

**UMATILLA CITY COUNCIL MEETING  
AGENDA  
COUNCIL CHAMBERS 700 6TH STREET, UMATILLA, OR 97882  
MAY 17, 2022  
6:00 PM**

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1. **MEETING CALLED TO ORDER**

2. **ROLL CALL**

3. **PLEDGE OF ALLEGIANCE**

4. **APPROVAL OF AGENDA**

5. **CITY MANAGER REPORT & ANNOUNCEMENTS**

6. **PUBLIC COMMENT**

7. **NEW BUSINESS**

- 7.a [Resolution No. 32-2022 - A Resolution Authorizing the City Manager to Sign a Memorandum of Understanding with the Umatilla School District to Implement a S.W.E.L.L. Cooperative](#) *Suggested Action: Motion to approve Resolution No. 32-2022*

*The Umatilla School District has implemented S.W.E.L.L. (Summer Work-based Experience Learning Lesson) Cooperative to provide opportunities for disabled students to gain work based learning experiences throughout the community. The City has partnered with this program in the past with great results and wishes to do so again this year. This resolution authorizes the City Manager to sign the attached Memorandum of Understanding with the Umatilla School District to implement a S.W.E.L.L. Cooperative.*

- 7.b [Resolution No. 33-2022 A resolution to authorize the Finance & Administrative Services Director to complete and sign an application for a Special Public Works Loan from Business Oregon's Infrastructure Finance Authority for funds to apply to the City of Umatilla/CTUIR water project](#) *Suggested Action: Motion to approve Resolution No. 33-2022*

- 7.c [Resolution 34-2022. A Resolution authorizing the City Manager to finalize and execute the Water Infrastructure Development Agreement with the Confederated Tribes of the Umatilla Indian Reservation \("CTUIR"\) for the City to fund, design, permit, and construct a new Point of Diversion \("POD"\) in the McNary Pool of the Columbia River and the corresponding new conveyance infrastructure to convey CTUIR water from the new POD to the Wanaket Wildlife Refuge and the City's new Water Treatment Facility.](#) *Suggested Action: Motion to approve Resolution 34-2022 and direct City Manager Stockdale to execute the Water Infrastructure Development Agreement with CTUIR.*

*The City has been working to update the City's Water Master Plan for a number of years. That draft plan calls for the City to transition off of critical ground water and to utilize its surface water rights of the Columbia River. Additionally, the City has been working together with ADS and the CTUIR as part of a public private partnership to deliver raw river water to ADS and to update the CTUIR's water delivery system to the Wanaket Wildlife Refuge. This project creates the confluence of all these needs converging into one system solution that provides a more efficient and sustainable water delivery system for the Wanaket Wildlife Refuge, a more desired and efficient water use for data centers, and a not-too-distant future solution for providing surface water for potable/domestic use.*

- 7.d [First Reading of Ordinance No. 857 - An Ordinance Amending Title 3, Chapter 5 of the Umatilla Municipal Code to Include Short-Term Rentals](#) *Suggested Action: Motion to have the first reading of Ordinance No. 857 - An Ordinance Amending Title 3, Chapter 5 of the Umatilla Municipal Code to Include Short-Term Rentals.*
- 7.e [Approval of Ordinance No. 857 - An Ordinance Amending Title 3, Chapter 5 of the Umatilla Municipal Code to Include Short-Term Rentals](#) *Suggested Action: Motion to approve Ordinance No. 857 - An Ordinance Amending Title 3, Chapter 5 of the Umatilla Municipal Code to Include Short-Term Rentals.*

8. **PUBLIC COMMENT**

9. **MAYOR'S MESSAGE**

10. **COUNCIL INFORMATION & DISCUSSION**

11. **ADJOURN**

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

CITY OF UMATILLA, OREGON

**AGENDA BILL**

<b>Agenda Title:</b> Resolution No. 32-2022 - A Resolution Authorizing the City Manager to Sign a Memorandum of Understanding with the Umatilla School District to Implement a S.W.E.L.L. Cooperative	<b>Meeting Date:</b> 2022-05-17
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<b>Department:</b> Finance & Administrative Services	<b>Director:</b> Melissa Ince	<b>Contact Person:</b> Melissa Ince	<b>Phone Number:</b>
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<b>Cost of Proposal:</b> 0	<b>Fund(s) Name and Number(s):</b> N/A
<b>Amount Budgeted:</b> 0	

<b>Reviewed by Finance Department:</b> Yes	<b>Previously Presented:</b> N/A
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**Attachments to Agenda Packet Item:**

[RES 32-2022.docx](#)

[RES 32-2022 MOU.pdf](#)

<b>Summary Statement:</b> Motion to approve Resolution No. 32-2022  The Umatilla School District has implemented S.W.E.L.L. (Summer Work-based Experience Learning Lesson) Cooperative to provide opportunities for disabled students to gain work based learning experiences throughout the community. The City has partnered with this program in the past with great results and wishes to do so again this year. This resolution authorizes the City Manager to sign the attached Memorandum of Understanding with the Umatilla School District to implement a S.W.E.L.L. Cooperative.
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<b>Consistent with Council Goals:</b> Goal 3: Enhance and Cultivate Relationships and Partnerships.
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**RESOLUTION NO. 32-2022**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A MEMORANDUM OF UNDERSTANDING WITH THE UMATILLA SCHOOL DISTRICT TO IMPLEMENT A S.W.E.L.L. (SUMMER WORK-BASED EXPERIENCE LEARNING LESSON) COOPERATIVE**

**WHEREAS**, the Umatilla School District has implemented S.W.E.L.L. Cooperative to provide opportunities for disabled students to gain work-based learning experiences throughout the community; and

**WHEREAS**, through the interaction of student and work experiences, the students are able to enhance their academic knowledge, personal development, and professional preparation; and

**WHEREAS**, the City has partnered with this program in the past with great results and wishes to do so again this year.

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

1. The City Manager is authorized to sign the Memorandum of Understanding with the Umatilla School District to implement a S.W.E.L.L. Cooperative.

**PASSED** by the City Council and **SIGNED** by the Mayor this 17<sup>th</sup> day of May, 2022.

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

ATTEST:

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

**Memorandum of Understanding**

The Umatilla School district has implemented S.W.E.L.L., ( Summer Work-based Experience Learning Lesson) Cooperative, to foster self and career exploration, develop positive work habits and attitudes, and provide opportunities for students to strengthen key soft-skill areas, such as communication, enthusiasm and attitude. Students will fortify teamwork, networking, problem-solving, critical thinking skills and professionalism.

Through S.W.E.L.L., students will be able to engage in a Co-Op work Team, where they will work alongside non-disabled peers. Students will frequent worksites that are located within our school district community. Students will not only gain experiences, though in addition they will experience a sense of acceptance and accomplishment, as they secure compensation, which would be an incentive as they participate in job-related tasks. Such opportunity would provide a challenge for students to explore how to communicate disability-related work support and accommodation needs.

The school district has partnered with your business to provide students with assistance, training and resources to offer work-based learning experiences, in an effort to assist students in choosing careers, network with potential employers, select courses of student, and develop job skills relevant to future employment. Through the interaction of student and work experiences, the goal is to allow students to enhance their academic knowledge, personal development, and professional preparation.

**Purpose of the Agreement**

This Memorandum of Agreement (MOA) sets out the terms by which The Youth Transition Program, Umatilla School District and City of Umatilla whereas, the parties have agreed to work together to implement a S.W.E.L.L. (Summer Work-based Experience Learning Lesson) Cooperative.

This agreement will remain in effect from June 20th, 2022 to August 12th, 2022. Julie A. Hunt, Special Education Director, Umatilla School District, is the key contact for Umatilla Youth Transition Program. Mya Galvez, Youth Transition Specialist (YTS), is the key contact for the student placements, service organization and supervision of this service project. These individuals are responsible for ensure the conduct of the activities herewithin.

Through this agreement The Umatilla Youth Transition Program agrees to provide student compensation (minimum wage), for each hour worked, as scheduled by the YTS. Students will fill out timesheets and have them signed by their employer. The Service Project Manager, will confirm logged ours, during weekly check-ins. The Youth Transition Program will run simultaneously with this summer project and will offer, as part of this learning experience, on-going assistance, training, coaching, and support. To assist students, through the implementation of S.W.E.L.L., a summer Work-based Experience Learning Lesson Cooperative.

\_\_\_\_\_, agrees to offer students a work-experience opportunity to gain a work-based learning experience, where they can expand their knowledge, enhance their skills, and experience an occasion for personal development, and professional work practice.

Dated this \_\_\_\_\_, day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Umatilla School District

\_\_\_\_\_  
Community Partner Participant

CITY OF UMATILLA, OREGON

# AGENDA BILL

**Agenda Title:**

Resolution No. 33-2022 A resolution to authorize the Finance & Administrative Services Director to complete and sign an application for a Special Public Works Loan from Business Oregon's Infrastructure Finance Authority for funds to apply to the City of Umatilla/CTUIR water project

**Meeting Date:**

2022-05-17

**Department:**

Finance & Administrative Services

**Director:**

Melissa Ince

**Contact Person:**

Melissa Ince

**Phone Number:**

**Cost of Proposal:**

\$2.5 million

**Amount Budgeted:**

\$2.5 million

**Fund(s) Name and Number(s):**

Water - 02

**Reviewed by Finance Department:**

Yes

**Previously Presented:**

N/A

**Attachments to Agenda Packet Item:**

[RES 33-2022.docx](#)

**Summary Statement:**

Motion to approve Resolution No. 33-2022

**Consistent with Council Goals:**

Goal 2: Promote Economic Development and Job Growth.

**RESOLUTION NO. 33-2022**

**A RESOLUTION TO AUTHORIZE THE FINANCE & ADMINISTRATIVE SERVICES DIRECTOR TO COMPLETE AND SIGN AN APPLICATION FOR A SPECIAL PUBLIC WORKS LOAN FROM BUSINESS OREGON'S INFRASTRUCTURE FINANCE AUTHORITY FOR FUNDS TO APPLY TO THE CITY OF UMATILLA/CTUIR WATER PROJECT**

**WHEREAS**, Business Oregon's Infrastructure Finance Authority is accepting applications for the Special Public Works Loan Program; and

**WHEREAS**, the City of Umatilla and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) would like to collaborate on a water project that would convey raw water from the CTUIR point of diversion to serve many customers, including the CTUIR managed wildlife area, industrial tenants at the Port of Umatilla, future tenants at the adjacent CTUIR industrial property, and eventually serve as the City's potable water supply to get us off of critical ground water; and

**WHEREAS**, the City of Umatilla desires to obtain a loan to fund the design portion of the City of Umatilla/CTUIR Water Project; and

**WHEREAS**, the City authorizes the debt to be supported by water user fees.

**NOW, THEREFORE, BE IT RESOLVED:**

The Umatilla City Council hereby authorizes the Finance & Administrative Services Director to apply and sign the loan application from IFA's Special Public Works Fund.

**PASSED** by the Umatilla City Council and **APPROVED** by the Mayor this 17<sup>th</sup> day of May, 2022.

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Mary Dedrick, Mayor

ATTEST:

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Nanci Sandoval, City Recorder

CITY OF UMATILLA, OREGON

**AGENDA BILL**

<b>Agenda Title:</b> Resolution 34-2022. A Resolution authorizing the City Manager to finalize and execute the Water Infrastructure Development Agreement with the Confederated Tribes of the Umatilla Indian Reservation ("CTUIR") for the City to fund, design, permit, and construct a new Point of Diversion ("POD") in the McNary Pool of the Columbia River and the corresponding new conveyance infrastructure to convey CTUIR water from the new POD to the Wanaket Wildlife Refuge and the City's new Water Treatment Facility.	<b>Meeting Date:</b> 2022-05-17
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<b>Department:</b> City Administration	<b>Director:</b> David Stockdale	<b>Contact Person:</b> Dave Stockdale	<b>Phone Number:</b>
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<b>Cost of Proposal:</b> n/a	<b>Fund(s) Name and Number(s):</b> Water - 02
<b>Amount Budgeted:</b> n/a	

<b>Reviewed by Finance Department:</b> Yes	<b>Previously Presented:</b> 09/07/2021
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**Attachments to Agenda Packet Item:**

[Resolution\\_34\\_2022\\_for\\_CTUIR Water Development Agreement.docx](#)

[CTUIR-City Umatilla and CTUIR Water Development Infrastructure Agt-FINAL.pdf](#)

**Summary Statement:**

Motion to approve Resolution 34-2022 and direct City Manager Stockdale to execute the Water Infrastructure Development Agreement with CTUIR.

The City has been working to update the City's Water Master Plan for a number of years. That draft plan calls for the City to transition off of critical ground water and to utilize its surface water rights of the Columbia River. Additionally, the City has been working together with ADS and the CTUIR as part of a public private partnership to deliver raw river water to ADS and to update the CTUIR's water delivery system to the Wanaket Wildlife Refuge. This project creates the confluence of all these needs converging into one system solution that provides a more efficient and sustainable water delivery system for the Wanaket Wildlife Refuge, a more desired and efficient water use for data centers, and a not-too-distant future solution for providing surface water for potable/domestic use.

**Consistent with Council Goals:**

Goal 3: Enhance and Cultivate Relationships and Partnerships.

**RESOLUTION NO. 34 – 2022**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE WATER INFRASTRUCTURE DEVELOPMENT AGREEMENT WITH THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION (“CTUIR”) FOR THE CITY TO FUND, DESIGN, PERMIT, AND CONSTRUCT A NEW POINT OF DIVERSION (“POD”) IN THE MCNARY POOL OF THE COLUMBIA RIVER AND THE CORRESPONDING NEW CONVEYANCE INFRASTRUCTURE TO CONVEY CTUIR WATER FROM THE NEW POD TO THE WANAKET WILDLIFE REFUGE AND THE CITY’S NEW WATER TREATMENT FACILITY.**

**WHEREAS**, The Confederated Tribes of the Umatilla Indian Reservation owns and operates a point of diversion consisting of a water intake and pump station and related conveyance infrastructure that diverts water from the Columbia River and pumps it to an upland open canal through which the water is then conveyed to maintain the Wanaket Wildlife Refuge (“Wanaket”) and Wetlands; and

**WHEREAS**, the City owns and operates a water supply system comprised of water diversion, treatment and distribution facilities that provide water to residents and commercial and industrial businesses in the City; and

**WHEREAS**, the City is interested in creating a more reliable water supply and ultimately one that does not rely on continuing appropriations of groundwater and further desires to increase its ability to appropriate more of its existing Columbia River surface water rights; and

**WHEREAS**, the City’s draft Water Master Plan (*anticipated adoption August 2022*) directs the City to transition off of critical ground water and to utilize the City’s surface water rights to meet water delivery demands of all residential, commercial, and industrial users within the City; and

**WHEREAS**, the City desires to fund, design, permit, and construct an all-new Point of Diversion (“POD”) and initial City Water Delivery System in order for the City to provide water services and to convey CTUIR water, under CTUIR water rights, to the Wanaket. These improvements will: (1) create new infrastructure to wholly replace and, therefore, materially increase diversion, pumping, and transmission capacity of the CTUIR POD, (2) construct an additional City water treatment facility; (3) complete a raw river water pipeline to convey raw river water to the new Water Treatment Facility and Wanaket; and (4) ultimately create a treated water supply pipeline to convey potable/domestic water from the Water Treatment Facility throughout the City; and

**WHEREAS**, the CTUIR desires to continue to maintain the Wanaket at current water delivery levels under their existing water rights, retain the ability to apply such water rights to the full extent as authorized under applicable law, and to obtain the ability to further enhance the functional habitat values of the Wanaket which, given the age and condition of its pumping plant and delivery infrastructure, would require considerable investment; and

**WHEREAS**, The City is willing to design and build for CTUIR a new point of diversion near CTUIR’s Existing POD at a location agreed to by the Parties together with new conveyance infrastructure, but, as

a public entity, can only do so provided the City be allocated a sufficient percentage of the surface water diversion and transmission capacity from the New POD through such new facilities once completed to benefit both CTUIR and City's water needs; and

**WHEREAS**, the representatives of the CTUIR and the City have negotiated the attached Water Infrastructure Development Agreement setting forth the terms, rights and obligations of the parties in locating, designing, constructing, operating and maintaining the New Water Facilities as defined in the Water Infrastructure Development Agreement; and

**WHEREAS**, the existing tribal POD, pumps and delivery infrastructure will be used to deliver City Water to its water treatment facility during the April 2023 through November 2024 time period while the POD and delivery infrastructure is being constructed with the City being responsible for the operation and maintenance of the existing tribal pumps and delivery infrastructure, including all costs, during this period and with the requirement that the City's water needs will be met only after the Wanaket's water needs have been met first; and

**WHEREAS**, the CTUIR Board of Trustees, via RESOLUTION NO. 22-040, approved this agreement at their May 2, 2022 Regular Meeting; and

**WHEREAS**, this project will ultimately serve as the main water source no less than approximately 75% of the City as the City begins to transition our water supply off of critical ground water to surface water; and

**WHEREAS**, time is of the essence to complete the Water Infrastructure Development project; and

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

1. The City Manager is authorized to finalize and execute the Water Infrastructure Development Agreement by and between the Confederated Tribes of the Umatilla Indian Reservation and the City of Umatilla; and
2. The City Manager is further delegated authority to carry out the purposes of this Resolution and to take such further action, including but not limited to the execution of documents, amendments, and/or addendums to this agreement as may be necessary.

**PASSED** by the City Council and **SIGNED** by the Mayor this 17<sup>th</sup> day of May, 2022.

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Mary Dedrick, Mayor

ATTEST:

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Nanci Sandoval, City Recorder

RESOLUTION NO. 22 -040 Topic: CTUIR - City of Umatilla Water Infrastructure Development Agreement Department: OED Exhibits: 1C Page 1 of 3 CERTIFICATE The undersigned, N, Kathryn Brigham and Sally Kosey, hereby certify that they are the Chair and Secretary, respectively, of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, and at a regular meeting of said Board of Trustees at the Board Chambers of the Nixyaawii Governance Center, Mission, Oregon, on the 2<sup>nd</sup> day of May, 2022, a quorum of said Board was present and the following Resolution was regularly moved, seconded, and adopted by a vote of 6 for, 0 against, and 0 abstaining. RESOLUTION WHEREAS, the Board of Trustees is the governing body of the Confederated Tribes of the Umatilla Indian Reservation (Confederated Tribes) by the authority of Article VI, Section 1 of the Constitution and Bylaws of the Confederated Tribes, adopted on November 4, 1949 and approved on December 7, 1949, as amended; AND WHEREAS, pursuant to Article VI, Section 1(b) of the Constitution and Bylaws, the powers of the Board of Trustees include the authority “to manage all affairs of the Confederated Tribes, including the administration of tribal lands, fimsd, timber and other resources, under appropriate contracts, leases, permits and loan or sale agreements”; AND WHEREAS, pursuant to Resolution 22-012 (February 7, 2022) the Board of Trustees authorized the Executive Director to appoint appropriate Tribal staff to negotiate with the City of Umatilla (City) on the Water Infrastructure Development Agreement described in that Resolution; AND WHEREAS, by letter dated March 8, 2022, the Tribal Executive Director notified the Manager of the Tribal Team to negotiate the terms of the CTUIR- City of Umatilla Water Infrastructure Development Agreement and set forth the terms expected in that agreement; AND WHEREAS, the representatives of the Confederated Tribes and the City of Umatilla have negotiated the attached Water Infrastructure Development Agreement setting forth the terms, rights and obligations of the parties in locating, designing, constructing, operating and maintaining the New Water Facilities as defined in the Water Infrastructure Development Agreement; AND WHEREAS, the attached Water Infrastructure Development Agreement was reviewed by the Executive Management Team (“EMT”) at their meeting on April 12, 2022, at which meeting the EMT authorized the presentation of the Water Infrastructure Development Agreement to be presented to the Board of Trustees at the work session that had been scheduled for April 14, 2022; AND RESOLUTION NO. 22 -040 Topic: CTUIR - City of Umatilla Water Infrastructure Development Agreement Department: OED Exhibits: 1C Page 2 of 3 WHEREAS, after the presentation of the Water Infrastructure Development Agreement to the EMT, the City of Umatilla (“City”) informed the Tribal team of their need to use the existing tribal point of diversion, pumps and delivery infrastructure to deliver City Water to its water treatment facility during the April 2023 - November 2024 time period (Interim Period) while the new pumping plant and delivery infrastructure was being constructed, which authorization is included in the attached Water Infrastructure Development Agreement subject to the following terms: a) The City shall be responsible for the operation and maintenance of the existing tribal pumps and delivery infrastructure, including ail costs, during the Interim Period; b) The City shall pay all water pumping costs for the pumping of both the Wanaket and the City water during the Interim Period; and c) If during the Interim Period the existing tribal pumps and delivery infrastructure are unable to meet the combined water demand for Wanaket and the City, Wanaket’s water needs shall be satisfied first and the City’s water demand shall be subordinate to Wanaket’s and only provided after Wanaket’s needs have been met; AND WHEREAS, The Board of Trustees conducted a work session on April 27, 2022, to review this Resolution, the letter to the City of Umatilla and the Water Infrastructure Development Agreement which is attached to this Resolution as Exhibit 1C; NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby approves the Water Infrastructure Development Agreement between the Confederated Tribes and the City of Umatilla attached as Exhibit 1C to this Resolution; AND BE IT FURTHER RESOLVED, that the Board of Trustees hereby authorizes its Chair to execute the attached Water Infrastructure Development Agreement, or a document containing substantially similar terms;

AND BE IT FINALLY RESOLVED, that the Board of Trustees hereby authorizes its Chair and Executive Director to take such further action including the execution of documents, including but not limited to, the Consent of Land Owner for permission to make survey on Trust and Restricted Indian Land, as may be necessary to carry out the purposes of this Resolution provided that the right of way across Tribal trust lands known as Section 7 shall require Board of Trustees approval. AND, that said Resolution has not been modified, amended or repealed and is still in full force and effect.

RESOLUTION NO. 22 -040 Topic: CTUIR - City of Umatilla Water Infrastructure Development Agreement Department: OED Exhibits: 1C Page 3 of 3 DATED this 2<sup>nd</sup> day of May, 2022. N. Kathryn Brigham, Chair \ Board of Trustees ATTEST: Sally Kos<sup>er</sup>, Sec<sup>retary</sup> Board of Trustees Exhibit 1C: Water Infrastructure Development Agreement NAME YES NO ABSTAIN LEAVE N. Kathryn Brigham, BOT Chair Aaron Ashley, BOT Vice Chair X Sandra Sampson, BOT Treasurer X X Sally Kosey, BOT Secretary Corinne Sams, BOT Member X Boots Pond, BOT Member X Lisa Ganuelas, BOT Member X X Toby Patrick, BOT Member Lindsey X Watchman. General Council Chair  
Personal Leave

## ***WATER INFRASTRUCTURE DEVELOPMENT AGREEMENT***

This WATER INFRASTRUCTURE DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into as of this 2nd day of May, 2022 (the “**Effective Date**”) by and between the CITY OF UMATILLA, OREGON, a municipal corporation with offices at 700 Sixth Street, Umatilla, OR 97882 (the “**City**”) and the Confederated Tribes of the Umatilla Indian Reservation (“**CTUIR**”), a federally recognized Indian tribe with offices at 46411 Timine Way, Pendleton, OR 97801. The City and CTUIR are each referred to as a “**Party**,” and collectively as the “**Parties**.”

### **RECITALS**

A. The City owns and operates a water supply system comprised of water diversion, treatment and distribution facilities that provide water to residents and commercial and industrial businesses in the City.

B. The City is interested in creating a more reliable water supply and ultimately one that does not rely on continuing appropriations of groundwater and, therefore, desires to increase its ability to appropriate more of its existing Columbia River surface water rights.

C. The CTUIR owns and operates a point of diversion and related infrastructure above the McNary Dam (the “**Existing POD**”) with which they divert surface water from the Columbia River and pump it to an upland open canal (the “**Wanaket Canal**”) through which the water is then conveyed to maintain the Wanaket Wildlife Refuge and Wetlands Area (the “**Wanaket**”). The CTUIR desires to continue to maintain the Wanaket at current water delivery levels under their existing water rights, retain the ability to apply such water rights to the full extent as authorized under applicable law, and to obtain the ability to further enhance the functional habitat values of the Wanaket which, given the age and condition of its pumping plant and delivery infrastructure, would require considerable investment.

D. The City is willing to design and build for CTUIR a new point of diversion near CTUIR’s Existing POD at a location agreed to by the Parties (the “**New POD**”) together with new conveyance infrastructure, but, as a public entity, can only do so provided the City be allocated a sufficient percentage of the surface water diversion and transmission capacity from the New POD through such new facilities once completed to benefit both CTUIR and City’s water needs.

E. The Parties desire to enter into an agreement that provides for the City’s funding, design, permitting and construction of the New POD and the accompanying new conveyance infrastructure (the “**New Raw Water Pipeline**”) which will convey CTUIR water from the New POD to the Wanaket and the City’s new water treatment facility (“**WTF**”) *in exchange* for the City receiving rights to utilize a specified percentage of diversion and conveyance capacity of the New POD and the New Raw Water Pipeline (collectively, the “**New Water Facilities**”) with which the

City would be additionally entitled to divert and convey its own surface water and water rights to provide water service to its existing and future residential, commercial, and industrial customers.

## AGREEMENT

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

### ARTICLE 1 – DEFINITIONS AND INTERPRETATION

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

- (a) “**BIA**” means the Bureau of Indian Affairs.
- (b) “**Applicable Law**” means (1) any federal, tribal, state or local law, code or regulation; (2) any Governmental Approval; and (3) any consent order or decree, settlement agreement or similar agreement with a Governmental or Tribal Authority, applicable to the Parties and the New Water Facilities.
- (c) “**New Water Facilities**” has the meaning set forth in Recital E.
- (d) “**Construction Work**” means everything required to be furnished and done for and relating to the construction of the New Water Facilities under this Agreement.
- (e) “**Existing POD**” has the meaning set forth in Recital C.
- (f) “**Effective Date**” has the meaning as set forth in the opening paragraph of this Agreement.
- (g) “**Good Engineering and Construction Practice**” means the range of methods, techniques, standards and practices which are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices followed in Oregon for the design, construction and improvement of capital assets in the municipal water system industry of a kind and nature similar to the kind and nature of the New Water Facilities as provided for in this Agreement.
- (h) “**Governmental Approval**” means any permit, license, certificate, order, consent, authorization, franchise, registration, or other approval from, or required by, any Governmental Authority for the completion and operation of the New Water Facilities.
- (i) “**Governmental Authority**” means any federal, tribal state, county, municipal, or regional legislative, executive, judicial or other governmental board, agency,

authority, commission, administration, court or other body, or any official thereof, having jurisdiction over the Parties and the completion and operation of the New Water Facilities

(j) “**Interim Period**” has that meaning set forth in Section 3.1(b)(ii).

(k) “**New POD**” has that meaning set forth in Recital D.

(l) “**New Raw Water Pipeline**” has that meaning set forth in Recital E.

(m) “**New Water Facilities**” has that meaning set forth in Recital E and shall possess the capacity to pump and deliver no less than an aggregate total of 20.51 cfs of raw water from the New POD *via* the New Raw Water Pipeline to (i) the WTF, (ii) a single stub on the New Raw Water Pipeline to serve CTUIR Section 7 lands as specified by CTUIR, and (iii) an additional pipeline extending to the northernmost point of what will be the remaining operational section of the CTUIR’s existing water delivery canal to exclusively serve the Wanaket (the “**Wanaket Pipeline**”), with the Wanaket Pipeline to contain two (2) stubs to serve the Wanaket at locations as specified by the CTUIR.

(n) “**Prudent Industry Practice**” means the methods, techniques, standards and practices which are generally recognized and accepted as reasonably prudent operation, maintenance, repair, replacement and management practices in the water supply and treatment industry as followed in the northwestern region of the United States.

(o) “**Term**” has the meaning set forth in Section 2.1.

(p) “**Temporary Raw Water Pipeline**” has that meaning set forth in Section 3.1(b)(i).

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

(r) “**USACE**” means the U.S. Army Corps of Engineers.

(s) “**Wanaket**” has that meaning set forth in Recital C.

(t) “**Wanaket Canal**” has that meaning set forth in Recital C.

(u) “**Wanaket Pipeline**” has that meaning set forth in the definition of “New Water Facilities.”

(v) “WTF” means the “Water Treatment Facility” as set forth in Recital E and to which raw water will be conveyed from the New POD *via* the New Raw Water Pipeline for treatment and subsequent delivery to the City’s commercial, industrial, and residential customers.

**1.2 Interpretation.** In this Agreement, unless the context otherwise requires, in the event of any conflict between the terms and conditions of the body of this Agreement with the terms and conditions of any Exhibit, the terms and conditions of the body of this Agreement will control.

## **ARTICLE 2– TERM, EFFECTIVE DATE, TERMINATION**

**2.1 Term and Termination.** This Agreement will be in full force and effect from the Effective Date and shall remain in effect for a term of twenty-five (25) years and will automatically renew in twenty-five (25) year increments unless expressly terminated in writing and by the Parties’ mutual consent.

## **ARTICLE 3 – CONSTRUCTION, OPERATION AND OWNERSHIP OF NEW WATER FACILITIES**

### **3.1 Design, Permitting and Construction of New Water Facilities.**

#### **(a) City Responsibility.**

(i) Design, Permitting, Construction. The City will be responsible for funding and completing the design, permitting, construction and testing of the New Water Facilities. The City will provide CTUIR copies of design drawings and other project documents created throughout the City’s completion of its design and completion of the New Water Facilities. To the extent CTUIR wishes to provide responding comments to any documents generated by or related to the design and construction of the New Water Facilities, CTUIR will provide such comments at the latest two days before the City’s responding comments are due to the City’s consulting engineers or contractors.

(ii) Periodic Progress Reports. The City will provide the CTUIR (a) bi-weekly written progress updates regarding the design and completion status of the New Water

Facilities, and (b) relevant data or documents within its control which are reasonably required for such purposes.

(iii) Contractors. City will engage, and will compel all other parties completing work under the City's oversight and subject to City approval to also engage, reputable contractors experienced in the design, construction, and commissioning of the New Water Facilities. All contractors will be selected according to the City's public procurement purchasing policies, which comply with all state laws regarding public procurement of such services.

(b) ***Interim Water Service During New Water Facilities Permitting and Completion.***

(i) Wanaket Water Deliveries. Prior to completion and subsequent in-service operation of the New Water Facilities, CTUIR will continue to appropriate and convey its water and water rights to the Wanaket through its continued use and maintenance of the Existing POD and related conveyance infrastructure existing as of the Effective Date of this Agreement. However, during the City's completion of the New Water Facilities, a section of the Wanaket Canal will be completely filled in, but the removal of such section from service will be fully mitigated to avoid any change in the delivery of water to the Wanaket. During the period from approximately November 1, 2022 – March 31, 2023 when no water in the normal course is conveyed to the Wanaket, and in close coordination with CTUIR, the City will install a temporary raw water pipeline running in an east-west orientation just inside the southern boundary of the City's right of way containing Wanapa Road, as further depicted on the attached **Exhibit A** (the "**Temporary Raw Water Pipeline**"). Such pipeline will be installed to fully mitigate the removal of those sections of the Wanaket Canal (also shown on **Exhibit A**) which are located on property identified for construction of new improvements. *CTUIR's receipt of written notice from the City confirming the Wanaket Canal performs as well or better following the installation of the Temporary Raw Water Pipeline will be a condition precedent to any actions taken to remove the designated sections of the Wanaket Canal permanently from service.* Once operational, the Temporary Raw Water Pipeline will maintain raw river water flows from the Existing POD to the Wanaket until such time that the New Raw Water Pipeline is completed.

(ii) New Water Facilities Completion Dates. The City intends to complete construction, test, and begin operations of the New Water Facilities in order that the City may utilize such facilities, in part, to divert and convey raw water to the Wanaket in time and amount as currently exercised by CTUIR by April 1, 2024. However, during the interim period beginning April 1, 2023 to November 1, 2024, the CTUIR agrees to allow the City use of the Existing POD and related existing conveyance infrastructure to the Wanaket in order to ensure the City may not only (a) maintain uninterrupted conveyance of raw water to the Wanaket for irrigation use as authorized under CTUIR's existing water rights, but also, (b)

additionally provide raw water to the WTF for municipal use under the City’s existing water right permit S-41444 (once amended to include the Existing POD and the New POD). If it becomes apparent that the New Water Facilities may not be completed and fully operational by April 1, 2024, the Parties further agree that the City will continue to operate, maintain, and repair the Existing POD and related existing conveyance infrastructure to both the Wanaket and the WTF throughout the remainder of 2024 through November 1, 2024, or such additional time as necessary until the New Facilities are fully operational (therefore, beginning April 1, 2023, collectively the “**Interim Period**”). The City anticipates that all water supply infrastructure *not* located on Bureau of Indian Affairs (“**BIA**”) lands or U.S. Army Corps of Engineers (“**USACE**”) lands shall be completed by April 1, 2023 and that all water supply infrastructure located on BIA lands and USACE lands shall be completed by April 1, 2024.

(iii) City Assumption of Operation and Maintenance Costs. During the entirety of the Interim Period, the City shall assume responsibility for payment of all costs incurred related to the City’s operation, maintenance, alteration, and repair of the Existing POD and related existing conveyance infrastructure to the Wanaket and to the WTF, which costs shall include, but not be limited to, all power costs incurred as a result of the City’s appropriation and conveyance of water from the Existing POD to the Wanaket and the WTF.

(iv) Priority of Water Delivery During Interim Period. If at any time during the Interim Period the concurrent water demands of both the Wanaket and the WTF exceed the capacity of the Existing POD or the related existing conveyance infrastructure, water service to the WTF shall be curtailed to the extent necessary to ensure the maintenance of the required water service to the Wanaket.

(c) **CTUIR Responsibilities.**

(i) Right of Way Agreement. The CTUIR agrees to secure a Right of Way Easement Agreement (the “**BIA ROW**”) for any part of the New Water Facilities located on lands held by the BIA in trust for the CTUIR and to make every effort to secure BIA approval of the ROW by no later than October 15, 2022. The BIA ROW will authorize the CTUIR to assign use of the BIA ROW to the City and other utilities for the construction, operation, maintenance, repair and replacement of the New Water Facilities or other utility facilities located within the BIA ROW. The CTUIR shall grant to and otherwise confirm in the City and, therefore, the City’s employees, agents, contractors, and representatives, including any and all other parties completing work subject to City oversight and approval related to the completion of the New Water Facilities, all necessary temporary and permanent rights of access, ingress and egress, on, across and within any property interests owned outright or managed under any fiduciary or other trust responsibility of or by the BIA, to construct, install, commission, test, own, operate, maintain, and replace the New Water Facilities. The consideration for the CTUIR assignment to the City for use of the BIA ROW for the purposes described herein shall be satisfied by the City carrying out its obligations to the CTUIR under this Agreement. The BIA ROW shall comply

with the requirements of 25 C.F.R. Part 169.

(ii) CTUIR Permitting. To the extent required under Applicable Law, or as necessary in the City’s reasonable determination that such is required to best ensure the successful permitting of the New Water Facilities, all or a portion of such Governmental Approvals may be obtained in the name of the CTUIR, the CTUIR and the City, or just in the City, provided, however, in all circumstances where such permits should be additionally issued in the name of the CTUIR, the City will prepare and provide such documents for the CTUIR’s review sufficiently in advance of the CTUIR’s sole or joint submittal with the City.

(iii) CTUIR Deliverables. The following documents shall be prepared on behalf of the City by contractors selected by mutual agreement of the City and CTUIR, and shall be subject to CTUIR review as an express condition precedent to the City proceeding further with the submittal of such documents in support of the applicable permitting process:

- (A) Biological Assessment for listed salmon ESUs (*Draft and Final*)
- (B) Biological Assessment for Bull Trout (*Draft and Final*).
- (C) Joint Aquatic Resource Permit Application (*Draft and Final*)
- (D) Best Management Practice Plans including: Stormwater Management Plan, Fish Salvage Plan, and Hazardous Spill Prevention Plan.
- (E) Cultural Resources Survey.

(iv) Advisory Role. CTUIR shall assume an advisory role to benefit the City’s preparation of a draft Environmental Assessment (“EA”) for BIA or, as applicable, the USACE, including, but not limited to, timely providing the City the following:

- (A) Examples of recent EAs approved by BIA/USACE.
- (B) Consultation with BIA/USACE about EA process.
- (C) Technical review of draft EA.

(d) Tribal Historic Preservation Officer. CTUIR shall assist the City involving its coordination with the Tribal Historic Preservation Officer (the “THPO”) to navigate Section 106 of the National Historic Preservation Act (NHPA) process, including any necessary survey work. Any cultural resource survey or construction monitoring services by the THPO shall be on a fee for service basis.

**3.2 Turnover and Acceptance of the New Water Facilities.** Within thirty (30) days of the completion of construction and commission tests of the New Water Facilities, CTUIR will turn over, assign, and convey to the City, and the City agrees to accept ownership of the New Water Facilities and all real and personal property interests related to such facilities including,

but not limited to, documents identifying and/or confirming interests in real property, copies of Government Approvals, and as-built drawings. The Parties will work cooperatively to transfer any Governmental Approvals held by the CTUIR that, under Applicable Law, must be held by the City in order for the City to own, operate, maintain, repair, and replace the New Water Facilities.

**3.3 City Operation and Maintenance Responsibilities.** The City will operate and maintain the New Water Facilities and the related connections to the City Water System in a manner consistent with Prudent Industry Practice and in compliance with all Applicable Law.

**3.4 Wanaket Water Rates.** CTUIR will pay water rates to the City for water deliveries to the Wanaket that shall be no more than the CTUIR's current water supply costs provided such rates shall be periodically adjusted as necessary to reflect inflation. The City's and CTUIR's obligations with respect to billing, payments, appeals, and delinquencies will be governed by Section 7-4A-11 (Collection of Water Rates and Charges) of the Umatilla City Code (including any amendments thereto that the City may from time-to-time duly adopt). The Parties commit to developing a rate schedule for the initial 25 year term for approval by the CTUIR Board of Trustees at the time that the BIA ROW is submitted to the Board for approval.

**3.5 Other Rate Adjustments for City Potable, Commercial and Industrial Water.** In the event that the City modifies its rate structure to establish different customer classes or proposes to adopt any other change in rates or charges that do not apply equally to all classes of customers, any such rates and charges will be fairly and reasonably allocated to each customer class including, but not limited to, such customer classes as may apply to the CTUIR provided, however, that any adjustments to CTUIR rates will not affect the City's rates to provide water to the Wanaket under Section 3.4 of this Agreement. Such rates shall be established in relation to the costs incurred by the City to provide water service to such customer class.

**3.6 Measurement of Water Quantity.** The City will meter the amount of water service delivered to CTUIR facilities and provide documentation or billings of such readings within fifteen (15) days following the end of each calendar month.

**3.7 Water Meter Calibration and Inspection.** The CTUIR water meter will be of a type sufficient to meet all applicable accuracy, precision and calibration standards established by all Applicable Laws. The City, at its sole cost, will be responsible to inspect and maintain the CTUIR water meter and make inspection results available upon request from CTUIR following at least 24 hours notice by the CTUIR.

**3.8 Potable Water and Waste Water Utility Services.** The City shall construct, operate and maintain potable water and waste water infrastructure to serve CTUIR Section 7 land at a location to be determined by the Parties. The CTUIR shall be able to access and use such

utility services at the City's water rates and charges as described in section 3.5 above.

#### **ARTICLE 4 – UNCONTROLLABLE CIRCUMSTANCES**

**4.1 Relief.** The Parties to this Agreement will be excused from performing any obligation under this Agreement to the extent such failure by a Party to perform directly results from an Uncontrollable Circumstance. The occurrence of an Uncontrollable Circumstance will not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance.

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

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

(a) The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Oregon, with its principal office and place of business at the location set forth in **Section 6.1(a)**, with all requisite power and authority to enter into and perform its obligations under this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by all necessary action of the City and constitutes a legal, valid and binding obligation of the City, subject to general equity principles, enforceable against the City in accordance with its terms, except as

the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

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

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

## ARTICLE 5 – DEFAULT AND REMEDIES

**5.1 Events of Default.** The following will constitute an Event of Default by a Party to this Agreement.

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

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

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

Damages awarded and actually paid to a third party.

**5.3 Remedies in General.** In the event of any Event of Default under this Agreement, each Party will have a right to obtain specific performance of the obligations set forth in this Agreement, it being acknowledged and understood that damages and other remedies at law are not adequate. Each Non-Defaulting Party will have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover damages for any such violation or default. Such proceeding will include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate.

**5.4 No Limitation of Remedies.** The foregoing remedies will be in addition to, and not in limitation of, all available remedies at law or equity. Such available remedies will be cumulative and not alternative, and the invocation of any such right or remedy will not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

**5.5 Survival.** The provisions of this **Article 5** will survive termination of this Agreement.

## ARTICLE 6 – MISCELLANEOUS

### 6.1 Notices.

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

If to CTUIR:

Confederated Tribes of the Umatilla Indian Reservation  
Office of the Executive Director  
46411 Timine Way  
Pendleton, OR 97801  
Fax: (541) 429-7391 – same as phone number

Email: [DonSampson@ctuir.org](mailto:DonSampson@ctuir.org)

With a copy to:

Lead Attorney  
Confederated Tribes of the Umatilla Indian Reservation  
46411 Timine Way  
Pendleton, OR 97801  
Fax: (541) 429-7405 – same as phone number  
Email: [NaomiStacy@ctuir.org](mailto:NaomiStacy@ctuir.org)

If to City:

City of Umatilla  
Attn: City Manager  
P.O. Box 130  
Umatilla, OR 97882  
Fax: (541) 922-5758  
Email: [scott@umatillacity.org](mailto:scott@umatillacity.org)

With a copy to:

*By U.S. Mail and email*  
Peter D. Mohr  
MohrWater Legal PC  
1631 NE Broadway St., PMB 632  
Portland, OR 97232  
Email: [peter.mohr@mohrwaterlegal.com](mailto:peter.mohr@mohrwaterlegal.com)

(b) **Notices Given.** Notices will be deemed “given”: (i) by personal delivery, electronic mail or facsimile machine, when received pursuant to this Section 6; (ii) when accepted by overnight commercial courier; or (iii) when deposited into the United States Postal Service.

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

6.2 **Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such

invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction

**6.3 Assignment.** This Agreement is not assignable without the express written consent of the other Party.

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

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

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

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

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

*[SIGNATURES ON FOLLOWING PAGE]*

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

**CITY OF UMATILLA**

**CONFEDERATED TRIBES OF THE  
UMATILLA RESERVATION**

By: \_\_\_\_\_  
David Stockdale, City Manager

By: \_\_\_\_\_  
N. Kathryn Brigham, Chair  
Board of Trustees

ATTEST:

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

APPROVED AS TO FORM:

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

CITY OF UMATILLA, OREGON

# AGENDA BILL

**Agenda Title:**

First Reading of Ordinance No. 857 - An Ordinance Amending Title 3, Chapter 5 of the Umatilla Municipal Code to Include Short-Term Rentals

**Meeting Date:**

2022-05-17

**Department:**

City Administration

**Director:**

David Stockdale

**Contact Person:**

David Stockdale

**Phone Number:**

**Cost of Proposal:**

NA

**Amount Budgeted:**

NA

**Fund(s) Name and Number(s):**

N/A

**Reviewed by Finance Department:**

No

**Previously Presented:**

NA

**Attachments to Agenda Packet Item:**

[ORD 857.docx](#)

**Summary Statement:**

Motion to have the first reading of Ordinance No. 857 - An Ordinance Amending Title 3, Chapter 5 of the Umatilla Municipal Code to Include Short-Term Rentals.

**Consistent with Council Goals:**

Goal 1: Promote a Vibrant and Growing Community by Investing in and Support of Quality of Life Improvements.

**ORDINANCE NO. 857**

**AN ORDINANCE AMENDING TITLE 3, CHAPTER 5 OF THE UMATILLA MUNICIPAL CODE TO INCLUDE SHORT TERM RENTALS**

**WHEREAS**, Short-Term Rentals are currently not defined in the City of Umatilla’s Municipal Code, and

**WHEREAS**, the City Council has the authority and responsibility to implement, administer, and operate the licensing programs for the City, and

**WHEREAS**, in preparation for the City’s growth, the City desires to clarify sections of the code, and delegate authority to staff to make forms and practices consistent with Title 3, Business and Licensing Provisions, and

**WHEREAS**, periodic updates to municipal code are necessary to keep the language current with changes in the transient rental industry.

**NOW, THEREFORE, THE CITY OF UMATILLA, OREGON ORDAINS AS FOLLOWS:**

NOTE: Matter in **boldfaced, underlined** type in an amended section is new; matter in [~~bracketed strikethrough~~] is existing text to be omitted.

**Section 1.** Section 3-5-1: DEFINITIONS of the Umatilla Municipal Code is amended by adding a definition for “Short-Term Rental” to read:

**SHORT-TERM RENTAL – means the renting of a dwelling unit (including any accessory guest house on the same property) or portion of a dwelling unit, to any person(s) on a day-to-day basis for a period of time of up to thirty (30) consecutive nights.**

**Section 2.** Section 3-5-2: TAX IMPOSED of the Umatilla Municipal Code is amended to read:

- A. For the privilege of occupancy in any motel, **short-term rental**, or recreational vehicle park, each transient shall pay a tax in the amount of three and one-half percent (3.5%) of the rent charged by the operator.
- B. For the privilege of occupancy in any motel, on and after July 1, 2021, each transient shall pay a tourism promotion assessment charge in the amount of \$2.00 per night of occupancy up to the 30-day limitation of this chapter.
- C. **For the privilege of occupancy in any short-term rental, on and after July 1, 2022, each transient shall pay a tourism promotion assessment charge in the amount of \$2.00 per night of occupancy up to the 30-day limitation of this chapter.**
- D. ~~F~~ For the privilege of occupancy in any recreational vehicle park, on and after July 1, 2021, each transient shall pay a tourism promotion assessment charge in the amount of \$1.00 per one space night of occupancy up to the 30-day limitation of this chapter.
- E. ~~D~~ The taxes and charges imposed by subsections A., B., and C. of this section constitute a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the motel or recreational vehicle park at the time the rent is paid. The operator shall enter the tax on the operator's records when rent is collected,

if the operator keeps his/her records on the cash accounting basis, or when earned if the operator keeps his/her records on the accrual accounting basis.

- F.** ~~F.~~ If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax is not paid to the operator of the motel, **short-term rental**, or recreational vehicle park, the Tax Administrator may require that such tax shall be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services, and commodities other than the furnishing of rooms, accommodations, and parking spaces in mobile home parks or trailer parks.

**Section 3.** Section 3-5-6: REGISTRATION REQUIREMENTS of the Umatilla Municipal Code is amended to read:

- A. Operator's Registration Required: An operator of a motel, **short-term rental**, or recreational vehicle park shall register with the tax administrator, on a form provided by the administrator, within fifteen (15) days after beginning business or within thirty (30) days after passage of this chapter.
- B. Contents of Registration: The registration shall include:
1. The name under which the operator transacts or intends to transact business.
  2. The location of the motel, **short-term rental**, or recreational vehicle park.
  3. Any other information the tax administrator may require to facilitate collection of the tax.
  4. The signature of the operator.
- C. Failure to Register: Failure to register does not relieve the operator from collecting the transient room tax or tourism promotion assessment charge or a person from paying the transient room tax or tourism promotion assessment charge.
- D. Certificate of Authority:
1. The tax administrator shall issue a certificate of authority to the registrant within ten (10) days after registration.
  2. Certificates are nonassignable and nontransferable and shall be surrendered immediately to the tax administrator on cessation of business at the location named or when the business is sold or transferred. However, in the event, that the business is transferred to a partnership or corporation wherein the proprietor still retains a majority interest, then the operator is only required to register the new name and other required information with the tax administrator.
  3. Each certificate shall state:
    - a. The name of the operator.
    - b. The address of the motel, **short-term rental**, or recreational vehicle park.
    - c. The date when the certificate was issued.
    - d. This transient occupancy registration certificate signifies that the person named on the certificate has fulfilled the requirements of the Transient Room Tax Ordinance of the City by registering with the Tax Administrator for the purpose of collecting the transient room tax and tourism promotion assessment charge imposed by the City and remitting the tax to the Tax Administrator.

**Section 4.** Section 3-5-19: SUBSEQUENT REVIEW AND SUNSET PROVISIONS of the Umatilla Municipal Code is amended to read:

The amount of Tourism Promotion Assessment designated to fund tourism promotion, facility design, and construction of the Eastern Oregon Trade and Event Center, Umatilla Marina & RV Park, Big River Golf Course, and Umatilla Community Center is being added in an effort to increase and promote tourism. The additional \$1.00 per night of occupancy in any motel, **or short-term rental**, and the additional \$0.50 per night of occupancy in any recreational vehicle park designated to help fund tourism promotion, facility design, and construction will sunset on June 30, 2046, unless further extended by City Council by ordinance.

**Section 5.** Effective Date. This ordinance shall take effect on July 1, 2022.

PASSED and ADOPTED by the City Council the \_\_\_ day of May, 2022.

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

\_\_\_\_\_

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

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

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

And SIGNED in authentication by the Mayor this \_\_\_ day of May, 2022.

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

ATTEST:

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

CITY OF UMATILLA, OREGON

# AGENDA BILL

<b>Agenda Title:</b> Approval of Ordinance No. 857 - An Ordinance Amending Title 3, Chapter 5 of the Umatilla Municipal Code to Include Short-Term Rentals	<b>Meeting Date:</b> 2022-05-17
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<b>Department:</b> City Administration	<b>Director:</b> David Stockdale	<b>Contact Person:</b> David Stockdale	<b>Phone Number:</b>
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<b>Cost of Proposal:</b> NA	<b>Fund(s) Name and Number(s):</b> N/A
<b>Amount Budgeted:</b> NA	

<b>Reviewed by Finance Department:</b> No	<b>Previously Presented:</b> NA
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**Attachments to Agenda Packet Item:**

[ORD 857.docx](#)

<b>Summary Statement:</b> Motion to approve Ordinance No. 857 - An Ordinance Amending Title 3, Chapter 5 of the Umatilla Municipal Code to Include Short-Term Rentals.
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<b>Consistent with Council Goals:</b> Goal 1: Promote a Vibrant and Growing Community by Investing in and Support of Quality of Life Improvements.
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**ORDINANCE NO. 857**

**AN ORDINANCE AMENDING TITLE 3, CHAPTER 5 OF THE UMATILLA MUNICIPAL CODE TO INCLUDE SHORT TERM RENTALS**

**WHEREAS**, Short-Term Rentals are currently not defined in the City of Umatilla’s Municipal Code, and

**WHEREAS**, the City Council has the authority and responsibility to implement, administer, and operate the licensing programs for the City, and

**WHEREAS**, in preparation for the City’s growth, the City desires to clarify sections of the code, and delegate authority to staff to make forms and practices consistent with Title 3, Business and Licensing Provisions, and

**WHEREAS**, periodic updates to municipal code are necessary to keep the language current with changes in the transient rental industry.

**NOW, THEREFORE, THE CITY OF UMATILLA, OREGON ORDAINS AS FOLLOWS:**

NOTE: Matter in **boldfaced, underlined** type in an amended section is new; matter in [~~bracketed strikethrough~~] is existing text to be omitted.

**Section 1.** Section 3-5-1: DEFINITIONS of the Umatilla Municipal Code is amended by adding a definition for “Short-Term Rental” to read:

**SHORT-TERM RENTAL – means the renting of a dwelling unit (including any accessory guest house on the same property) or portion of a dwelling unit, to any person(s) on a day-to-day basis for a period of time of up to thirty (30) consecutive nights.**

**Section 2.** Section 3-5-2: TAX IMPOSED of the Umatilla Municipal Code is amended to read:

- A. For the privilege of occupancy in any motel, **short-term rental**, or recreational vehicle park, each transient shall pay a tax in the amount of three and one-half percent (3.5%) of the rent charged by the operator.
- B. For the privilege of occupancy in any motel, on and after July 1, 2021, each transient shall pay a tourism promotion assessment charge in the amount of \$2.00 per night of occupancy up to the 30-day limitation of this chapter.
- C. **For the privilege of occupancy in any short-term rental, on and after July 1, 2022, each transient shall pay a tourism promotion assessment charge in the amount of \$2.00 per night of occupancy up to the 30-day limitation of this chapter.**
- D. ~~F~~ For the privilege of occupancy in any recreational vehicle park, on and after July 1, 2021, each transient shall pay a tourism promotion assessment charge in the amount of \$1.00 per one space night of occupancy up to the 30-day limitation of this chapter.
- E. ~~D~~ The taxes and charges imposed by subsections A., B., and C. of this section constitute a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the motel or recreational vehicle park at the time the rent is paid. The operator shall enter the tax on the operator's records when rent is collected,

if the operator keeps his/her records on the cash accounting basis, or when earned if the operator keeps his/her records on the accrual accounting basis.

- F.** ~~F.~~ If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax is not paid to the operator of the motel, **short-term rental**, or recreational vehicle park, the Tax Administrator may require that such tax shall be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services, and commodities other than the furnishing of rooms, accommodations, and parking spaces in mobile home parks or trailer parks.

**Section 3.** Section 3-5-6: REGISTRATION REQUIREMENTS of the Umatilla Municipal Code is amended to read:

- A. Operator's Registration Required: An operator of a motel, **short-term rental**, or recreational vehicle park shall register with the tax administrator, on a form provided by the administrator, within fifteen (15) days after beginning business or within thirty (30) days after passage of this chapter.
- B. Contents of Registration: The registration shall include:
1. The name under which the operator transacts or intends to transact business.
  2. The location of the motel, **short-term rental**, or recreational vehicle park.
  3. Any other information the tax administrator may require to facilitate collection of the tax.
  4. The signature of the operator.
- C. Failure to Register: Failure to register does not relieve the operator from collecting the transient room tax or tourism promotion assessment charge or a person from paying the transient room tax or tourism promotion assessment charge.
- D. Certificate of Authority:
1. The tax administrator shall issue a certificate of authority to the registrant within ten (10) days after registration.
  2. Certificates are nonassignable and nontransferable and shall be surrendered immediately to the tax administrator on cessation of business at the location named or when the business is sold or transferred. However, in the event, that the business is transferred to a partnership or corporation wherein the proprietor still retains a majority interest, then the operator is only required to register the new name and other required information with the tax administrator.
  3. Each certificate shall state:
    - a. The name of the operator.
    - b. The address of the motel, **short-term rental**, or recreational vehicle park.
    - c. The date when the certificate was issued.
    - d. This transient occupancy registration certificate signifies that the person named on the certificate has fulfilled the requirements of the Transient Room Tax Ordinance of the City by registering with the Tax Administrator for the purpose of collecting the transient room tax and tourism promotion assessment charge imposed by the City and remitting the tax to the Tax Administrator.

**Section 4.** Section 3-5-19: SUBSEQUENT REVIEW AND SUNSET PROVISIONS of the Umatilla Municipal Code is amended to read:

The amount of Tourism Promotion Assessment designated to fund tourism promotion, facility design, and construction of the Eastern Oregon Trade and Event Center, Umatilla Marina & RV Park, Big River Golf Course, and Umatilla Community Center is being added in an effort to increase and promote tourism. The additional \$1.00 per night of occupancy in any motel, **or short-term rental**, and the additional \$0.50 per night of occupancy in any recreational vehicle park designated to help fund tourism promotion, facility design, and construction will sunset on June 30, 2046, unless further extended by City Council by ordinance.

**Section 5.** Effective Date. This ordinance shall take effect on July 1, 2022.

PASSED and ADOPTED by the City Council the \_\_\_ day of May, 2022.

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

\_\_\_\_\_

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

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

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

And SIGNED in authentication by the Mayor this \_\_\_ day of May, 2022.

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

ATTEST:

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