

AGENDA**REGULAR CITY COUNCIL MEETING****NOVEMBER 8, 2021****5:30 p.m.****VIA ZOOM**<https://zoom.us/j/93160851764?pwd=VVhUVkpSb1h2aFBhbUtsMEY2bnZHQT09>

Meeting ID: 931 6085 1764

Passcode: 216856

Dial +1 346 248 7799 or +1 669 900 6833

1. CALL TO ORDER
2. ROLL CALL OF COUNCIL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. AUDIENCE PARTICIPATION

During this portion of the meeting, anyone may speak on any subject which does not later appear on the agenda. Five minutes per person will be allowed. If a response by the City is requested, the speaker will be referred to the City Manager for further action. The issue may appear on a future meeting agenda for City Council consideration.

6. CITY MANAGER REPORT
7. CITY COUNCIL REPORTS
8. CONSENT AGENDA

Items of a routine and non-controversial nature are placed on the Consent Agenda to allow the City Council to spend its time and energy on the important items and issues. Any Councilor may request an item be "pulled" from the Consent Agenda and be considered separately. Items pulled from the Consent Agenda will be placed on the Agenda at the end of the "Action Items" section.

- A. Approval of the October 25, 2021 Regular City Council Meeting Minutes
- B. Resolution No. 21-025 Concurring with Mayor's Appointments to Various

CITY OF THE DALLES

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

Commissions and Committees

- C. Surplus of 8 Apple iPhones from Police Department Returned to Service Provider for \$1,430.00 credit to Account
- D. Resolution No. 21-026 Amending Resolution 13-032 Which Set Forth The City's Policy Of Nondiscrimination On The Basis Of Disability Status
- E. Resolution No. 21-027 Amending Resolution 20-019 Which Supports The Fair Housing Amendments Act Of 1988 And Implemented A Fair Housing Program For The City Of The Dalles

9. PUBLIC HEARINGS

- A. General Ordinance No. 21-1387, an Ordinance Amending Title 5, by Adding Chapter 5.01 Legislative Subpoenas to The Dalles Municipal Code

10. ACTION ITEMS

- A. Resolution No. 21-028 Authorizing the City Manager to Execute an Infrastructure Agreement with Moraine Industries, LLC and Design, LLC Related to Utilities for Future Development

11. ADJOURNMENT

This meeting conducted VIA Zoom

Prepared by/
Izetta Grossman, CMC
City Clerk

CITY OF THE DALLES

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



AGENDA STAFF REPORT

AGENDA LOCATION: Item #8 A-E

MEETING DATE: November 8, 2021

TO: Honorable Mayor and City Council

FROM: Izetta Grossman, CMC, City Clerk

ISSUE: Approving items on the Consent Agenda and authorizing City staff to sign contract documents.

- A. **ITEM:** Approval of the October 25, 2021 Regular City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the October 25, 2021 Regular City Council meeting have been prepared and are submitted for review and approval.

RECOMMENDATION: That City Council review and approve the minutes of the October 25 Regular City Council meeting minutes.

- B. **ITEM:** Concurrence with the Mayor's Appointment to the Beautification Committee and Urban Renewal Agency Budget Committee

BUDGET IMPLICATIONS: None

SYNOPSIS: Resolution No. 21-025 Concurring with the Mayor's appointments to various Commissions has been prepared for your review.

RECOMMENDATION: Approve Resolution No. 21-025 Concurring with the Mayor's appointment to Beautification Committee and Urban Renewal Agency Budget Committee

- C. **ITEM:** Surplus of 10 Apple iPhones from Police Department Returned to Service Provider for \$1,400.00 credit to Account

BUDGET IMPLICATIONS: Credit to Cellphone Account saving \$1,400.00

SYNOPSIS: The Dalles Police department received a phone upgrade for 7 patrol phones and 3 detective phones at no charge. The old phones can be sold in the amount of \$1400.00; which can be credited directly to the police department cell phone service provider (ATT FIRST NET).

RECOMMENDATION: Approve 10 Apple iPhones for surplus for credit to Police Department cell phone provider account.

- D. **ITEM:** Resolution No. 21-026 Amending Resolution 13-032 Which Set Forth The City's Policy Of Nondiscrimination On The Basis Of Disability Status

BUDGET IMPLICATIONS: None

SYNOPSIS: Minor amendments to Resolution 13-032 including updating the City Attorney's contact information, removing the word "handicapped" when referring to disability status, and removing specific program titles from the text for the creation of a generic resolution for use with future Community Development Block Grant programs.

RECOMMENDATION: Approve Resolution No. 21-026 Amending Resolution 13-032 Which Set Forth The City's Policy Of Nondiscrimination On The Basis Of Disability Status

- E. **ITEM:** Resolution No. 21-027 Amending Resolution 20-019 Which Supports The Fair Housing Amendments Act Of 1988 And Implemented A Fair Housing Program For The City Of The Dalles

BUDGET IMPLICATIONS: None

SYNOPSIS: Minor amendments to Resolution 20-019 including the removal of specific program titles from the text for the creation of a generic resolution for use with future Community Development Block Grant programs.

RECOMMENDATION: Approve Resolution No. 21-027 A Resolution Amending Resolution 20-019 Which Supports The Fair Housing Amendments Act Of 1988 And Implemented A Fair Housing Program For The City Of The Dalles

MINUTES

CITY COUNCIL MEETING
OCTOBER 25, 2021
5:30 p.m.

VIA ZOOM

PRESIDING: Mayor Richard Mays

COUNCIL PRESENT: Darcy Long, Tim McGlothlin, Rod Runyon, Scott Randall, Dan Richardson

COUNCIL ABSENT: None

STAFF PRESENT: Legal Counsel Jonathan Kara, City Clerk Izetta Grossman, Finance Director Angie Wilson, Community Development Director Alice Cannon, Public Works Director Dave Anderson, Human Resources Director/Interim City Manager Daniel Hunter, Police Chief Tom Worthy

CALL TO ORDER

The meeting was called to order by Mayor Mays at 5:30 p.m.

ROLL CALL OF COUNCIL

Roll Call was conducted by City Clerk Grossman. All Councilors present.

PLEDGE OF ALLEGIANCE

Mayor Mays asked Councilor Randall to lead the Pledge of Allegiance.

Councilor Randall invited the audience to join in the Pledge of Allegiance.

APPROVAL OF AGENDA

It was moved by Long and seconded by McGlothlin to approve the agenda as submitted. The motion carried 5 to 0; Long, McGlothlin, Randall, Runyon, Richardson voting in favor; none opposed.

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AUDIENCE PARTICIPATION

The following citizens asked Council to reconsider demolition of the Gitchell/Waldron Drug
Sheila Dooley, 3300 Benson Road
Sam Woolsey, 751 East 18th Street
Eric Gleason, 704 E Street

CITY MANAGER REPORT

Mayor Mays said the City Manager would be out of the office for several weeks, due to a serious family issue.

CITY COUNCIL REPORTS

Councilor Runyon reported:

- Daniel Hunter was in attendance and he had been appointed City Manager Pro-Tem.
- Urban Renewal Meeting
- Veteran's Day Parade – November 11, 11 am; Contact Chamber for parade entry form

Councilor Richardson reported:

- Spoke with residents on agenda items
- Urban Renewal Meeting – 10 years and \$10,000,000 left; working on priorities for remainder of program
- Community Outreach Team

Richardson said he thought Council should consider revisiting the Gitchell building demolition.

Mayor Mays said the City Manager had put off the demolition at the time. He said it could be looked at in 2022.

Councilor Long said she supported revisiting the Gitchell building.

Councilor Randall said the City Manager had indicated the demolition was on hold.

Councilor Long reported:

- Conversations with citizens regarding Google Strategic Investment Plan and Utility Agreement
- Urban Renewal Meeting – looking at adding to the plan; projects have to be in the plan to spend funds
- Traffic Safety Commission
- League of Oregon Cities Conference; represented Council at Business Meeting – voted on new slate of officers and for all five constitutional amendments

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Councilor McGlothlin reported:

- Many inquiries regarding Google agreements
- In favor of Gitchell building revisited

CONSENT AGENDA

It was moved by McGlothlin and seconded by Randall to approve the Consent Agenda as presented. The motion carried 5 to 0; McGlothlin, Randall, Richardson, Long, Runyon voting in favor; none opposed.

Items approved on the consent agenda were: 1) The minutes of the October 11, 2021 Regular City Council Meeting.

PUBLIC HEARING

Mayor Mays reviewed the process for the Public Hearing.

Supplemental Budget

Finance Director Angie Wilson reviewed the staff report.

Runyon asked if the 9th Street house was the right of way issue. Public Works Director Dave Anderson said it was.

Runyon asked what land was purchased. Anderson right of way on 15th Street.

Richardson asked if the additional funding for Dog River Pipeline would move the project forward. Anderson said the project was more expensive than anticipated. He said he would be asking the State of Oregon for additional funding.

Long asked where the additional funds came from.

Wilson said the additional beginning fund balances were from projects budgeted, but not completed by the end of the fiscal year.

Mayor Mays asked for testimony from audience. Hearing none he closed the hearing.

It was moved by McGlothlin and seconded by Long to adopt Resolution No. 21-022 Adopting a Supplemental Budget for Fiscal Year 2021-22, Making Appropriations and Authorizing Expenditures from and Within Various Funds of The City of The Dalles Adopted Budget. The motion carried 5 to 0; McGlothlin, Long, Runyon, Richardson, Randall voting in favor; none opposed.

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ACTION ITEMS

Resolution No. 21-023 Adjusting Minimum Employment Level Requirement Pursuant to Section 2 or 3 of HB 2343 (2021) for Powderpure

Enterprise Zone Manager Matthew Klebes reviewed the staff report.

Powderpure Manager William Parkki shared a PowerPoint reviewing the operation. (attached)

Long asked if the City was at risk of the company moving to another location.

Parkki said it was possible, however, they were doing all they could to keep the company in The Dalles.

It was moved by Runyon and seconded by Long to adopt Resolution No. 21-023 Adjusting Minimum Employment Level Requirement Pursuant to Section 2 or 3 of HB 2343 (2021) for Powderpure. The motion carried 5 to 0; Runyon, Long, McGlothlin, Randall, Richardson voting in favor; none opposed.

Strategic Investment Plan (SIP) Agreement Between Google, Wasco County, and City of The Dalles

Mayor Mays said the Infrastructure Agreement would be on the November 8, 2021 Council Agenda.

Mayor Mays said Council would consider the SIP at this meeting. He reviewed the order of comments, noting that Tyler Stone, Wasco County Administrator; Kristen Campbell, Wasco County Attorney; Jonathan Kara, City Attorney; Scott Hege, Wasco County Commissioner; and Kathy Schwartz, Wasco County Commissioner were in attendance.

Enterprise Zone Manager Matthew Klebes reviewed the staff report.

Wasco County Tax Assessor Jill Amery reviewed property taxes each year. She said Measure 50 raises the maximum assessed value 3% each year automatically if no other changes have been made to the property there would only be the 3% increase. She said if something like a shop or garage were added, or a new kitchen remodel, MAV (maximum assessed value) would increase more.

Amery said the MAV is compared to the RMV (real market value) and the lower of those 2 are the assessed value (the value that taxes are calculated on).

Amery said there were 2794 exempt or partially exempt taxable properties in Wasco County. She said it was important to consider that the SIP brings revenue to the sponsors every year.

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Amery said the Enterprise Zone and SIP Programs were designed to attract large companies.

She said she and Klebes looked at other SIP agreements across the State and found the average was 40%, where the SIP before Council was 60%. Amery said Google was the seventh highest paying tax payer in Wasco County.

McGlothlin said he personally knows of a number of programs that Google provided to The Dalles over the years:

- IStar program – autistic program in the schools
- Donated computers – and helped with installation \$500,000
- \$150,000 in Wi Fi
- Donated to the new children's wing at the Library
- Mobile Wi Fi hotspots that can be checked out at the Library
- STEM Program sponsor
- Makers Movement

He said he was thankful Google was in The Dalles.

Richardson asked if the part of the Community Service Fee would go to School District 21. Klebes said School District is not one of the districts that contribute to the 75% of the taxing district levy needed to reach agreement on the Community Service Fee distribution, along with the City and County. They could receive funds and provide input, but under the ORS are not officially involved in deciding the CSF distribution.

Richardson asked if the distribution would be approved by resolution. Klebes said it could be done through an agreement with each district.

Mayor Mays asked if Enterprise Zone funds were included in the taxes paid by Google would that make them the #1 tax payer in Wasco County. Amery said it would.

Runyon said he was not in favor of another Enterprise Zone Abatement with Google. He said the SIP program is different and he was in favor of this agreement.

Public Comment

Kurt Conger, 2559 East 12th Street asked how much the Aluminum Plant paid in taxes.

Amery said she couldn't say, because retention of those records was such that they now longer existed. Amery said Google was taxed on land, not development.

Rodger Nichols, 1617 Oregon Street asked if there was a connection between the SIP and the upcoming Infrastructure Agreement.

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Mayor Mays said they were closely related. He said the Infrastructure Agreement would be on the November 8, 2021 Council Agenda.

Randall said Council had close to a year to analyze and discuss the SIP. He said he was confident it was in the best interest of the community.

Richardson said he had been skeptical about the City working with a big corporation to negotiate an \$100,000,000 decision. He said the cost to the City was small and the gains were large. He said it would be foolish for the City not to take the opportunity.

It was moved by Runyon and seconded by Randall to adopt Resolution No. 21-024 Approving the Strategic Investment Program Agreement Between The City of The Dalles and Wasco County (Co-sponsors) and Design, LLC. . The motion carried 5 to 0; Runyon, Randall, Richardson, McGlothlin, Long voting in favor; none opposed.

ADJOURNMENT

Being no further business, the meeting adjourned at 6:59 p.m.

Submitted by/
Izetta Grossman, CMC
City Clerk

SIGNED: _____
Richard A. Mays, Mayor

ATTEST: _____
Izetta Grossman, CMC City Clerk

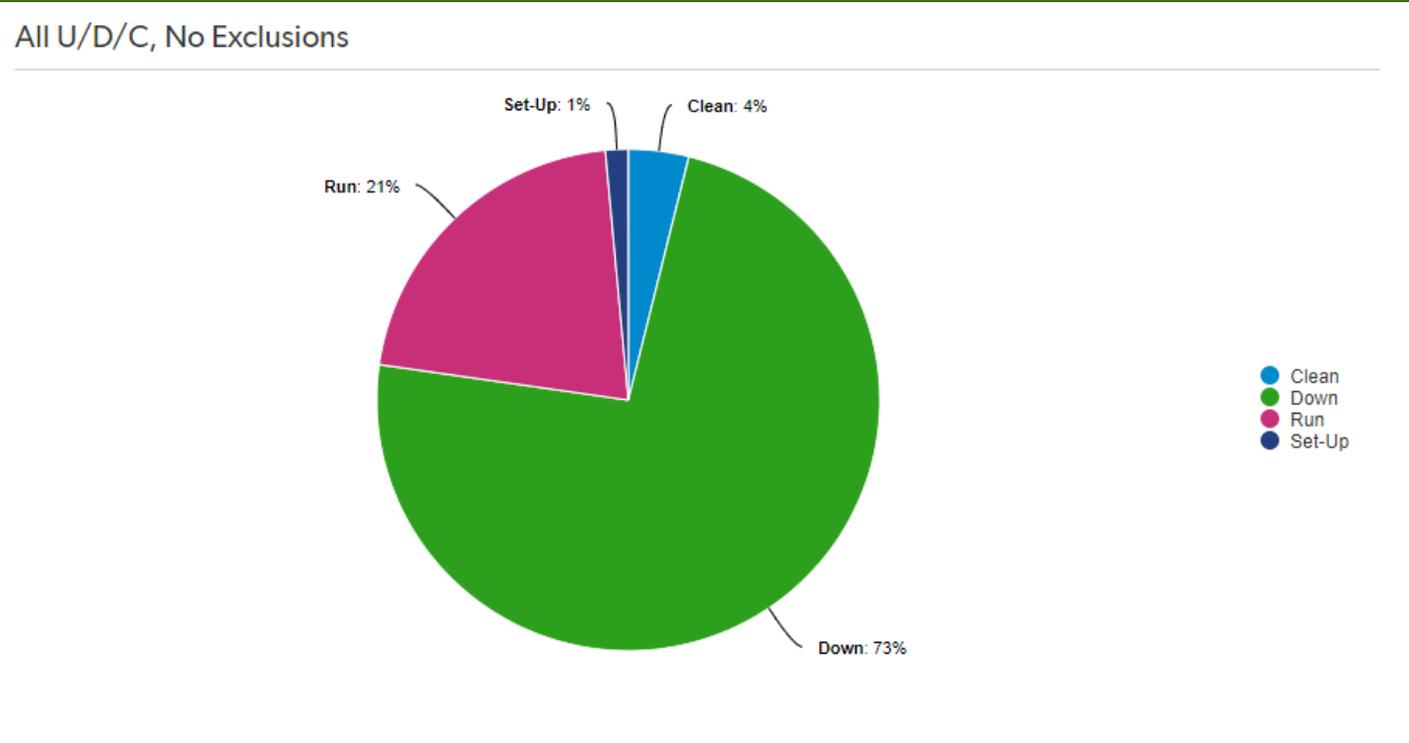
2020 – 2021 Pandemic Effects



POWDER **PURE**TM
by IFF



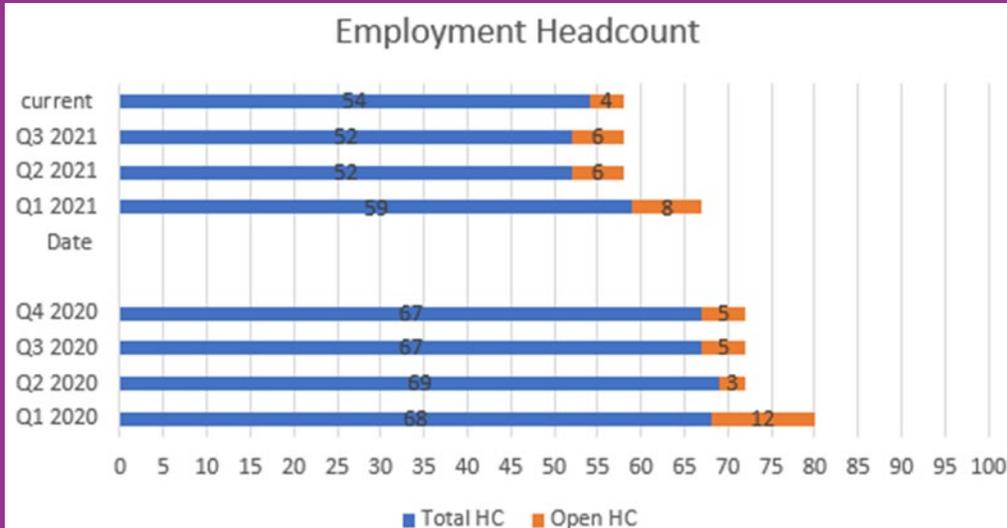
2020 – 2021 Plant Equipment Utilization



- Plant is Running at 28% capacity
- Expansion increased the capacity by 50%
- Social distance mandates and shift changeover cleans and segregation resulted in >250 production hours lost and direct costs >\$42,000



2020 – 2021 Employment Head Count

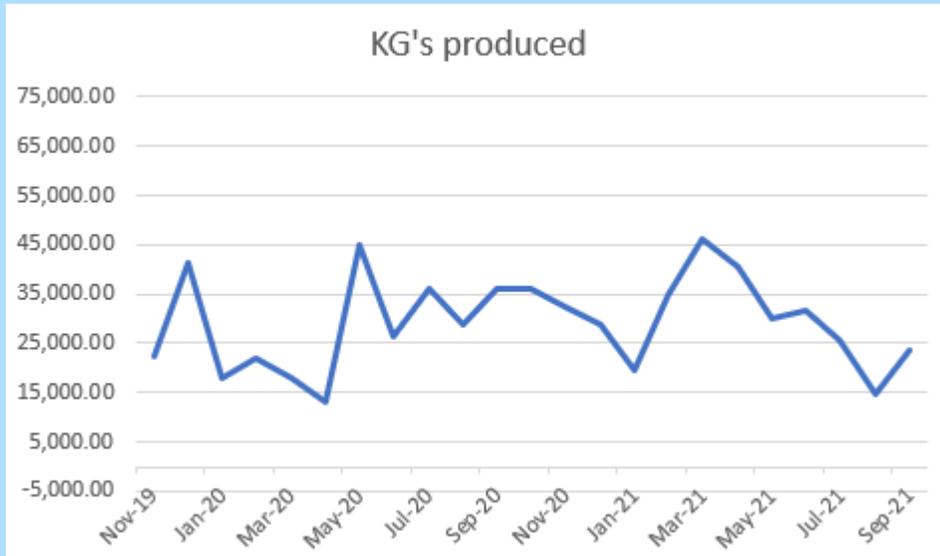


Decline in on site employees has been through attrition, employees have been leaving the company at an increased rate during the pandemic and suitable applicants have not been received to backfill vacant positions

- Have not been able to be fully staffed even with extensive recruiting and participation in job fairs
- Change in Sales amounts and lack of labor has changed our processing lead times and structure (suspension of 2nd shift due to lack of available labor)
- No layoff's occurred during pandemic, in times without orders we maintained employees with training.
- Lack of available local labor has shifted sales positions to remote (off site) labor



2020 – 2021 Production Amounts



- Average production below 30,000kg/mo
- expected was 40,000kg
- Overtime Had a large increase with reduced labor availability

RESOLUTION NO. 21-025

**A RESOLUTION CONCURRING WITH THE MAYOR'S APPOINTMENTS
TO THE BEAUTIFCATION COMMITTEE AND URBAN RENEWAL BUDGET
COMMITTEE**

WHEREAS, there are vacancies on the City of The Dalles Beautification Committee, and the Urban Renewal Budget Committee; and

WHEREAS, the Mayor has elected to appoint Debi Ferrer to the Beautification Committee, and Leanne Lewis to the Urban Renewal Budget Committee.

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

Section 1. The City Council concurs with the appointment of:

Debi Ferrer to the Beautification Committee an Ad-Hoc Committee of the City of The Dalles; and Leanne Lewis to the Urban Renewal Budget Committee with a term expiring June 30, 2024.

Section 2. This Resolution shall be effective November 8, 2021.

PASSED AND ADOPTED THIS 8th DAY OF NOVEMBER, 2021.

Voting Yes, Councilors: _____
Voting No, Councilors: _____
Absent, Councilors: _____
Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR 8th DAY OF NOVEMBER, 2021.

SIGNED:

ATTEST:

Richard A. Mays, Mayor

Izetta Grossman, CMC, City Clerk

RESOLUTION NO. 21-026

A RESOLUTION AMENDING RESOLUTION NO. 13-032 AND REAFFIRMING THE CITY'S POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY STATUS

WHEREAS, the City is the recipient of a Community Development Block Grant issued by Business Oregon; and

WHEREAS, in order to process requests for draw-down payments under the grant, the City is required to adopt a resolution reaffirming its policy of nondiscrimination on the basis of disability status.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF THE DALLES RESOLVES AS FOLLOWS:

Section 1. The City Council declares it is the policy of the City of The Dalles the City does not discriminate on the basis of disability status in the admission or access to, or treatment or employment in, its federally assisted programs or activities.

Section 2. The person named below has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's regulations implementing Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8, dated June 2, 1988):

City Attorney
City Hall
313 Court Street
The Dalles, OR 97058

Section 3. This Resolution shall be effective upon adoption.

PASSED AND ADOPTED THIS 8TH DAY OF NOVEMBER, 2021.

Voting Yes, Councilors: _____
Voting No, Councilors: _____
Absent, Councilors: _____
Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 8TH DAY OF NOVEMBER, 2021.

Signed:

Richard A. Mays, Mayor

Attest:

Izetta Grossman, CMC, City Clerk

RESOLUTION NO. 21-027

A RESOLUTION AMENDING RESOLUTION NO. 20-019 AND SUPPORTING THE FAIR HOUSING AMENDMENTS ACT OF 1988

WHEREAS, the City is the recipient of a Community Development Block Grant issued by Business Oregon;

WHEREAS, the City certified in its grant contract with the State it will comply with requirements of Title VIII of the Civil Rights Act of 1968, as amended, popularly known as the Fair Housing Act, and will take action to affirmatively further fair housing; and

WHEREAS, let it be known to all persons of the City of The Dalles discrimination in the sale, rental, lease, advertising of sale, rental or lease, financing of housing or land to be used for construction of housing, or in the provision of brokerage or rental services because of race, color, religion, sex, disability (physical or mental), familial status (children) or national origin is prohibited by Title VIII of the federal Fair Housing Amendments Act of 1988. It is the policy of the City of The Dalles to support the Fair Housing Amendments Act of 1988 and to continue to implement a Fair Housing Program to ensure equal opportunity in housing for all persons regardless of race, color, religion, sex, disability (physical or mental), familial status (1. children, and 2. actual or perceived sexual orientation, gender identity or marital status or its members), or national origin.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF THE DALLES RESOLVES AS FOLLOWS:

Section 1. Within the resources available to the City through city, county, state, federal and community volunteer sources, the City will assist all persons who feel they have been discriminated against because of race, color, religion, sex, disability (physical or mental), familial status (children) or national origin in the process of filing a complaint with the Oregon Civil Rights Division or the U.S. Department of Housing and Urban Development, Seattle Regional Office Compliance Division, they may seek equity under federal and state laws.

Section 2. The City shall publicize this Resolution and through this publicity shall cause real estate brokers and sellers, private home sellers, rental owners, rental property managers, real estate and rental advertisers, lenders, builders, developers, home buyers and home or apartment renter to become aware of their respective responsibilities and rights under the Fair Housing Amendments Act of 1988 and any applicable state or local laws or ordinances.

Section 3. The Fair Housing Program, for the purpose of informing those affected of their respective responsibilities and rights concerning Fair Housing law and complaint procedures, will at a minimum include, but not be limited to: 1) the printing, publicizing and distribution of the Resolution; 2) the distribution of posters, flyers, pamphlets and other applicable Fair Housing information provided by local, state and federal sources, through local media of community contacts; and 3) the publicizing of locations where assistance will be provided to those seeking to file a discrimination complaint.

Section 4. This Resolution shall be effective upon its adoption.

PASSED AND ADOPTED THIS 8TH DAY OF NOVEMBER, 2021.

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 8TH DAY OF NOVEMBER, 2021.

Signed:

Richard A. Mays, Mayor

Attest:

Izetta Grossman, CMC, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Public Hearing Item #9 A

MEETING DATE: November 8, 2021

TO: Honorable Mayor and City Council

FROM: Jonathan Kara, City Attorney

ISSUE: Adopting General Ordinance No. 21-1387, an Ordinance Amending Title 5, by Adding Chapter 5.01 Legislative Subpoenas to The Dalles Municipal Code

BACKGROUND: The City Charter authorizes the City to have all powers contemplated by or authorized under the Oregon and federal constitutions and federal and state law, and vests such powers exclusively in the Council. A fundamental aspect of the Council's authority is its power to investigate violations of and enforce The Dalles Municipal Code (**Code**).

The City regularly finds itself in situations where it requires outside information or records to determine whether a violation of the Code occurred. Specifically, enforcing the Code often demands compelling outside sources to produce information or records, but the Code often lacks sufficient authority to make such demands in cases where outside sources refuse or otherwise fail to produce the necessary information or records. Instead, our Code usually makes refusal or failure to produce such information or records a violation or misdemeanor punishable by a fine but does not currently provide the City an avenue to actually retrieve the necessary information or records.

Generally, the legal mechanism through which one party may compel production of information or records from another party is known as a subpoena. Most subpoenas are judicial, stem from litigation, and are enforced by the adjudicating court. However, legislative subpoenas are just as valid and enforceable: a legislative subpoena stems from a public body's need to compel production of information or records absent active litigation to determine whether prosecution or litigation is warranted. Oregon cities are authorized to issue subpoenas upon enactment of an ordinance articulating this municipal

legislative power.

The proposed General Ordinance No. 21-1387 aims to add a new Chapter 5.01 Legislative Subpoenas to our Code and articulates the City's legislative authority to issue subpoenas absent an active case in controversy. The authority grants the City a critical tool to investigate potential violations of our Code thereby promoting the public health, safety, and welfare to the maximum extent feasible.

Under the proposed Ordinance, the Council may authorize the City Manager, his or her designee, or the City Attorney to issue a subpoena for the purposes of compelling the attendance of witnesses or the production of records in any proceeding pending or potentially pending before the Council. The subpoenas would follow Oregon law formalities regarding adequate service, witness fees, responses, and compliance. If a party receiving a legislative subpoena refuses or fails to comply, the proposed Ordinance authorizes the City Attorney to seek a court order to compel the production of the necessary information or records.

BUDGET IMPLICATIONS: Staff time to implement General Ordinance No. 21-1387 and nominal witness attendance and mileage fees set by Oregon law.

COUNCIL ALTERNATIVES:

1. **Staff recommendation:** *Move to adopt General Ordinance No. 21-1387, an Ordinance Amending Title 5, by Adding Chapter 5.01 Legislative Subpoenas to The Dalles Municipal Code by title only.*
2. Decline to adopt General Ordinance No. 21-1387 and provide direction to staff on how to proceed.

GENERAL ORDINANCE NO. 21-1387

**AN ORDINANCE AMENDING TITLE 5, BY ADDING CHAPTER 5.01 LEGISLATIVE
SUBPOENAS TO THE DALLES MUNICIPAL CODE**

WHEREAS, Section 4 of the 2020 City of The Dalles Charter (“Charter”) authorizes the City of The Dalles (“City”) to have all powers the Oregon and federal constitutions, statutes, and common laws of the United States now or hereafter expressly or impliedly grant or allow the City;

WHEREAS, Section 6 of the Charter provides all powers of the City are vested in the City Council;

WHEREAS, a fundamental and inherent component of the City Council’s function is its power to investigate and enforce such investigative powers;

WHEREAS, the City often finds it necessary to compel the production of various records from outside sources;

WHEREAS, in addition to compelling the production of outside records, the City may also find it necessary to compel the appearance of witnesses for various meetings and hearings; and

WHEREAS, the review of outside documents and the testimony of witnesses may be utilized for investigations into possible violations of The Dalles Municipal Code or other municipal needs.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF THE DALLES ORDAINS AS
FOLLOWS:**

Title 5, Offenses, shall be amended by adding Chapter 5.01, Legislative Subpoenas, which shall read as follows:

Sections:

5.01.01	Findings
5.01.02	Definitions
5.01.03	Legislative Subpoena Power
5.01.04	Service
5.01.05	Witness Fees
5.01.06	Compliance
5.01.07	Enforcement
5.01.08	Severability Clause
5.01.09	Effective Date

**Chapter 5.01
LEGISLATIVE SUBPOENAS**

5.01.01 Findings. The City Council finds:

- A. In furtherance of its legislative function, the City Council may, at times, conduct investigations into various matters to determine whether there are violations of any provision of the City Charter or ordinances.

- B. This investigative function may be best served by issuing subpoenas to compel the attendance of witnesses, the production of certain records, or both.

5.01.02 Definitions. As used in this ordinance:

- A. “Records” means any books, paper, documents or other information, in whatever format or however stored.

5.01.03 Legislative Subpoena Power. For the purposes of compelling the attendance of witnesses or the production of records for evidence or testimony in any action or proceeding pending or potentially pending before it, the City Council may, by resolution, direct the City Manager, the City Manager’s designee, or the City Attorney to issue a subpoena.

5.01.04 Service. A subpoena may be served by the City or any other person 18 years of age or older.

- A. The service shall be made by:
 - 1. delivering a copy to the witness personally;
 - 2. giving or offering the witness at the same time the fees to which the witness is entitled for travel to and from the place designated; and
 - 3. one day’s attendance fees, whether or not personal attendance is required.
- B. If the witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the witness’s parent, guardian, or guardian ad litem.
- C. Service of a subpoena by certified mail, return receipt requested, may be used for a subpoena commanding production of records not accompanied by a command to appear personally.
- D. Service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. However, the subpoena shall not require production of records less than 14 days from the date of service upon the person required to produce the records.
- E. A return of service shall be delivered to the authority who issued the subpoena within 10 days after its delivery to the person for service, with proof of service of the subpoena or a statement stating the person cannot be found.

5.01.05 Witness fees. Witness fees and mileage to be paid shall be the same as prescribed by Oregon law for witnesses.

5.01.06 Compliance.

- A. Except as provided under paragraph B of this section, it is unlawful for any person so subpoenaed and served to neglect or refuse to attend at the proper time and place and to bring the records mentioned in the subpoena or, having done so, refuse or neglect to answer such questions as may be applicable to the matter under investigation or to allow the records to be examined.
- B. A person so subpoenaed may seek an order quashing the subpoena from a court of competent jurisdiction in the same manner as provided for in a civil case. Failure to seek and obtain such an

order waives any objections or defenses the person may have against compliance with the subpoena whether the person made any specific objection or raised that specific defense in seeking the order to quash.

- C. A witness shall not be required to answer any question or to act in violation of the witness's rights under Oregon or federal constitutions.

5.01.07 Enforcement.

- A. If a person subpoenaed fails to appear to testify or fails to produce any records as required, or whenever any person so summoned refuses to answer any question pertinent to the subject under inquiry, the City Attorney may apply to any court of competent jurisdiction for an order to the person to attend and testify or otherwise comply with the subpoena.
- B. The City Attorney's application to the court may seek an order requiring the person against whom the subpoena is directed to comply with the subpoena within three days after service of the order, or within such further time as the court may grant, or to justify the failure within that time.

5.01.08 Severability Clause. A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part of this ordinance shall not affect the validity of the remaining parts to this ordinance.

5.01.09 Effective Date. This ordinance is effective 30 days after its adoption.

PASSED AND ADOPTED ON THIS 8TH DAY OF NOVEMBER, 2021.

Voting Yes, Councilors: _____
Voting No, Councilors: _____
Abstaining, Councilors: _____
Absent, Councilors: _____

AND APPROVED BY THE MAYOR THIS 8TH DAY OF NOVEMBER, 2021.

Richard A. Mays, Mayor

Attest:

Izetta Grossman, CMC, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #10 A

MEETING DATE: November 8, 2021

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

ISSUE: Approval of Resolution No. 21-028 Authorizing an Infrastructure Agreement with Moraine Industries, LLC and Design, LLC related to utilities for future development

BACKGROUND: Moraine, LLC and Design, LLC (herein collectively referred to as “Design”) are pursuing a potential opportunity to construct a new data center in The Dalles on the old aluminum smelter site. City staff has worked with Design to draft an Infrastructure Agreement which would provide for the utility and water supply needs of the proposed new development while not compromising the interests of other existing or future City utility customers. Staff presented the concepts of a potential Infrastructure Agreement with Design to the City Council on September 27th; those concepts are included in the attached proposed Infrastructure Agreement for the Council’s consideration.

The potential construction of the new data center, like any industrial development, requires an understanding of its utility needs and the City’s capacity to meet those needs. It has been the practice and policy of the City to require a new developments to, at the developments’ expense, provide for the utility systems needs to serve the developments. In support of the water and sewer utility planning efforts for this proposed development, a number of analyses and reports have been completed to guide technically sound decision-making. This report will provide a summary of the efforts completed, much of which was presented at the September 27th meeting, and present the proposed Infrastructure Agreement for Council’s consideration.

Studies

Water Supply and Demands: The City’s 20-year Water System Master Plan is 15 years old and did not anticipate the type of development currently proposed for the smelter site. Therefore, a number of new analyses were completed to guide decisions related to the proposed new data center; City staff was integrally involved in the development of these analyses. The first was a study completed by GSI Water Solutions entitled *Water Supply*

Analysis for Buildable Lands Assessment in the 310 Zone. GSI is a firm the City has utilized for all its water rights planning and administration activities over the last two decades. This study evaluated all the City's water sources and rights to determine the amount of water available to support existing and future development, compared that to the projected demands of all the development likely to occur in the City's "310 Water Service Zone", and identified strategies to augment the City's water supplies to meet those projected future demands. The 310 Zone (water supplied from an equivalent elevation of 310 feet above sea level) is the City's largest water service zone which extends from Brewery Grade through the entire downtown area, west along West 6th Street and north to include all the Port Industrial Area. This study identified that, if all the potential development within the 310 Zone occurred that could occur while also allowing for continued commercial and residential growth in the rest of the City's Urban Growth Area ("UGA"), additional water supplies would need to be developed. The report also provided a recommended strategy to meet those projected demands.

In summary, the report concluded the City's current water system capacity is 9.9 million gallons per day (mgd) on a sustained average-day basis. It also projected the future total maximum day demand for the City, with all areas within the UGA at full build-out (including Design's proposed development), would be 17.5 mgd. From this analysis, it is apparent, without additional water supplies, the City would not be able to meet the projected future water demands at build-out.

The report identified a multi-pronged approach to meeting the future water demands of the City. One prong would be development of all the City's existing groundwater rights. While The Dalles is located within a state-designated critical groundwater area (meaning no new rights are available for use of native groundwater from The Dalles Groundwater Reservoir), the City has about 5 mgd of currently undeveloped groundwater rights from historical wells that have been abandoned, including the one in the basement of City Hall. Second is the acquisition of existing water rights from the old Northwest Aluminum wells previously located on or near the smelter site. The third prong would be the implementation of an Aquifer Storage and Recovery ("ASR") program. ASR was previously discussed in detail with City Council and is a technology whereby treated water from the Wicks Water Treatment Plant would be pumped down into a well for storage in the aquifer during the winter and spring when surplus surface water to which the City has rights is available and the water is later withdrawn when it is needed to meet summer demands. ASR is essentially a way of storing surface water without building a dam and would help the City's water supply system be more resilient to climate change. ASR also benefits the aquifer because state regulations allow a user to withdraw only up to 90% of the water stored; the aquifer retains 10%. The City has a "limited license" and water right to implement an ASR program; Design paid for all the engineering, technical evaluation, and permit application costs for the City's ASR license.

Other longer-term opportunities identified in the report include an expansion of the City's Wicks Water Treatment Plant (which is a project already identified in the City's Water Master Plan) and implementation of an Aquifer Recharge (AR) program which is slightly different than ASR in how it is regulated and implemented.

Water Infrastructure Needs: The second analysis completed was summarized in a technical memorandum by RH2 Engineering, an established engineering firm in the Pacific Northwest with expertise in municipal water and wastewater system planning and design. This analysis focused on the infrastructure needed to supply the 310 Zone at build-out. Since most of the anticipated new development in the 310 Zone with the potential to impact water demands will occur in the Port Industrial Area, the proposed water system improvements are focused in there. The major improvements needed included some new water mains to be constructed, new above-ground finished water reservoir(s) in the Port Area, new wells in the Port, and a booster pump station; the wells and pump station would all be equipped with emergency back-up power systems.

Groundwater Quality: The third analysis was an evaluation of groundwater quality and risks by the environmental engineering and planning firm of Maul Foster & Alongi. This analysis was conducted to help ensure any new wells potentially constructed in the Port Area would have water quality meeting state and federal drinking water standards, and such wells would not be susceptible to contamination from previous industrial and landfill uses in the area.

The new wells recommended to be constructed on the Port would tap into the same aquifer as the City's three existing wells – The Dalles Groundwater Reservoir (“DGWR”) which is sometimes called “The Dalles Pool”. The top of this aquifer is nearly 300 feet below the ground with mostly impervious basalt above it. Sampling since the 1980s confirms contamination from the previous industrial uses is present in shallower water-bearing zones and is separated from DGWR by impervious basalt. All testing indicates groundwater from DGWR at this site meets all drinking water standards.

Proposed Infrastructure Agreement: The proposed Infrastructure Agreement includes conditions Design will provide for the design, permitting, and construction of eight utility-related projects needed to serve the new development, and for these improvements to be accepted for final ownership and operation by the City as part of its water and sewer utilities. Those eight construction projects are:

- Water main looping to connect the newly constructed 18-inch diameter Port Water Main to the older 12-inch diameter water main in River Road. This project will improve the efficiency of water delivery to many water customers in the Port Area, south of Chenowith Creek.
- Construction of a new groundwater well with an 1800 gallons-per-minute (gpm) capacity and emergency back-up power.
- Construction of a new ASR-compatible groundwater well with an 1800 gpm capacity and emergency back-up power.
- Construction of a new above-ground storage reservoir on the Port to serve the 310 Zone.
- Construction of a new water booster pump station to deliver water from the new reservoir to the 310 Zone under proper pressures.
- Construction of a new sanitary sewer lift (pump) station to serve the Design facility and adjacent industrial customers.
- Construction of a new sanitary sewer force main from the pump station, under the Union Pacific Railroad (“UPRR”) tracks, to the newly constructed gravity sewer

- main in West 2nd Street.
- Construction of a shared utility access corridor from River Road to UPRR tracks for access to utility systems.

The total estimated value of these constructed projects is \$28.5 million.

In addition to the constructed projects, Design will provide to the City certificated groundwater rights for a total of 3.88 mgd (6.01 cubic feet per second); construction of the two new wells would follow the transfer of Design's water rights to the City. Design will also be granting to the City land and/or easements satisfactory for the utility needs of the City as they relate to these projects.

The water rights and well production capacities intended to be provided to the City are each greater than the volumes of water requested by Design for this development. Under the proposed Agreement, the City would realize a net increase in water rights and supplies to serve the City.

The City would also have commitments under the proposed Infrastructure Agreement:

- Contingent upon the successful transfer of Design's groundwater rights to the City, the City will provide to Design's facilities an adequate water supply and sanitary sewer capacity.
- Implement an ASR Monitoring Program. This is an existing requirement for the City as due diligence under its limited license. Work has already begun on this project.
- Accept the eight Design-constructed projects for City ownership and operation once they are completed to City standards.
- Initiate an update to the City's Water Master Plan within 12 months of the effective date of the Agreement. The existing Water Master Plan is overdue for an update. This project is identified in the City's current 2021/22 budget. The three studies outlined above will help inform the Master Plan update.
- The City recently completed a federally-required Risk and Resiliency Assessment ("RRA") of its water system. Information from the RRA will be incorporated into the updated Master Plan and inform development of a capital improvement plan. The Agreement commits the City to trying to fund and implement countermeasures to improve the resiliency of the water system as indicated by the RRA.
- Credit the cost of providing certain Design-constructed projects against Water and Sewer SDCs as allowed by the Municipal Code; this will happen regardless of any Agreement because the Municipal Code allows for appropriate costs to be credited against SDCs when an improvement has the capacity to serve others in addition to the developer.
- Not discriminate against Design in the setting of fees, rates, or other charges. Design pays, and will continue to pay, the same water and sewer utility rates as other commercial/industrial users in the City. Under the proposed Infrastructure Agreement, the City would initiate a water utility rate study within 12 months of the Effective Date. The intent is to set rates sufficient to cover utility needs and see if any rebalancing of rates is needed City-wide. Sometimes, as time goes by,

rates and needs drift such that one customer class may be subsidizing another. It is a common practice to evaluate rates as part of a master plan update. Water utility rates and SDCs will be evaluated with the Master Plan project.

- Seek to supply recharge water to the new ASR well on the Port as feasible.
- Use the same temperature modeling in the issuance of an Industrial Discharge Permit for the New Development, as was done for the Existing Development and other large industrial dischargers in the City.
- Consider a Memorandum of Understanding with Design regarding water supply scenarios for the 310 Zone.
- Work cooperatively with Design if there are new rules related to temperature for wastewater discharged to the Columbia River.

Nearly all the commitments for the City included in the draft agreement are items already underway, planned, and/or budgeted.

Supplemental Information: There have been a number of issues raised by interested parties related to the concepts within the proposed Infrastructure Agreement which are addressed below.

- The water rights included in the proposed Agreement are existing water rights associated with existing wells owned by Design, not new groundwater water rights. These rights are proposed to be transferred from Design to the City, not the other way around, and new wells would be constructed for the City to replace the old ones. Without this Agreement, Design or other private entities could use the existing wells and water rights as they needed—just as the aluminum plant did previously.
- The capacity of the aquifer was analyzed in the report provided by GSI. The Sustainable Annual Yield of TDGR, the aquifer used by the City’s and Design’s wells, is 5,500 acre-feet (1,792 MG). Currently, 3,700 acre-feet (1,206 MG) of that capacity is unused. The amount of water requested by Design is well below the amount of unused capacity in the aquifer.
- The water levels within TDGR have not been declining in recent years; in fact, they have increased significantly since The Dalles Irrigation District began utilization of water from the Columbia River in 1966.
- With acquisition of the groundwater rights and new wells as proposed in the Agreement, the City could further optimize utilization of its water supplies across all its sources including surface water live flow, stored surface water, ASR and native groundwater wells. The new groundwater rights would become another tool for City to utilize in addressing climate change and meeting the water demands of the full community including the Port Industrial Area. Without the Agreement, it is possible all the water needed to supply a new development on the smelter site could be drawn from TDGR, as an industry could use its own water sources as needed.
- The City’s state-approved Water Management and Conservation Plan provides the number one priority for the allocation of potable water during shortages is “Minimum health and safety allocations for indoor residential needs (includes single-family, multi-family, hospital and convalescent facilities, retirement and

mobile home communities, student housing, fire fighting and public safety).” Residents will not be without water as a result of the proposed Agreement.

Under the proposed Agreement, the City would be receiving more water rights and new well capacity than is being requested by Design for the new development. Attached to this report is a letter from Mid-Columbia Fire and Rescue Chief Robert Palmer supporting water system supply and infrastructure improvements increasing the City’s fire safety and associated ISO rating as they impact insurance rates within the community.

Staff is recommending authorization of the proposed Infrastructure Agreement with Moraine, LLC and Design, LLC through adoption of Resolution No. 21-028 authorizing the City Manager to execute the Agreement.

BUDGET ALLOCATION: If the proposed Infrastructure Agreement is authorized through adoption of Resolution No. 21-028, the City will be committed to implement an ASR monitoring program at an estimated cost of \$30,000, which work is underway, and update its Water Master Plan which is budgeted in the Water Reserve Fund, line 053-5300-000.34-10, at \$490,000. Upon application for a building permit, Design would pay to the City Water and Sewer System Development Charges (“SDCs”) in an amount determined by the permit application and at the same rates as other developers within the City. Design would pay for the design, permitting, and construction of water and sanitary sewer infrastructure improvements currently estimated to cost about \$28.5 million. Once Design’s facilities are operational, they will pay the same water and sewer utility rates as other City industrial and commercial customers.

COUNCIL ALTERNATIVES:

1. **Staff Recommendation:** *Move to adopt Resolution No. 21-028, a Resolution Authorizing the City Manager to Execute an Infrastructure Agreement with Moraine Industries LLC and Design, LLC.*
2. Deny authorization of the Infrastructure Agreement with Moraine Industries, LLC and Design, LLC and provide additional direction to staff.

September 22, 2021

City of The Dalles Public Works
C/O: David Anderson, Public Works Director
1215 W. 1st Street
The Dalles, Oregon 97058

Dear Mr. Anderson

The Insurance Services Office (ISO) Public Protection Classification (PPC) program measures the effectiveness of municipal fire suppression efforts in communities around the country – and helps insurance companies determine premiums for property owners in those communities. In general, the price of fire insurance in a community with a good PPC is substantially lower than in a community with a poor PPC, assuming all other factors are equal. So, relative to fire protection capabilities, you want your community to earn the best possible PPC.

To evaluate your community, ISO's field staff collects information about your community's municipal fire-suppression efforts. They use a manual called the Fire Suppression Rating Schedule (FSRS) to assign credit points for various features of your community's fire protection, including your water supply system, your fire alarm and communications systems, and your fire department. The maximum score is 100 points. Based on the score received, ISO assigns a Public Protection Classification – a number from 1 to 10. Class 1 represents the best public protection, and Class 10 indicates less than the minimum recognized protection.

There are several variables involved in the assessment process. Water resources are one of those assessed and are a vital component to earning a desirable PPC rating. ISO works with water companies and municipal water supply agencies on a nationwide basis to evaluate the adequacy of water infrastructures for fire suppression and effective firefighting. An effective water supply is a major component of a community's PPC grade for purposes of firefighting. This amounts to 40% of the total PPC grade. Additionally, water supply is also important to insurers, who must have an accurate and objective assessment of the fire protection capabilities that serve the residents of our community.

ISO's field analysts evaluate the amount of water available compared with the amount needed to suppress fires. They analyze whether the community has sufficient water supply for fire suppression beyond daily maximum consumption. ISO also surveys all components of the water supply system and provides an objective evaluation based on widely accepted national

Cc: Julie Krueger, City Manager

standards and criteria. They survey fire hydrants for distances to properties, types, inspection, size, installation, frequency and completeness of hydrant inspection, and fire flow-testing programs.

ISO bases much of their water supply evaluations on needed fire flow, the amount of water that should be available for providing fire protection at selected locations throughout a community and have established minimum criteria for their water supply evaluations. Making fundamental improvements in a community's water system is a viable method of improving a community's PPC rating thereby enhancing fire protection capabilities. If your water supply doesn't meet minimum FSRS criteria, one generally can't improve beyond a Class 9.

Sustaining and potentially improving our community's ISO classification and its associated fire protection capabilities requires resources and hard work. The Fire District, along with other community leaders, must partner to make critical decisions about priorities and budgets.

Based on the current and future developments planned for the port property, it has become apparent that without additional water supply, the City will not be able to meet the projected future water demands required resulting from the build-out. As noted above, adequate water supply is an important component of a desirable PPC. Based on this premise, Mid-Columbia Fire and Rescue supports the City's plan to upgrade the water system capabilities within the 310 Zone for purposes of sustaining and potentially improving our community's ISO rating and associated fire protection capabilities. Such an improvement would provide the Fire District with a more robust water supply system with which to protect the lives and property of those we serve.

Sincerely,



Robert F. Palmer
Fire Chief

INFRASTRUCTURE AGREEMENT

This Infrastructure Agreement (“**Agreement**”) is made this _____ day of _____, 2021 (“**Effective Date**”) by and between the City of The Dalles, Oregon, an Oregon municipal corporation (“**City**”), Moraine Industries LLC, a Delaware limited liability company (“**Moraine**”), and Design, LLC, a Delaware limited liability company (“**Design**”; Moraine and Design are referred to together in the Agreement as “**Design**”; each of the City and Design are a “**Party**,” and together, the “**Parties**”) pursuant to the City’s home-rule authority.

RECITALS

- A. Design owns and operates data centers (“**Existing Development**”) on real property located on Wasco County Tax Parcels 2N 13E 21C 1100 & 2N 13E 28 101 (“**Existing Development Property**”) and desires to further develop the real property (“**New Development**”) located on Wasco County Tax Parcels 2N 13E 28 700 & 2N 13E 33 200 (“**New Development Property**”) to meet its business needs.
- B. The Existing Development Property and New Development Property (together, the “**Design Property**”) are described in the list of legal descriptions attached to and made part of this Agreement as **Exhibit A**.
- C. The Design Property is located within the City’s Industrial Zone. Permitted uses within the Industrial Zone include Design’s existing and proposed uses. All development on the Design Property conforms or will conform to applicable density, height, and size limitations, as may be modified through City development approvals.
- D. Design is unwilling to risk substantial commitment of private capital without sufficient assurances from the City that adequate water supply and sanitary sewer capacity is and will continue to be available to support the Existing Development and the New Development.
- E. The City operates a potable water system that has an existing supply which is not being used and which is not reserved by others.
- F. The City operates a sanitary sewer system that has existing capacity which is not being used and which is not reserved by others.
- G. The City desires to work cooperatively with Design to ensure adequate water supply and sanitary sewer capacity for all City users including the Existing

Development and the New Development, including identifying and making improvements to the City’s water and sanitary sewer systems to ensure adequate supply and capacity in the future.

- H. The City also desires to make improvements to its water and sanitary sewer systems to ensure water and sanitary sewer system resiliency across the City’s systems and to support future economic growth in the City.
- I. The City finds that the water and sanitary sewer projects contemplated by the Agreement are in the public interest of its citizens and that the projects will support the Existing Development and the New Development, as well as the economic growth and vitality of the City.
- J. The City thus desires to work cooperatively with Design to develop water and sanitary sewer infrastructure for the future delivery of water and sanitary sewer service to all City users, including the Existing Development and the New Development.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and performance of the obligations of each Party set out in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged by the Parties, the City and Design hereby agree to the following terms and conditions:

1. Effective Date. The Agreement shall be effective upon the Effective Date.
2. Term of Agreement. The Agreement shall terminate when each Party has fulfilled its respective obligations under the Agreement but no later than fifteen (15) years from the Effective Date, unless otherwise terminated as provided in Section 17.6 below.
3. City Council Action. The Agreement was duly approved and adopted by The Dalles City Council through its Resolution No. 21-028 on November 8, 2021.
4. The Projects.
 - 4.1. In order to provide the necessary water supply and sanitary sewer capacity to the Existing Development and the New Development, as well as to increase overall City water and sanitary system resiliency and meet the existing and future needs of all residential, commercial, and industrial properties within the City, the City and Design agree to work cooperatively to complete the nine (9) water and sanitary sewer projects (“**Projects**,” each a “**Project**”) described in the Projects and Estimated Costs Summary, attached to and made part of this Agreement as **Exhibit B**.
 - 4.2. The City and Design agree to share in the construction and cost of the Projects as outlined in the Projects and Estimated Costs Summary and described further below.

4.3. The Projects will be completed in accordance with the timelines provided in Sections 5.3 and 6.3 below.

5. Design's Obligations.

5.1. Design Constructed Projects. Design will be responsible for all work necessary to complete Projects 1, 2, 3, 4, 5, 6, 7, and 8 (“**Design Constructed Projects**,” each a “**Design Constructed Project**”), including all (i) design and engineering; (ii) land acquisition or site control; (iii) bidding and contracting; (iv) permitting; and (v) construction. All projects will be constructed to City standards. City and Design shall conduct pre-design conferences for each Design Constructed Project to finalize project specifications and development timelines, and to discuss City standards and permitting requirements. City and Design shall work collaboratively to achieve concurrence on final project specifications and timelines. City shall have an opportunity to review and approve all project plans prior to submission to Oregon Health Authority (“**OHA**”) Drinking Water Program for plan review. Design shall pay fees for OHA-required plan reviews and City shall “sponsor” plan review applications.

5.1.1. Predesign Conference and Concurrence. Design will request a coordination meeting with the City in advance of beginning detailed design for each Design Constructed Project. This predesign conference will be used to finalize project specifications, set performance metrics, develop a design and construction schedule, identify permitting required, and agree on the timing for the transfer of the Design Constructed Project to the City. Design will request written concurrence for Design Constructed Projects from the City prior to issuing final construction contracts.

5.2. Additional Contributions. In addition to completing the Design Constructed Projects, Design has made or will make the following contributions to the City’s ongoing efforts to upgrade its water and sanitary sewer systems:

5.2.1. As part of Projects 2 and 3, Design will convey the water rights that consist of Water Right Certificate Nos. 46835, 46836, 46839, and a portion of 82480, comprising 6.01 cfs to the City for incorporation into the municipal water system and submit to the Oregon Water Resources Department (“**OWRD**”) water rights transfer applications to convert use from industrial to municipal use and, to the extent necessary, change the authorized place of use and points of appropriation (i.e., wells). Upon receipt of all necessary OWRD approvals, Design will relocate two (2) existing groundwater wells located on the Design Property Tax Parcel 2N 13E 28 700 to new locations on Design Property Tax Parcel 2N 13E 33 200.

- 5.2.2. Design will furnish the City a deed, easement, or other mutually acceptable right of entry, for Projects 1, 2, 3, 4, 5, 6, 7, and 8 for City ownership, operations and maintenance.
- 5.2.3. Design previously funded an Aquifer Storage and Recovery (“ASR”) Feasibility Study to confirm suitability for implementation, and subsequently funded permitting and preliminary design work for implementation of ASR by the City, including obtaining an ASR Limited License from OWRD authorizing pilot testing of ASR (including Oregon Department of Environmental Quality underground injection control permitting), plan review approval from OHA for the first ASR well, preliminary design of the first ASR well and pump station, and a draft design build contract for drilling and construction of one or more ASR wells.
- 5.3. Project Timelines and Delivery. Design anticipates initiation and completion of Projects 1,2, 3, 4, 5, 6, 7, and 8 according to the timing indicated in **Exhibit B**. If Design is unable to place in service one or more Design Constructed Projects within the timeframes outlined or if one or more Design Constructed Projects are not needed, Design shall notify the City of the need to revise the project list and/or timeline and work cooperatively with the City on a revised project list and/or schedule for the Design Constructed Project or Projects. If Design does not receive its land use or building permits for New Development; or if Design is unable to obtain the permits needed for the Projects identified above; it is not required to build the Design Constructed Projects. If the City and Design determine during the predesign conference and concurrence period that additional water and sewer capacity requirements for the New Development are not needed, the City and Design will agree which Design Constructed Projects can be deferred or deleted.
- 5.4. Monthly Reports. During design and construction of the Design Constructed Projects, Design shall provide the City a monthly report describing the status of each ongoing Design Constructed Project.
- 5.5. Meet and Confer. During the term of the Agreement or until both Parties confirm that the Projects have been satisfactorily completed, Design shall meet with the City twice each calendar year to discuss the implementation of the Agreement and the status of each ongoing Design Constructed Project.
6. City’s Obligations.
- 6.1. City Constructed Project. The City will be responsible for all work necessary to complete Project 9 (“**City Constructed Project**,”), including all (i) design and engineering; (ii) land acquisition or site control; (iii) bidding and contracting; (iv) permitting; and (v) construction.
- 6.2. City Funding. The City’s responsibility to complete the City Constructed Project is contingent upon the availability of public funds, but the City should make every effort

to allocate funds consistent with the terms of the Agreement, including revising its Capital Improvement Plan as necessary to allocate funds to the Projects. If, after making every effort to secure the necessary funding, the City is unable to fund the City Constructed Project, the City shall notify Design of the need to revise such City Constructed Project and Estimated Costs Summary and work cooperatively with Design on a revised funding package for the City Constructed Project.

- 6.3. Project Timelines and Delivery. The City shall commence its design and engineering of the City Constructed Project within twelve (12) months of the Effective Date. The City shall commence work on the City Constructed Project within twelve (12) months of the Effective Date. If the City is unable to complete the tasks and place in service the City Constructed Project within the timeframes outlined in this Section 6.3, the City shall notify Design of the need to revise the timeline and work cooperatively with Design on a revised schedule for the City Constructed Project.
- 6.4. Monthly Reports. During design and construction of the City Constructed Project, the City shall provide Design a monthly report describing the status of the ongoing City Constructed Project.
- 6.5. Meet and Confer. During the term of the Agreement or until both Parties confirm that the Project has been satisfactorily completed, the City shall meet with Design twice each calendar year. During these meetings, the City shall update Design regarding the progress of and schedule for completion of each ongoing City Constructed Project.
- 6.6. Supply and Capacity. Provided Design is successful in transferring its water rights to the City as outlined in Section 5.2.1 or the City is otherwise satisfied that it has received sufficient additional supply to serve the Existing Development and the New Development, the City agrees to provide Design a sufficient, reliable, and adequate water supply and sanitary sewer capacity to serve the Existing Development and the New Development within its reasonable ability to do so. It is estimated that the Existing Development and the New Development at full build-out will require water supply and sanitary sewer capacity in the volumes outlined in the Water Supply and Sanitary Sewer Capacity Demands Summary attached to and made part of this Agreement as **Exhibit C**. To the maximum extent allowed by law, the Parties agree **Exhibit C** is exempt from public disclosure under the Oregon Public Records Law and is subject to the confidentiality provisions set forth in Section 15. The contents of **Exhibit C** shall be redacted in the recorded version of the Agreement. This Agreement does not change or waive any of the previous requirements outlined in the development agreement entered into between Design and the City as of October 14, 2015.
- 6.7. Design Constructed Projects. Consistent with Sections 12 and 13, the City agrees to formally accept the Design Constructed Projects for ownership, operation, and maintenance upon Design's completion of the Design Constructed Projects and the Design Constructed Projects meeting the final inspection procedures outlined in The

Dalles Municipal Code 10.10.080. The City agrees to maintain all permitting requirements, including air emissions for projects requiring emergency generators.

- 6.8. Master Plan Update. Within twelve (12) months after the Effective Date, the City shall initiate a project to update its Water System Master Plan (“Master Plan”) to cover all projected development within the City in the next ten (10) years. During the master plan process, the City will provide updates to Design regarding improvements necessary to support the build-out of the Industrial Zone. This master planning effort is expected to consider the findings and conclusions from the following technical memos regarding the City’s existing facilities and necessary upgrades: (i) “Focused Assessment of Water Infrastructure”, prepared by RH2 Engineering, Inc. on December 10, 2020; (ii) “Water Supply Analysis for Buildable Lands Assessment in the 310 Zone”, prepared by GSI Water Solutions, Inc. on January 4, 2021; and (iii) “Review of Proposed Well Siting at 2929 West 2nd Street in The Dalles, Oregon in Relation to Water Quality” on July 27, 2020.
- 6.9. Water & Sewer System Resiliency. Design is aware of the City’s effort to prepare a Risk and Resilience Assessment to identify the threats, vulnerabilities, and consequences to critical infrastructure. The City agrees to identify, fund, design, and install countermeasures the City determines are necessary to ensure resiliency of the water and sewer system such that any interruption to operation can be corrected within 24 hours, within the City’s financial capability to do so.
- 6.10. In order to continue to evaluate ASR, the City agrees to the additional steps to establish an ASR water level monitoring program as outlined in Project 9 (utilizing existing wells identified in the ASR Limited License as observation wells). The City will work cooperatively with Design to continue the license of the ASR system described in the City’s ASR Limited License.
7. System Development Charges. The Parties agree that Design’s actual cost of designing and constructing certain Design Constructed Projects shall become a credit towards water or sanitary sewer system development charges (“SDCs”) for the New Development as allowed by City’s Municipal Code. Those Design Constructed Projects eligible for SDC credits are noted in **Exhibit B**.
8. Rate Study. The City shall not discriminate against Design in connection with the setting of fees, rates, or other charges for connection to or use of the water or sanitary sewer system by the Existing Development or the New Development. Within twelve (12) months after the Effective Date, the City agrees to initiate a water system rate study (“**Rate Study**”) to review both residential and commercial/industrial water rates. This Rate Study shall identify rates that are sufficient to provide for fixed and variable operating costs, water system resiliency and the capital costs needed to operate, improve, and expand its system for all customers. When establishing any new rates the City will ensure Design is not charged capital cost recovery for the Design Constructed Projects.

9. Aquifer Storage and Recovery (“ASR”). The City and Design both value the benefits of an ASR system including water resiliency, water quality, and water supply capacity expansion. As such, Design will construct Project 2 with ASR compatibility. The City solely controls the supply sources for ASR; and as such, agrees to make good faith efforts to supply treated surface water to Project 2 for recharge at the permitted limits defined in the ASR license. The ASR supply rates shall be at no additional cost to Design.
10. Temperature Total Maximum Daily Loads (“TMDLs”). Design may discharge sewer from the New Development Property at a temperature determined by modeling consistent with the methodology utilized at the Existing Development. The measurement point shall be mutually acceptable to both Parties and be physically located near the New Development Property boundary.
11. Memorandum of Understanding. Within twenty-four (24) months after the Effective Date, the Parties agree to consider a Memorandum of Understanding (“**MOU**”) regarding operational characteristics of water supply and delivery by the City in the 310 Zone, with a goal to reduce overall water usage of industrial customers by minimizing the mineral profile and improving overall water quality, including a plan to supply treated surface water to Design’s Project 2 with ASR compatibility.
12. No Further Upgrade Obligations.
 - 12.1. The Parties agree, once Design completes and the City formally accepts the Design Constructed Projects for ownership, operation, and maintenance, the City shall receive any transferred warranty obligations from Design’s contractor. Provided the contractor warrants the improvements against defects in the materials and workmanship provided for a period of one year from the date of the City’s final acceptance of the work as required by The Dalles Municipal Code Section 10.10.090, the City shall have no further recourse against Design for additional repairs or upgrades to the City’s water or sanitary sewer systems related to the Existing Development and the New Development identified in this Agreement notwithstanding the terms of Section 12.2.
 - 12.2. The City agrees to work cooperatively with Design to develop potential solutions if there are any future changes to Middle Columbia-Hood Temperature TMDL requirements beyond those in Section 5 of this Agreement.
 - 12.3. Notwithstanding anything to the contrary therein, Design shall have no obligation to perform water or sanitary sewer system repairs or upgrades under the following prior agreements: (i) November 20, 2008, Delayed Improvement Agreement, recorded in the Official Records of Wasco County, Oregon as Document No. 2008-005261; (ii) December 27, 2005, Delayed Improvement Agreement, recorded in the Official Records of Wasco County, Oregon as Document No. 2006-005493; and (iii) December 27, 2005 Waiver of Remonstrance Agreement, recorded in the official records of Wasco County, Oregon as Document No. 2006-005495.

13. Maintenance and Repair. The City shall be solely responsible for owning, operating, and maintaining the Projects and any other portions of the City's water and sanitary sewer systems serving the Existing Development and the New Development, including but not limited to the Projects and the Design Constructed Projects.
14. Permits and Approvals. The City shall expedite processing of all permits and any other approvals or actions requested by Design with respect to the Design Constructed Projects or the New Development. The City shall also assist and cooperate in good faith with Design in connection with obtaining any approvals and permits from other governmental or quasi-governmental agencies having jurisdiction over the Design Constructed Projects or the New Development.
15. Confidentiality. Except as provided otherwise in the Non-Disclosure Agreement between Design and the City dated March 18, 2013, the terms of which are incorporated by this reference, and except as provided below in this Section 15, the City and Design, for the benefit of each other, hereby agree each Party will hold all information obtained by it related to the Agreement in strictest confidence. Design acknowledges the City is subject to the Oregon Public Records Law and any public disclosure necessary to comply with such law is not a breach of this Section 15. To the extent permissible by law, the City agrees to engage in all discussions and exchange of information relating to the Agreement in City Council Executive Session. If the City receives a public records request for a copy of the Agreement or any other information regarding Design or the Projects, the City shall provide timely notice to Design and reasonably cooperate with Design in preserving confidentiality and protecting Design's trade secrets and other confidential information, at no additional cost or expense to the City.
16. Indemnification. In accordance with the Oregon Tort Claims Act and the Oregon Constitution, each Party hereby agrees to indemnify the other Party and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages, and losses, including, without limitation, reasonable attorneys' fees, resulting from any misrepresentation or breach of warranty or breach of covenant made by such Party in the Agreement; provided, however, in no event shall either Party indemnify against the other Party's sole negligence.
17. General Provisions.
 - 17.1. Good Faith and Reasonableness. The Parties intend obligations of good faith and fair dealing apply to the Agreement generally and no negative inferences should be drawn by the absence of an explicit obligation to be reasonable in any portion of the Agreement.
 - 17.2. Force Majeure. The Parties shall not be liable for any failure to perform hereunder as a result of an external event or events beyond their respective control, including, without limitation, fire, flood, hurricanes, tornadoes, earthquakes, terrorism, global pandemic, or other acts of God. However, if any such event interferes with the performance by a Party hereunder, such Party shall diligently and in good faith act to

the extent within its power to remedy the circumstances affecting its performance or to complete performance in as timely a manner as is reasonably possible.

- 17.3. Cooperation in the Event of Legal Challenge. In the event of any legal change instituted by a third party, the Parties agree to cooperate in defending such action.
- 17.4. Binding Effect. The Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns; however, Design shall not assign or otherwise transfer any interest without prior written consent from City except as otherwise provided under Section 17.5.
- 17.5. Assign and Successors. Design shall have the right to assign the Agreement to any entity owned or controlled by, or under common control with, Design (the fact of which will be established by written representation of Design), and Design shall give the City written notice in such event. Any other assignments shall require the City's written consent.
- 17.6. Amendment or Termination. The Agreement may be amended, modified, supplemented, or terminated by the mutual written consent of the Parties or their successors-in-interest or assigns.
- 17.7. Recitals. The recitals of the Agreement are material terms of the Agreement and shall be binding upon the Parties.
- 17.8. Severability. If any provision of the Agreement, or its application to any person, is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties to the extent possible
- 17.9. Notice. All notices given under the Agreement shall be in writing and may be delivered by personal delivery, courier service, or deposit in the United States mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

City: Julie Krueger
City Manager
313 Court Street
The Dalles, OR 97058
Telephone: (541) 296-5481
Email: jkrueger@ci.the-dalles.or.us

With a copy to: Jonathan M. Kara
w/Campbell Phillips PC
City Attorney
313 Court Street
The Dalles, OR 97058
Telephone: (541) 371-5585
Email: jkara@campbellphillipslaw.com

Design: General Counsel
Design LLC
1600 Amphitheatre Parkway
Mountainview, CA 94043
Telephone: 650-618-1833
Email: legal-notices@google.com

With a copy to: Sarah Stauffer Curtiss
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Telephone: (503) 294-9829
Email: sarah.curtiss@stoel.com

- 17.10. Applicable Law. The Agreement is governed by and shall be construed in accordance with the laws of the State of Oregon.
- 17.11. No Third-Party Beneficiaries. The only parties to the Agreement are the City and Design. There are no third-party beneficiaries under the Agreement, and, except for assignees and successors-in-interest to the Parties, the Agreement shall not be construed to benefit or be enforceable by any other person.
- 17.12. Authority. The City represents and warrants, as of the Effective Date: (i) the City has the full power and authority to enter into the Agreement and to perform its obligations hereunder; (ii) the Agreement is a valid and binding obligation, enforceable against the City in accordance with its terms; and (iii) the execution and delivery of the Agreement by the City has been validly authorized by all necessary governmental action, complies with the City's appropriation process, and does not conflict with any other agreements entered into by the City.
- 17.13. Counterparts. The Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 17.14. Entire Agreement and Exhibits. The Agreement constitutes the entire agreement between the Parties as to the subject matter covered by the Agreement. The exhibits attached to the Agreement are an integral part of the Agreement and are fully incorporated into the Agreement where they are referenced in the text of the Agreement.
- 17.15. Recording. The City shall cause the Agreement to be recorded in the Wasco County Clerk's Office at the City's expense.

IN WITNESS WHEREOF, the Parties have executed this Infrastructure Agreement as of the Effective Date.

CITY:

City of The Dalles
an Oregon municipal corporation
By: _____
Name: _____
Its: _____

DESIGN:

Design, LLC,
a Delaware limited liability company
By: _____
Name: _____
Its: _____

MORaine:

Moraine Industries LLC
a Delaware limited liability company
By: _____
Name: _____
Its: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2021, by _____
_____, _____ of the City of The Dalles, Oregon,
an Oregon municipal corporation, on its behalf.

Notary Public - State of Oregon
My commission expires:
Commission No:

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2021, by _____
_____, _____ of Design LLC, a Delaware limited liability company, on
its behalf.

Notary Public
My commission expires:
Commission No.:

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2021,
by _____, _____ of Moraine Industries, LLC, a Delaware
limited liability company, on its behalf.

Notary Public
My commission expires:
Commission No.:

EXHIBIT A

Design Property

Existing Development Property

2N 13E 28 101

Tract 1:

Parcel 1, Chenoweth Creek Replat, recorded March 1, 2005 under Minor Partition No. 2005-0003 and Microfilm No. 2005-1099, Wasco County Records, and being situated in the Chenowith Creek Industrial Subdivision, in the City of The Dalles, Wasco County, Oregon.

Together with that portion of the Northeasterly half of Columbia Road adjacent to said Parcel 1 vacated by City of The Dalles Special Ordinance No. 05-501 approved June 27, 2005 and final and effective July 27, 2005.

Tract 2:

Parcel 1, Partition Plat 2005-0021, recorded July 27, 2005 under Microfilm No. 2005-004201, Wasco County Records, and being situated in the Chenoweth Creek Industrial Subdivision, in the City of The Dalles, Wasco County, Oregon.

2N 13E 21C 1100

Tract 1:

A tract of land lying in the Southwest one-quarter of Section 28 and the Northwest one-quarter of Section 33, Township 2 North, Range 13 East of the Willamette Meridian, in the County of Wasco and State of Oregon, more particularly described as follows:

Beginning at a point on the East Right-of-Way of the Union Pacific Railroad, said point being South 3,169.00 feet and West 1,982.13 feet from the center one-quarter corner of said Section 28; thence following the existing fence along the approximate Easterly Right-of-Way of Union Pacific Railroad North 14°31'51" West 50.92 feet; thence North 11°34'27" West 79.10 feet; thence North 18°59'24" West 207.48 feet; thence South 67°51'13" West 36.80 feet; thence North 22°52'04" West 388.24 feet; thence North 68°40'37" East 20.58 feet; thence leaving said fence and Right-of-Way North 65°53'58" East 238.07 feet; thence North 67°12'52" East 796.99 feet; thence South 22°37'10" East 720.74 feet; thence South 67°09'03" West 164.58 feet; thence South 67°16'34" West 300.46 feet; thence South 67°12'51" West 448.99 feet; thence South 63°54'37" West 138.74 feet to the point of beginning.

Tract 2:

A tract of land being a portion of Parcel 1 of the Martin Marietta Corp. Partition Plat filed August 30, 1991, as MF No. 910016, Partition Plat Records of Wasco County, Oregon lying in the Southwest one-quarter of Section 28 and the Northwest one-quarter of Section 33, Township 2

North, Range 13 East of the Willamette Meridian, Wasco County, Oregon, more particularly described as follows:

Beginning at a point on the East Right-of-Way of the Union Pacific Railroad, said point South 3169.00 feet and West 1,982.13 feet from the center one-quarter corner of said Section 28; thence North 63°54'37" East 138.74 feet to a 2 inch diameter steel fence post; thence North 67°12'51" East 448.99 feet to a 2 inch diameter steel fence post; thence North 67°16'34" East 300.46 feet to a 2 inch diameter steel fence post; thence North 67° 09'03" East 65.16 feet to a 5/8 inch iron rod and the true point of beginning; thence continuing North 67°09'03" East 99.42 feet to monument; thence North 22°37'10" West 330.87 feet to a 5/8 inch iron rod; thence North 67°52'43" East 600.00 feet to a 5/8 inch iron rod; thence South 22°43'17" East 605.10 feet to a 5/8 inch iron rod; thence South 23°24'27" West 172.80 feet to a 5/8 inch iron rod; thence South 67°16'43" West 575.40 feet to a 5/8 inch iron rod; thence North 22°43'17" West 400.05 feet to the true point of beginning.

Tract 3:

A tract of land, being a portion of Parcel 1 of Partition Plat 91-0016, in the Northeast quarter of the Northwest quarter of Section 33, Township 2 North, Range 13 East of the Willamette Meridian, City of The Dalles, Wasco County, Oregon, being more particularly described as follows:

Commencing at the Southeasterly corner of Parcel I of Partition Plat 90-0004; Thence along the Southerly line of said Parcel 1, South 67°11'15" West 99.42 feet; Thence leaving said Southerly line along the Westerly line of that tract of land described in Document No 96-1945, Deed Records of Wasco County, South 22°41'05" East 400.05 feet to the true point of beginning of this description; Thence along the Southerly line of said tract of land, North 67°18'55" East 575.40 feet; Thence leaving said, Southerly line South 23°26'39" West 6.44 feet; Thence parallel with said Southerly line, South 67°18'55" West 570.75 feet; thence North 22°41'05" West 4.47 feet to the true point of beginning of this description.

TOGETHER with all rights and privileges appurtenant to such real estate arising under those instruments recorded as Microfilm Numbers: 2015-003613; 2015-003614; 2015-003615; 2015-003616; 2015-003617; 2015-003618; 2015-003725; 2015-003744; 2015-003745; and 2015-003760.

New Development Property

2N 13E 28 700

Lot 3 of Northwest Aluminum Subdivision Plat recorded December 6, 2017 in the real property records of Wasco County, Oregon as Survey Number 19-075, under Recorder's Number 2017-004778, being Plat No. 2017-2016.

2N 13E 33-200

Parcel 2 of Partition Plat recorded November 19, 2015 in the real property records of Wasco County, Oregon as Survey Number 18-107, under Recorder's Number 2015-4543, being Plat No. 2015-0015.

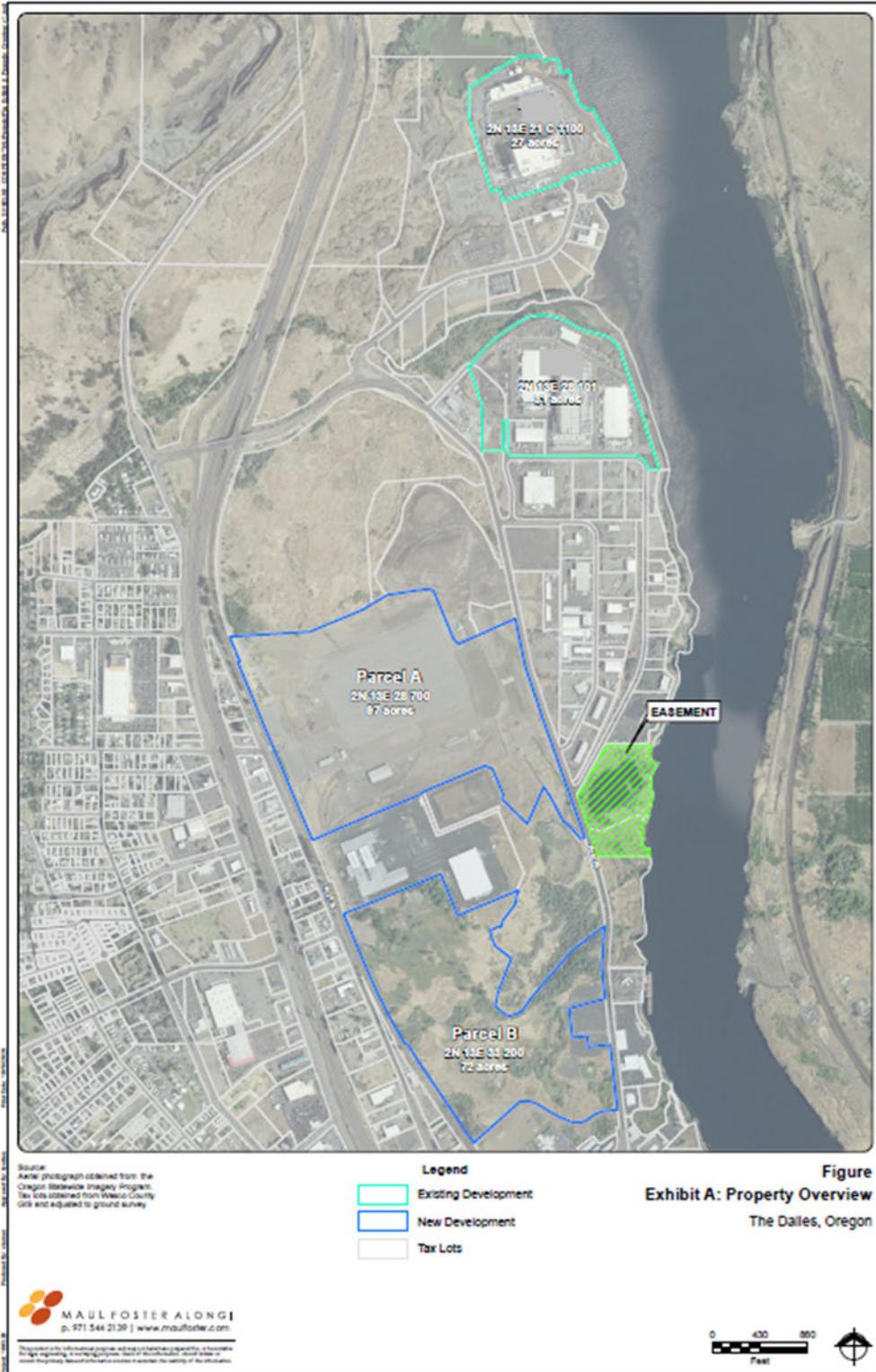


EXHIBIT B

Projects and Estimated Costs Summary

Exhibit	Type	Project Name	Description	Contingency	Estimated Cost (including design)
B-1	Water	310 Zone Water Main Looping	Connects River Rd to 2nd Street with a large diameter pipe main.	25%	\$2.4M
B-2		310 Zone Well: Well #6 w/ASR (Design Constructed Project)	Replaces the existing well #1 with a new well & ASR	15%	\$3.4M
B-3		310 Zone Well: Well #7 (Design Constructed Project)	Replaces the existing well #4 with a new well	15%	\$3.1M
B-4		Municipal Storage: Stage 1 Ground Level Storage	Provides ground level storage for residence time, operational and emergency storage in the 310 zone to buffer pumped groundwater.	15%	\$5.1M
B-5		Municipal Pump Station (Design Constructed Project)	Provides a booster pump station to increase pressure from 310 zone ground level storage to city designated pressure.	15%	\$6.8M
B-6	Sanitary Sewer	Municipal Sanitary Sewer Lift Station (Design Constructed Project)	Constructs a city lift station at a local low point to lift sanitary sewer from the area west of River Road to the 2nd Street sanitary sewer main.	15%	\$4.3M
B-7		Municipal Sanitary Sewer Forcemain (Design Constructed Project)	Installs a sanitary forcemain pipe in a shared utility access corridor to pump sanitary sewer waste from the new city lift station to the 2nd Street main.	15%	\$2.4M
B-8	Transportation	Shared Utility Access Corridor (Design Constructed Project)	Utility and transportation access corridor for the City Operations and Maintenance Access to projects.	15%	\$1M
B-9	Planning	ASR Monitoring	Provides for aquifer monitoring to establish a baseline for ASR performance evaluation	15%	\$30,000 (year 1) \$16,000 (annually thereafter)
Total					\$28.5M

Note: All Estimated Costs are Class 5 estimates and subject to final verification prior to execution

Estimated Additional Contributions Summary

Additional Contributions by Design			
Item	Rate/Size	Description	Estimated Value
GW certificate 46835	2.90	2.9 cfs certificated groundwater right	Market
GW certificate 46836	1.11	1.11 cfs certificated groundwater right	Market
GW certificate 82480	0.40	0.4 cfs certificated groundwater right	Market
GW certificate 46839	1.60	1.6 cfs certificated groundwater right	Market
Lift Station Partition	~0.29	~0.29 acres lift station partition parcel	\$20,000
Easements/Land	~5	~5 acres of public easement and/or deed dedication for new water/sewer systems on Parcel A&B	\$335,000
		Total	\$355,000 + market value water rights

Note: Water rights transfers remain subject to review and approval by Oregon Water Resources Department pursuant to applicable laws.

Exhibit B-1

Project 1	310 Zone Water Main Looping (Design Constructed Project)	
Description	Install approximately 2,500 linear feet of water main between the existing 12- and 18-inch diameter 310 zone water mains.	
Objective	Provide a loop in the existing water system that will allow the 2nd Street main and the River Street main to contribute flows to meet increasing demand in the 310 zone.	
Timing	Anticipated Initiation	Within 3 Months of Building Permit Issue Date
	Anticipated Completion	Within 24 Months of Initiation
Estimated Planning Permitting & Construction Cost:	\$2.4M	
SDC Credit Eligible:	Yes	

Exhibit B-2

Project 2	310 Zone Well: Well #6 with ASR (Design Constructed Project)	
Description	Drill a new estimated 1,800 gallon per minute capable well in the 310 zone or surrounding area to contribute to a new above-ground storage reservoir. The new reservoir will connect directly to the 310 zone. Well #6 will be constructed with ASR capability and emergency back-up power systems.	
Objective	Provide new supply capability in the 310 zone as well as additional storage resources to buffer peak demand periods.	
Timing	Anticipated Initiation	TBD based on predesign conference with City
	Anticipated Completion	TBD based on predesign conference with City
Estimated Planning Permitting & Construction Cost:	\$3.4M	
SDC Credit Eligible:	Yes	

Exhibit B-3

Project 3	310 Zone Well: Well #7 (Design Constructed Project)	
Description	Drill an new estimated 1,800 gallon per minute capable well in the 310 zone or surrounding area to contribute to a new above ground storage reservoir. The new reservoir will connect directly to the 310 zone. Well #7 will be constructed with emergency back-up power systems.	
Objective	Provide new supply capability in the 310 zone as well as additional storage resources to buffer peak demand periods.	
Timing	Anticipated Initiation	TBD based on predesign conference with City
	Anticipated Completion	TBD based on predesign conference with City
Estimated Planning Permitting & Construction Cost:	\$3.1	
SDC Credit Eligible:	Yes	

Exhibit B-4

Project 4	Municipal Storage: Stage 1 Ground Level Storage (Design Constructed Project)	
Description	Construct an estimated 1.2-2.4 million gallon above ground storage tank to increase storage volume and buffer peak flow demands in the 310 zone. Coordinate placement and capabilities of groundwater wells and booster pump station to facilitate 310 zone storage in this tank.	
Objective	Bolster water system storage capabilities with service connection to the 310 zone and maintain service pressures for future facilities. Also provides opportunity for contact time if treatment of pumped well water is necessary.	
Timing	Anticipated Initiation	TBD based on predesign conference with City
	Anticipated Completion	TBD based on predesign conference with City
Estimated Planning Permitting & Construction Cost:	\$5.1M	
SDC Credit Eligible:	Yes	

Exhibit B-5

Project 5	Municipal Pump Station (Design Constructed Project)	
Description	Construct a booster pump station to serve the 310 zone with water from a local storage volume to buffer peak flow demands. Coordinate placement and capabilities of booster pump station with municipal above ground storage tanks and groundwater supply wells. The booster pump station will be constructed with emergency back-up power systems.	
Objective	Bolster water system supply to the 310 zone and maintain service pressures for future facilities.	
Timing	Anticipated Initiation	TBD based on predesign conference with City
	Anticipated Completion	TBD based on predesign conference with City
Estimated Planning Permitting & Construction Cost:	\$6.8M	
SDC Credit Eligible:	Yes	

Exhibit B-6

Project 6	Municipal Sanitary Sewer Lift Station (Design Constructed Project)	
Description	Construct a sanitary sewer lift station to meet rising demand in the 310 zone. Redirect new effluent increases away from the existing Klindt lift station to the recently improved 2nd Street sanitary sewer main in order to accommodate peak flow. Coordinate placement and capabilities of the lift station with utility and municipal access corridors. The sanitary lift station will be constructed with emergency back-up power systems.	
Objective	Prevent overloading of the existing sanitary sewer lift station and forcemain and provide for future facilities.	
Timing	Anticipated Initiation	Within 3 Months of Building Permit Issue Date
	Anticipated Completion	Within 24 Months of Initiation
Estimated Planning Permitting & Construction Cost:	\$4.3M	
SDC Credit Eligible:	Yes	

Exhibit B-7

Project 7	Municipal Sanitary Forcemain (Design Constructed Project)	
Description	Construct a sanitary sewer forcemain to transfer effluent from a new sanitary sewer lift station to the recently improved 2nd Street sanitary sewer main. This will protect the existing Klindt Lift Station from overloading and will provide accommodation for peak flow. Coordinate placement with utility and municipal access corridors.	
Objective	Prevent overloading of an existing sanitary sewer lift station and forcemain and provide for future facilities.	
Timing	Anticipated Initiation	Within 3 Months of Building Permit Issue Date
	Anticipated Completion	Within 24 Months of Initiation
Estimated Planning Permitting & Construction Cost:	\$2.4M	
SDC Credit Eligible:	Yes	

Exhibit B-8

Project 8	Shared Utility Access Corridor (Design Constructed Project)	
Description	Construct a utility access corridor extending from River Road to the Union Pacific Railroad generally along the south side of the Design LLC property for public and private utilities. This shared utility corridor will accommodate an interconnection from utilities present in 2nd Street to those located in River road.	
Objective	Provide for the expansion of utility service capabilities across the 310 zone. This also provides the City access to anticipated municipal utility extensions across private property.	
Timing	Anticipated Initiation	Within 3 Months of Building Permit Issue Date
	Anticipated Completion	Within 24 Months of Initiation
Estimated Planning Permitting & Construction Cost:	\$1M	
SDC Credit Eligible:	No	

Exhibit B-9

Project 9	ASR Monitoring (City Constructed Project)
Description	The City of The Dalles holds an approved limited license authorizing implementation of an Aquifer Storage and Recovery (ASR) program. The ASR Monitoring project provides for the identification of a network of observation wells where water levels would be routinely monitored to gauge the response of the aquifer to ASR.
Objective	Assist the City in obtaining access to 4 private wells and to setup automated data collection systems to establish a baseline for ASR performance. The annual monitoring program will provide for field visits every 2 months to collect confirmation water level measurements and the data set will be analyzed to determine any trends.
Timing	Anticipated Initiation TBD 2021 Anticipated Completion 2022
Cost	\$30,000 in year 1, \$16,000 annually thereafter

EXHIBIT C

To the maximum extent allowed by law, the Parties agree Exhibit C is exempt from public disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478.

Exhibit C shall be redacted in the recorded form of this Agreement.

[REDACTED]

[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			

[REDACTED]

If either Party requests modifications to the capacities listed in Exhibit C, the non-requesting Party shall consider the request. Upon mutual agreement of the Parties to make such modifications, the new capacities may be ratified in writing via an amendment to this exhibit in the Agreement or expressly in a new and separate agreement executed by the Parties.

RESOLUTION NO. 21-028

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN INFRASTRUCTURE AGREEMENT WITH
MORAINÉ INDUSTRIES LLC AND DESIGN, LLC**

WHEREAS, the City of The Dalles (“City”) entered that certain Development Agreement (“Development Agreement”) with Design, LLC (“Design”) on October 14, 2015;

WHEREAS, the Development Agreement concerned the planning and construction of data center projects located within the city limits of The Dalles, and such projects were constructed according to the terms of the Development Agreement;

WHEREAS, the City, Design, and Moraine Industries LLC have agreed to the terms of an Infrastructure Agreement, attached to and made part of this Resolution as Exhibit “A”, concerning a proposed expansion of the data center projects; and

WHEREAS, Section 3 of the Infrastructure Agreement requires the City Council duly approve and adopt this Resolution authorizing the City’s entering into the Infrastructure Agreement.

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

1. The City Council hereby approves the City entering the Infrastructure Agreement.
2. The City Council hereby authorizes the City Manager to execute the Infrastructure Agreement.
3. This Resolution is effective upon its adoption.

PASSED AND ADOPTED ON THIS 8TH DAY OF NOVEMBER, 2021.

Voting Yes, Councilors: _____
 Voting No, Councilors: _____
 Abstaining, Councilors: _____
 Absent, Councilors: _____

AND APPROVED BY THE MAYOR THIS 8TH DAY OF NOVEMBER, 2021.

Richard A. Mays, Mayor

Attest:

Izetta Grossman, CMC, City Clerk