approved by The City of The Dalles and the local building codes agency.

“IPF” means the Initial Project Fee.

“IPF Amount” or “IPFA” means, as of a particular date, the greater of (a) \$1,450,000 and (b) the product of the IPF Building Volume determined as of that date and \$0.16 per cubic foot.

“IPF Building Volume” means (i) as of the Preliminary Initial Project Fee (PIPF) Payment Date, the Building Volume of the Buildings subject to the First IPF Permit, as determined by Company in good faith, (ii) as of the Final Initial Project Fee Payment Date (as defined below), the Final Building Volume of the Buildings subject to the First IPF Permit that have received a final certificate of occupancy, and (iii) as of an Additional Initial Project Fee Payment Date (as defined below), the Final Building Volume of all Buildings subject to an IPF Permit that have received a final certificate of occupancy.

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“IPF Permit” means a building permit approved by the City and the local building codes agency before the date of the first final certificate of occupancy for a Building at the Primary Site.

2. Company shall make one or more payments to the Sponsor pursuant to this Section II.C.2 (collectively, the “Initial Project Fees”) in an aggregate amount equal to the greater of (a) \$1,450,000 and (b) the product of the Final Building Volume of all Buildings subject to an IPF Permit and \$0.16 per cubic foot. The Initial Project Fees shall be paid in the amounts (“Payment Amounts”) and on or before the dates (“Payment Dates”) set forth in the schedule below. For the avoidance of doubt, an Initial Project Fee will be payable only if the conditions set forth in the Payment Date column have been satisfied. An example of the calculation and timing of Initial Project Fees is provided in Exhibit D.

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Fee	Payment Amount	Payment Date
Minimum Initial Project Fee (MIPF)	\$1,450,000	30 days after the last to occur of the following: (i) Company has acquired the Primary Site, (ii) Company has entered into development agreements with the City of the Dalles for utility services, (iii) Company has entered into an energy services agreement with Northern Wasco Public Utility District for power supply to the Taylor Lake Facility, (iv) Company has entered into an agreement with Northern Wasco Public Utility District providing for the construction of any required interconnection facilities for the Taylor Lake Facility, (v) all City roads inside the Primary Site have been vacated by the City such that ownership is vested in Company or an affiliate of Company, and (vi) a height variance or conditional use permit for the building has been approved. At its sole discretion, Company may waive any of conditions (i) through (vi).
Preliminary Initial Project Fee (PIPF)	$PIPF = IPFA - MIPF$, but the PIPF shall not be less than zero.	60 days after Company's receipt of the First IPF Permit.
Final Initial Project Fee (FIPF)	$FIPF = IPFA - (MIPF + PIPF + \text{any prior AIPFs})$.	Due date for the Annual Project Fee for the tax year relating to the first Assessment Date after receipt of the final certificate of occupancy for all Buildings subject to the First IPF Permit. If the FIPF is positive, Company shall pay the amount of the FIPF to Sponsor. If the FIPF is negative, Company shall reduce amounts otherwise payable to Sponsor by the amount of the FIPF.
Additional Initial Project Fee (AIPF)	$AIPF = IPFA - (MIPF + PIPF + FIPF + \text{all prior AIPFs})$.	Due date for the Annual Project Fee for the tax year relating to the first Assessment Date after receipt of the final certificate of occupancy for all Buildings subject to an IPF Permit other than the First IPF Permit.

3. Company shall pay to the Port of The Dalles \$250,000 (the "Port Fee") on or before the Payment Date for the Minimum Initial Project Fee.

4. Company shall pay to the Sponsor the Annual Project Fee on or before December 31 of each tax year during the 15-Year Exemption Period, except that the Annual Project Fee will not be due for any tax year in which the Taylor Lake Facility does not qualify for the property tax exemption under ORS 285C.409(1)(c). The Annual Project Fee for any tax

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year shall be an amount equal to the greater of \$1,000,000 and the product of \$0.114 per cubic foot and the aggregate Final Building Volume of all Buildings or portions thereof that are in service as of the Assessment Date for the tax year, as specified in accordance with Section II.C.6.

5. The Final Building Volume of a Building shall be the Building Volume of the Building determined in accordance with this Section II.C.5.

a. Within six months after Company has received a final certificate of occupancy for a Building (or, if later, the April 1 that follows receipt of the final certificate of occupancy for a Building), Company shall determine the Building Volume for the Building and, promptly thereafter, Company and Sponsor will schedule a meeting to discuss the determination of the Building Volume. The City and the County each may designate up to two people to attend the meeting. At the meeting, Company will make available the applicable building permits and explain the calculation of the Building Volume. Company will not be required to disclose confidential information, and the representatives of the City and the County will be allowed to view confidential information as provided by Company, but shall agree not to make copies or to remove any materials provided to them for review at the meeting. In addition, in the case of a completed Building, and subject to the Company's security and safety rules and procedures, Company will provide a tour of the exterior of each Building that has received the final certificate of occupancy that is the subject of the applicable meeting.

b. Within 30 days after a Meeting, the Sponsor may propose to Company in writing any reasonable changes to the calculation of the Building Volume and include reasonable documentation supporting the changes or request in writing that Company grant one 30-day extension for Sponsor to propose changes (which request shall not be unreasonably withheld by Company). In the event that no such changes are proposed to Company and no such extension is requested and granted within such time period, the Sponsor will be deemed to have agreed to and accepted the determination of the Building Volume, and the determination shall be conclusive and binding upon Company and Sponsor. Company and Sponsor will attempt in good faith to resolve any differences with respect to the determination of the Building Volume within 30 days after Company's receipt of a timely written notice of objection from the Sponsor. If Company and the Sponsor are unable to resolve such differences within such time period, then any remaining disputed matters will be submitted to an engineering firm that is also a registered architect in the state of Oregon selected as follows (the "Independent Engineer"): Company will specify three engineering firms and Sponsor will select one of the three.

c. The Independent Engineer will determine those matters in dispute based on Company's as-built design drawings and the provisions in this Section II.C and will render a written report (or, if a written report would disclose confidential information of Company, a report given at a meeting subject to the provisions of Section II.C.5.a) as to the disputed matters and the resulting determination of Building Volume, which report shall be conclusive and binding upon Company and Sponsor. Any information provided to the Independent Engineer by Company shall be for the confidential use of the Independent Engineer and shall not be disclosed, in the report or otherwise, to the Sponsor or any other person.

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Company and Sponsor shall each pay 50% of the fees and expenses of the Independent Engineer's report and analysis. At Sponsor's election, Company shall advance Sponsor's share of the fees and expenses of the Independent Engineer. Company shall offset amounts otherwise payable by Company pursuant to this Agreement against the amount of such advances, and any offset shall be treated as if Company had paid the amount otherwise payable and Sponsor had reimbursed Company for Sponsor's share of the fees and expenses of the Independent Engineer.

d. In no event shall Sponsor delay, condition, or withhold its approval of any determination related to the development, construction, or operation of any Building (including but not limited to its approval of a building permit or the issuance of a certificate of occupancy) as a result of the determination of the Building Volume of any Building.

6. For each tax year of the 15-Year Exemption Period, Company shall provide to Sponsor written notice of the aggregate Final Building Volume of each Building or portion thereof that is in service as of the Assessment Date for the tax year by October 1 of the tax year (or, if later, within 10 days after the Final Building Volume of any such Building has been determined in accordance with Section II.C.5).

7. Company shall pay the Port Fee to The Port of The Dalles, which Company and the Sponsor understand will be used to address environmental or other issues on brownfield property or to otherwise develop additional land in The Dalles. Company shall pay the Initial Project Fees and the Annual Project Fees to County for the benefit of the Sponsor, and such amounts shall be budgeted, expended, and distributed by the Sponsor in its sole discretion.

8. Failure by Company to pay any Port Fee, Initial Project Fee, or Annual Project Fee (each, a "Project Fee") after 120 days' written notice of delinquency from the Sponsor (with a copy to the County Assessor) will result in disqualification of the Taylor Lake Facility from the property tax exemption under Section I.C.2 of this Agreement as provided in ORS 285C.420, including but not limited to potential liability for back taxes under ORS 285C.420(3).

9. Company will make reasonable efforts to assist the County Assessor, the Sponsor, and state agencies in administering the provisions of this Agreement or the associated tax incentives. However, Company may refuse any request for assistance if Company concludes, in its sole discretion, that such assistance will compromise the confidentiality of trade secrets or other sensitive information associated with the Company or the construction and operation of the First Steelhead Facility, the Second Steelhead Facility, or the Taylor Lake Facility.

10. Except as provided above, no promise or warranty attributable to Company, whether oral or written, will be deemed an obligation or requirement of Company for purposes of a property tax exemption under the Statutes.

III. OBLIGATIONS OF SPONSOR

A. The County and City will each adopt substantially the same resolution to authorize approval of this Agreement, the Company's application with respect to the Taylor Lake

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Facility, and the property tax exemption described in Part I with respect to the Taylor Lake Facility and this Agreement (the "Approval Resolutions"):

1. If the Approval Resolutions are not adopted within 90 days of the Effective Date, then Company may terminate this Agreement by written notice to the Sponsor. This agreement will then become null and void and neither the Sponsor nor Company will be liable in any way.

2. The Approval Resolutions and/or the execution of this Agreement will constitute approval under ORS 285C.403(3)(a) of the property tax exemption described in Part I with respect to the Taylor Lake Facility and this Agreement.

B. The County and City hereby approve the property tax exemption described in Part I with respect to the Taylor Lake Facility and this Agreement. The Sponsor sets the period of the property tax exemption for purposes of ORS 285C.409(1)(c) at 15 consecutive years beginning with the first tax year in which the Taylor Lake Facility is in service as of the Assessment Date for the tax year, notwithstanding any other period that may be allowed by law.

C. The Sponsor will ensure that the Project Fees are budgeted, expended, and distributed and will indemnify and hold Company, its employees, agents, attorneys, contractors, members, managers, and affiliates harmless from and against any loss, damage, liability, cost, or expense (including attorney fees and costs) arising out of or related to the Project Fees, including without limitation issues relating to accounting, budgeting, expenditure, non-expenditure, or distribution.

D. The Sponsor will not impose or request any additional requirement of Company as a condition of the property tax exemption granted herein, except as expressed in this Agreement.

E. The Sponsor will support Company in every effort to have the Taylor Lake Facility approved by the Governor for Payroll Tax Credits under ORS 317.124, but the Sponsor makes no warranty with respect to its ability to affect any outcome.

IV. TERM OF AGREEMENT

This Agreement takes effect on the Effective Date and is terminated on June 30 of the last tax year of the property tax exemption.

V. MISCELLANEOUS

A. This Agreement is governed by the law of the State of Oregon.

B. The benefits and burdens of this Agreement run with the land on which the Taylor Lake Facility is constructed and is binding upon the parties, their successors, and assigns.

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C. Company may assign its rights and obligations under this Agreement only with the consent of City and County, not to be unreasonably withheld or delayed, except that neither City nor County's consent is required for an assignment to: (1) a person or entity that owns a majority interest in Company (the "Parent"); or (2) another entity in which the Parent or Company owns a majority interest. A change in ownership of the Parent, Company, or an assignee of Company's rights and obligations under this Agreement will not be deemed an assignment for purposes of this paragraph. City and County may not assign this Agreement.

D. The parties will to the maximum extent permitted by law:

1. consider the content and nature of discussions culminating in this Agreement, and documentation and information prepared or provided to verify compliance with the terms of this Agreement and the property tax exemption (including but not limited to the notices, reports, information, and documentation required pursuant to ORS 285C.415 and OAR 123-690-5200), as containing confidential commercial and financial information of Company, thus making it exempt from Freedom of Information Act (FOIA) requests as permitted under 5 U.S.C. §552(b)(4) and Sections 192.501(2), 192.502(4), 192.502(9), and/or 192.502(17) of the Oregon public records law;

2. keep the content and nature of discussions culminating in this Agreement, and documentation and information prepared or provided to verify compliance with the terms of this Agreement and the property tax exemption (including but not limited to the notices, reports, information, and documentation required pursuant to ORS 285C.415 and OAR 123-690-5200), confidential and will not, without the prior written consent of the other party, disclose or use any information obtained in the course of this transaction other than in connection with the transaction; and

3. transmit such information only to such of its representatives who need to know the information for the sole purpose of assisting that party in evaluating this Agreement and who agree to be bound by these terms as if a party.

E. Prior to any party to this Agreement instituting any legal action, arbitration, or other proceeding of any nature regarding matters related to this Agreement against any other party to this Agreement, the complaining party will request the other parties' participation in non-binding mediation, and the parties agree to work in good faith to attempt to resolve the dispute in the course of such non-binding mediation. Requests for such non-binding mediation may be made by written notice in the manner provided for in subsection G of this Section. The expenses of non-binding mediation, including, without limitation of generality, costs of notice thereof, fees of the mediator and of witnesses, and the cost of taking and transcribing testimony shall be shared equally by the parties. Notwithstanding the foregoing, any party may withdraw from such non-binding mediation at any point and, further, may decline to participate in or abstain from requesting such non-binding mediation if, in its sole discretion, doing so will adversely affect the party's interests. If non-binding mediation fails to resolve the dispute, a party withdraws from non-binding mediation, or a party abstains from requesting non-binding mediation pursuant to the foregoing, then each party may pursue any and all legal and equitable

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remedies available under and according to the laws of the State of Oregon. In such proceeding, and in any non-binding mediation, the parties agree to bear their own attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith.

F. Company may terminate this Agreement upon written notice to the City and County.

G. All notices relating to this Agreement must be in writing, are effective upon receipt, and must be personally delivered or sent by U.S. certified mail, return receipt requested, addressed to the parties as follows:

If to Company:

Design, LLC
Attention: General Counsel
1600 Amphitheatre Parkway
Mountain View, CA 94043

with a copy to:

Adam C. Kobos
Troutman Sanders LLP
100 SW Main Street
Portland, OR 97204

If to Sponsor:

The Dalles/Wasco County Enterprise Zone
City of The Dalles
313 Court Street
The Dalles, OR 97058

Either party may by proper notice to the other designate such other address for notice. All notices will be deemed given on the day such notice is personally served or on the third day following the day such notice is mailed.

H. Subject to Section II.A and Section V.F, this Agreement contains the entire agreement of the parties as to the Taylor Lake Facility, except for existing confidentiality agreements between the parties (including but not limited to those associated with the First Steelhead Facility and the Second Steelhead Facility), which remain binding and valid according to their individual terms and conditions. No other agreement, statement, or promise made by any party or to any employee or agent of any party is binding unless made in writing and signed by both parties to this Agreement.

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I. The parties acknowledge that they have been represented by legal counsel in connection with this transaction. This Agreement and each of the terms and provisions were explicitly negotiated between the parties. This Agreement will be construed according to its fair meaning and not strictly for or against either party.

J. This Agreement may be executed in two or more counterparts, each will be considered an original and all together will constitute one and the same Agreement.

K. The following Exhibits are attached and incorporated into this Agreement:

Exhibit A – Description of First Steelhead Facility Site and Second Steelhead Facility Site

Exhibit B – Legal Description for Primary Site

Exhibit C – Legal Description for Ancillary Site

Exhibit D – Illustrative Construction Scenario And The Related Calculations And Timing Of Initial Project Fees

The parties executed this Agreement as follows:

City of The Dalles

By: _____
Title: _____

DATE: _____

Wasco County

By: _____
Title: _____

DATE: _____

Design, LLC, a Delaware limited liability company

By: _____
Title: _____

DATE: _____

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EXHIBIT A

**DESCRIPTION OF FIRST STEELHEAD FACILITY SITE AND SECOND
STEELHEAD FACILITY SITE**

The legal description of the First Steelhead Facility Site is attached as Exhibit A.1. The legal description of the Second Steelhead Facility Site is attached as Exhibit A.2.

EXHIBIT A.1

LEGAL DESCRIPTION FOR FIRST STEELHEAD FACILITY SITE

A tract of land lying in the [Chenowith] Creek Replat in the North 1/2 of Section 28, Township 2 North, Range 13 East, Willamette Meridian, City of The Dalles, Wasco County, Oregon being more particularly described as follows:

Parcel 1 of said [Chenowith] Creek Replat (M.P. # 2005-0003), being Document # 2005-099, recorded March 1, 2005, Deed Records of Wasco County, together with vacated Columbia Road per City Ordinance # 05-501, excepting therefrom the following described tract of land:

Commencing at the Southwest corner of said Parcel 1, said point further lying on the Northerly right-of-way line of Steelhead Way; thence along said Northerly right-of-way line, South 89°53'21" East 448.17 feet; thence leaving said Northerly right-of-way line, North 00°06'52" East 30.50 feet to the true point of beginning of this description; thence continuing North 00°06'52" East 834.03 feet; thence North 64°47'04" West 405.23 feet; thence South 00°06'52" West 628.16 feet; thence on a 100.00 foot radius curve to the right through a central angle of 28°07'48" a distance of 49.10 feet, (the chord of which bears South 14°10'46" West 48.60 feet); thence South 28°14'40" West 44.75 feet; thence on a 100.00 foot radius curve to the left through a central angle of 28°08'01" a distance of 49.10 feet, (the chord of which bears South 14°10'40" West 48.61 feet); thence South 00°06'39" West 184.04 feet; thence on a 60.00 foot radius curve to the left through a central angle of 90°00'00" feet a distance of 94.25 feet, (the chord of which bears South 44°53'21" East 84.85 feet); thence South 89°53'21" East 351.67 feet to the true point of beginning of this description.

Contains 22.99 acres.

EXHIBIT A.2

LEGAL DESCRIPTION FOR SECOND STEELHEAD FACILITY SITE

A tract of land lying in Parcel 1 of the [Chenowith] Creek Replat in the North 1/2 of Section 28, Township 2 North, Range 13 East, Willamette Meridian, City of The Dalles, Wasco County, Oregon, being more particularly described as follows:

Commencing at the Southwest corner of said Parcel 1, said point further lying on the Northerly right-of-way line of Steelhead Way; thence along said Northerly right-of-way line, South 89°53'21" East 448.17 feet; thence leaving said Northerly right-of-way line, North 00°06'52" East 30.50 feet to the true point of beginning of this description; thence continuing North 00°06'52" East 834.03 feet; thence North 64°47'04" West 405.23 feet; thence South 00°06'52" West 628.16 feet; thence on a 100.00 foot radius curve to the right through a central angle of 28°07'48" a distance of 49.10 feet, (the chord of which bears South 14°10'46" West 48.60 feet); thence South 28°14'40" West 44.75 feet; thence on a 100.00 foot radius curve to the left through a central angle of 28°08'01" a distance of 49.10 feet, (the chord of which bears South 14°10'40" West 48.61 feet); thence South 00°06'39" West 184.04 feet; thence on a 60.00 foot radius curve to the left through a central angle of 90°00'00" feet a distance of 94.25 feet, (the chord of which bears South 44°53'21" East 84.85 feet); thence South 89°53'21" East 351.67 feet to the true point of beginning of this description.

Contains 8.05 acres

EXHIBIT B

LEGAL DESCRIPTION FOR PRIMARY SITE

Lots 11 through 23 of Columbia Gorge Industrial Center Subdivision, being a portion of tax lots 2N-13-21 700 and 800, in the North 1/2 of Section 28, Township 2 North, Range 13 East, W.M., City of the Dalles, Wasco County, Oregon, as depicted on the map below.

Including the shaded portion of the road designated as River Trail Way.

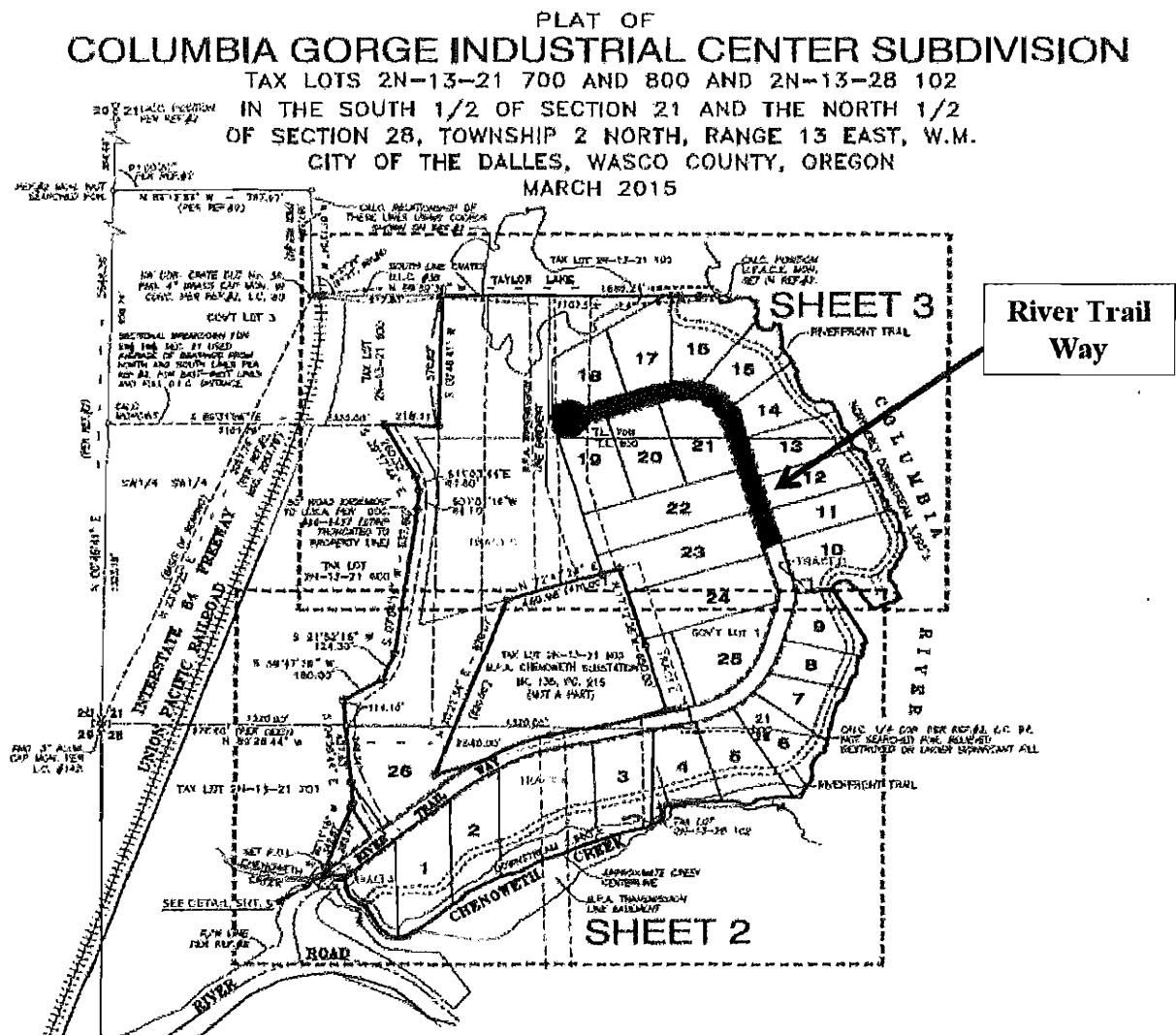


EXHIBIT D

**ILLUSTRATIVE CONSTRUCTION SCENARIO AND THE RELATED
CALCULATIONS AND TIMING OF INITIAL PROJECT FEES**

This scenario is for illustrative purposes only and does not represent any actual payments due.

- *On October 1, 2015, the last of the conditions for payment of the MIPF is satisfied. Accordingly, Company must pay \$1,450,000 to Sponsor by October 31, 2015.*
- *On December 1, 2015, Company receives its first building permit for a building to be located at the Primary Site. Company determines that the Building Volume of the Buildings subject to the permit is 10,000,000 cubic feet.*
 - *The permit is the First IPF Permit, and therefore the Company has until January 30, 2016 to pay Sponsor the PIPF.*
 - $\text{PIPF} = \text{IPFA} - \text{MIPF} = \$1,600,000 - \$1,450,000 = \$150,000.$
 - $\text{IPFA} = \$1,600,000.$
 - $\text{IPFA} = \text{the greater of } \$1,450,000 \text{ and the IPF Building Volume times } \$0.16 \text{ per cubic foot.}$
 - $\text{The IPF Building Volume is } 10,000,000 \text{ cubic feet, the amount determined by Company.}$
 - $\text{IPFA} = \$1,600,000 (10,000,000 \text{ cubic feet} \times \$0.16 \text{ per cubic foot}).$
 - $\text{MIPF} = \$1,450,000.$
- *On April 1, 2016, Company receives a building permit for additional buildings to be located at the Primary Site. Because Company has not received a final COO for a building at the Primary Site, the new permit is an IPF Permit and the buildings subject to the new permit will be taken into account in the calculation of the Initial Project Fee. However, no Initial Project Fee is payable in connection with the issuance of the IPF Permit.*
- *On September 1, 2017, Company receives a final COO for the buildings subject to the building permit received December 1, 2015. On December 15, 2017, the as-built Building Volume for the buildings is finally determined to be 9,000,000 cubic feet pursuant to Section II.C.5.*
 - $\text{FIPF} = \text{IPFA} - (\text{MIPF} + \text{PIPF}) = \$1,450,000 - (\$1,450,000 + \$150,000) = -\$150,000.$
 - $\text{IPFA} = \$1,450,000.$
 - $\text{IPFA} = \text{the greater of } \$1,450,000 \text{ and the IPF Building Volume times } \$0.16 \text{ per cubic foot.}$
 - $\text{The IPF Building Volume is } 9,000,000 \text{ cubic feet, which is the Final Building Volume of the Buildings subject to the First IPF Permit.}$
 - $\text{IPFA} = \text{the greater of (a) } \$1,450,000 \text{ and (b) } \$1,440,000 (9,000,000 \text{ cubic feet} \times \$0.16 \text{ per cubic foot}). \text{ Therefore, the IPFA is } \$1,450,000.$
 - $\text{MIPF} = \$1,450,000.$

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- $PIPF = \$150,000$.
- Because the FIPF is negative, Company reduces amounts otherwise payable to Sponsor by the amount of the FIPF under Section II.C.2.
- Company is entitled to a credit of \$150,000 on December 31, 2018, which is the December 31 of the tax year after the first Assessment Date after the final COO.
- *On September 1, 2018, Company receives a final COO for the buildings subject to the building permit received April 1, 2016. On January 15, 2019, the as-built Building Volume for the buildings is finally determined to be 3,000,000 cubic feet pursuant to Section [II.C.5].*
 - $AIPF = IPFA - (MIPF + PIPF + FIPF) = \$1,920,000 - (\$1,450,000 + \$150,000 - \$150,000) = \$470,000$.
 - $IPFA = \$1,920,000$.
 - IPFA = the greater of \$1,450,000 and the IPF Building Volume times \$0.16 per cubic foot.
 - The IPF Building Volume is 12,000,000 cubic feet, which is the Final Building Volume of all Buildings subject to an IPF Permit (9,000,000 + 3,000,000).
 - IPFA = the greater of (a) \$1,450,000 and (b) \$1,920,000 (12,000,000 cubic feet x \$0.16 per cubic foot). Therefore, the IPFA is \$1,920,000.
 - $MIPF = \$1,450,000$.
 - $PIPF = \$150,000$.
 - $FIPF = -\$150,000$.
 - Company must pay Sponsor \$470,000 on or before December 31, 2019 (the deadline of the Annual Fee for the tax year relating to the first Assessment Date after receipt of the final COO).



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125
FAX: (541) 298-5490

AGENDA STAFF REPORT

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
August 4, 2015	Action Items 4, B	

TO: Honorable Mayor and City Council

FROM: Richard Gassman, Director
Planning Department

THRU: Nolan Young, City Manager *ny*

DATE: August 4, 2015

ISSUE: City Council Resolution to Initiate a Right of Way Vacation Process for a portion of River Trail Way.

RELATED CITY COUNCIL GOAL: N/A

PREVIOUS AGENDA REPORT NUMBERS: N/A

BACKGROUND: The Port of The Dalles has requested this partial right of way vacation process for a portion of River Trail Way from a line connecting lots 11 and 23 of the new Chenoweth Business Park north to the end of River Trail Way, as indicated on the attached map.

If approved, all of the vacated land will revert to The Port of The Dalles. A consent has been signed by The Port.

Enclosed with this staff report is Resolution No. 15-032, which will initiate the vacation proceeding. If the Resolution is adopted, a public hearing will be held on the proposed partial street vacation.

BUDGET IMPLICATIONS: The costs associated with the proposed partial right of way vacation are minimal; public notices and some staff time which will be covered by the filing fee. If the right of way is ultimately vacated, General Ordinance No. 99-1230 requires the Petitioner to pay for the costs associated with the filing and recording. In this case the Petition is The Port of The Dalles.

ALTERNATIVES:

A. Staff Recommendation: *Move to adopt Resolution No. 15-032 initiating the right of way vacation process for a portion of River Trail Way.*

B. Do not adopt the resolution and provide additional direction to staff.

RESOLUTION NO. 15-032

**INITIATING A STREET VACATION PROCEDURE FOR A
PORTION OF RIVER TRAIL WAY**

WHEREAS, the City is requesting to initiate a street vacation for a portion of River Trail Way located north of the line between lots 11 and 23 of the Columbia Gorge Industrial Center to the end of the River Trail Way, as indicated on the attached map; and

WHEREAS, street vacations are governed by General Ordinance No. 99-1230;
and

WHEREAS, under General Ordinance No. 99-1230, Section 6, the City Council may initiate the vacation process by providing notice (ORS 271.110) of public hearing and posting of notice no less than 14 days prior to the hearing; and

WHEREAS, it is in the best interest of the public for the City to initiate a public hearing for the requested street vacation;

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

Section 1. Street Vacation Initiated. Street Vacation No. 65-15, which is further described on the attached map, is hereby initiated.

Section 2. Officers to Act. The Planning Department of the City is directed to post and publish notice for the street vacation initiated in Section 1 according to the provisions of ORS 271.110.

Section 3. Effective Date. This resolution shall be effective as of 4th day of August, 2015.

PASSED AND ADOPTED THIS 4th DAY OF AUGUST, 2015

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 4th DAY OF AUGUST, 2015

SIGNED:

ATTEST:

Stephen E. Lawrence, Mayor

Julie Krueger, MMC, City Clerk

