

**UMATILLA CITY COUNCIL MEETING  
AGENDA  
COUNCIL CHAMBERS 700 6TH STREET, UMATILLA, OR 97882  
NOVEMBER 17, 2020  
6:00 PM**

---

1. **MEETING CALLED TO ORDER**

2. **ROLL CALL**

3. **PLEDGE OF ALLEGIANCE**

4. **PUBLIC COMMENT** Public Comment is an opportunity for citizens to express opinions, raise issues, and provide information to the City Council. Comments presented during this segment should be on city-related issues and not on items that are scheduled for a Public Hearing on the same evening's agenda. If you wish to speak, please provide the requested information on the Sign-Up Sheet, being sure to note the topic on which you will speak. When called to the podium, begin by stating your name and address. You will have five minutes to speak, unless otherwise instructed.

5. **CITY MANAGER REPORT**

5.a **Community Development Quarterly Report** *Suggested Action: Suggestion Action: Discussion.*

*For online version click [HERE](#).*

5.b **Public Works Quarterly Report** *Suggested Action: Discussion. For online version, [please click here](#).*

5.c **Police Department Quarterly Report** *Suggested Action: Report & Discussion*

*To view the published version click [HERE](#).*

6. **NEW BUSINESS**

6.a **Resolution 25 - 2021. A Resolution authorizing the City Manager to Finalize and sign the Wanapa Road Extension Agreement with Amazon Data Services, Inc. for road and utility improvements to Wanapa Road.** *Suggested Action: Motion to Approve.*

*On November 3, 2020 Council approved two Long Term Enterprise Zone Abatement Agreements with Amazon Data Services, Inc. (ADS) for the construction of two all-new data center campuses to be located in the Industrial properties along Wanapa Road. This agreement will provide more than \$4 million in road and utility extension services to serve ADS facilities and to continue to expand these services for potential future use for CTUIR industrial businesses. This project will help ADS meet their goal of having their first building of the first new campus operational by October 2022.*

7. **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> Community Development Quarterly Report	<b>Meeting Date:</b> 2020-11-17
--	------------------------------------

<b>Department:</b> Community Development	<b>Director:</b> Brandon Seitz	<b>Contact Person:</b> Brandon Seitz	<b>Phone Number:</b> 541-922-3226x103
---	-----------------------------------	---	--

<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
--	------------------------------------

**Attachments to Agenda Packet Item:**

[CDD 1st Quarter Report, FY 20-21.pdf](#)

<b>Summary Statement:</b> Suggestion Action: Discussion.  For online version click <a href="#">HERE</a> .
--

<b>Consistent with Council Goals:</b> Goal 3: Enhance and Cultivate Relationships and Partnerships.
--



CITY OF UMATILLA

# COMMUNITY DEVELOPMENT QUARTERLY REPORT

1st Quarter, Fiscal Year 2020-2021  
Quarter Ended September 30, 2020

I'm pleased to present the Community Development Quarterly report for your review. Community Development includes Planning, Building, Economic Development and Parks & Recreation. This report is intended to provide a general update on current project and highlight events, programming and private development.

Brandon Seitz  
Community Development Director

## COMMUNITY DEVELOPMENT HIGHLIGHTS

While many projects requiring community input or involvement have been delayed due to COVID-19, the planning and building divisions have remained very busy with little or no decline in permit volume. Recreational programming has been the most impacted so far with very limited opportunities to create new programming with many of our parks being closed or limited in addition to social distancing requirements.

**Staffing Changes** - I'm pleased to announce that the City has filled the newly created Community Development Coordinator position. Please join me in welcoming Hannah Keister to the City of Umatilla team. Hannah will be developing a variety of recreational programming and organizing, coordinating special events hosted by the City, assisting with building permits and other projects as needed. Hannah previously worked as a park ranger for the Army Corp of Engineers.

A few fun facts about Hannah:

She moved cross country five years ago from Pennsylvania to Oregon, a total of 2430 miles.

She is easily spooked, but loves Halloween and scary movies.

She believes in celebrating birthday weeks because one day just isn't enough!

**Umatilla County COVID-19 Relief Grant** – The City had the opportunity to partner with Umatilla County and their County wide Small Business Grant program. The City partnered with the County and Umatilla Chamber of Commerce to help advertise the new program. As a result there were 29 awards from the new grant program within the City's urban growth boundary with \$145,000.00 in awards to local businesses.

**Electric Vehicle Charging Station** - The City applied for a grant from Pacific Power to offer an electric charging station at City Hall to residents at no cost and also to help cover the cost for the new electric vehicle for City Hall staff. City will not know if the grant is awarded until late December 2020.

**Residential Development** – The City continues to see rapid growth of new homes primarily in the South Hill neighborhood. The City also took a significant step towards assuming more building

inspections and plan review services in house. As of August 23rd, the City assumed all residential inspections responsibilities from the City of Hermiston. In the first quarter alone the building department preformed 197 inspections and plans to provide all plan review services in house by the end of the second quarter.

There are 4 large residential development in various stages of construction. The pictures below show these developments at the beginning and end of the quarter.

### Riverwood Estates



Vandelay Meadows



# Cheryl's Place





## DIVISION REPORTS

### Planning Division

±

<b>Number of Applications</b>	<b>Type of Application</b>
1	Site Plan Review
1	Zoning Permit
2	Conditional Uses
1	Partition
3	Plan Amendments
1	Property Line Adjustment
2	Replats
1	Subdivision
<b>12</b>	<b>Total Permit Issued</b>

## Building Division

Building Permits Issued 1st Quarter 2021	
Category	Sep 2020
Commercial Electrical	17
Residential Permits 1 & 2 Family D...	16
Residential Mechanical	13
Residential Electrical	13
Commercial Structural	8
Other	14

Building Permit Value 1st Quarter 2021	
Category	Sep 2020
Residential Permits 1 & 2 F...	\$33,589,719.06
Commercial Mechanical	\$8,425,445.00
Commercial Structural	\$2,925,047.50
Commercial Electrical	\$2,871,682.40
Residential Structural	\$163,609.80
Other	\$70,423.00

## Parks & Recreation Division

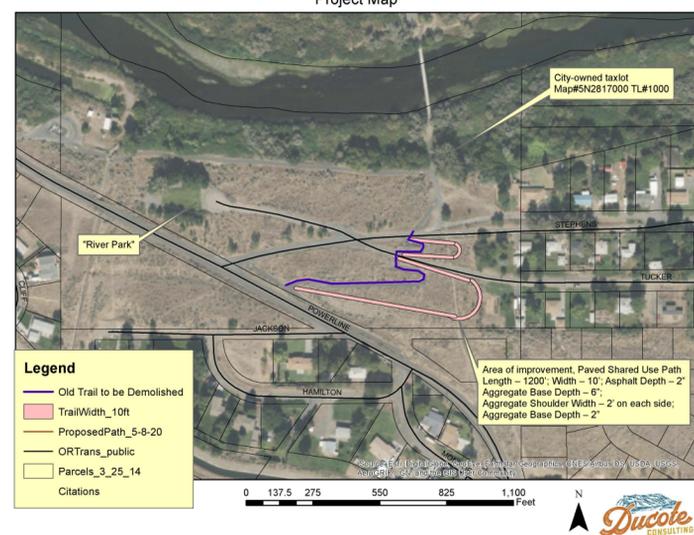
### Trail Plan Grants

The City was successful on our RTP Grant application. The RTP Project will include design and construction of a section of path that will connect the South Hill region to the downtown area. The paved path will be 10 ft wide, with a 2 ft gravel shoulder on each side, approximately 1,000 ft in length and ADA-compliant. The project will also include demolishing and removing the existing substandard asphalt path. The new path will be designed to meet bicycle and pedestrian design standards including ADA requirements.

### Parks Master Plan

Progress on the Parks Master Plan continues with over 100 responses received for the online survey. The Parks Master Plan continues to be delayed due to limited opportunities for community involvement. The first draft of the plan will be ready for review and comment from the community in the second quarter with a planned adoption in early 2021.

Umatilla 2020 RTP Grant Application, Stephens to Powerline Rd  
Project Map



## Nugent Park Baseball Field

The Community Development Department assisted Public Works with improvements to the Nugent Park baseball field. Once all of the improvements are completed the field will have a new playing surface, fence, dugout and scoreboard.



## Kiwanis Park Bathroom

Community Development also assisted Public Works with completion of the new restroom facility. The new restroom is now operational and open to the public for use. We are excited to see the park this spring once all of the grass and other areas disturbed by construction this year have grown back.



COMMUNITY DEVELOPMENT DEPARTMENT QUARTERLY REPORT

[www.umatilla-city.org](http://www.umatilla-city.org)

CITY OF UMATILLA, OREGON

# AGENDA BILL

<b>Agenda Title:</b> Public Works Quarterly Report	<b>Meeting Date:</b> 2020-11-17
---	------------------------------------

<b>Department:</b> Public Works	<b>Director:</b> Scott Coleman	<b>Contact Person:</b> David Stockdale	<b>Phone Number:</b> 541-922-3226
------------------------------------	-----------------------------------	---	--------------------------------------

<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
--	------------------------------------

**Attachments to Agenda Packet Item:**

[Public Works 1st Quarter 2021.pdf](#)

<b>Summary Statement:</b> Discussion. For online version, <a href="#">please click here</a> .
--

<b>Consistent with Council Goals:</b> Goal 3: Enhance and Cultivate Relationships and Partnerships.
--



CITY OF UMATILLA

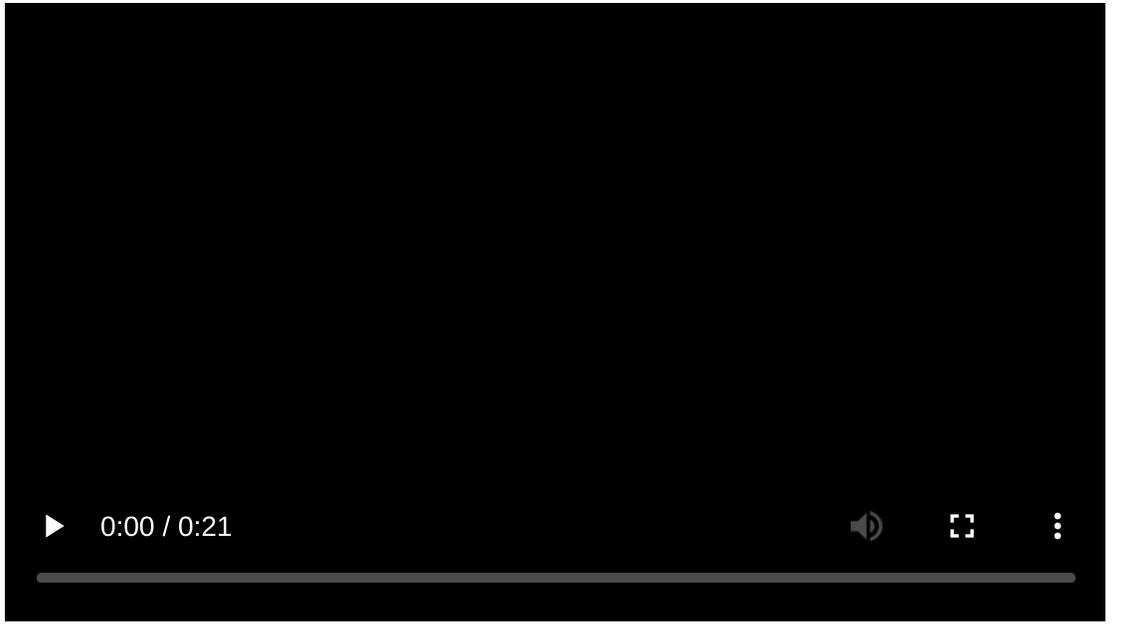
# PUBLIC WORKS DEPARTMENT QUARTERLY REPORT

**First Quarter, Fiscal Year 2020-2021**

**Quarter Ended September 30, 2020**

I will begin this Quarterly Report once again by letting you know how the department has fared through the fall of 2020. As we all know 2020 has been extremely challenging and it has been no different. All of the employees have been affected in some way. The Public Works staff are essential personnel. The water is being treated, streets need to be swept and kept clear and our employees are working there aren't a lot of places to go except outside. We have had to use separate vehicles and keep their distance from one another while still working together. They have managed to use face masks and social distancing. In all I would say that they have done a great job but there is still a lot of work to be done at disinfecting and keeping things clean.

Winter is just around the corner and we are all set to keep our snow trucks ready for the dreaded "S" & "I" words. That being said, please don't be afraid to let us know if you see something that

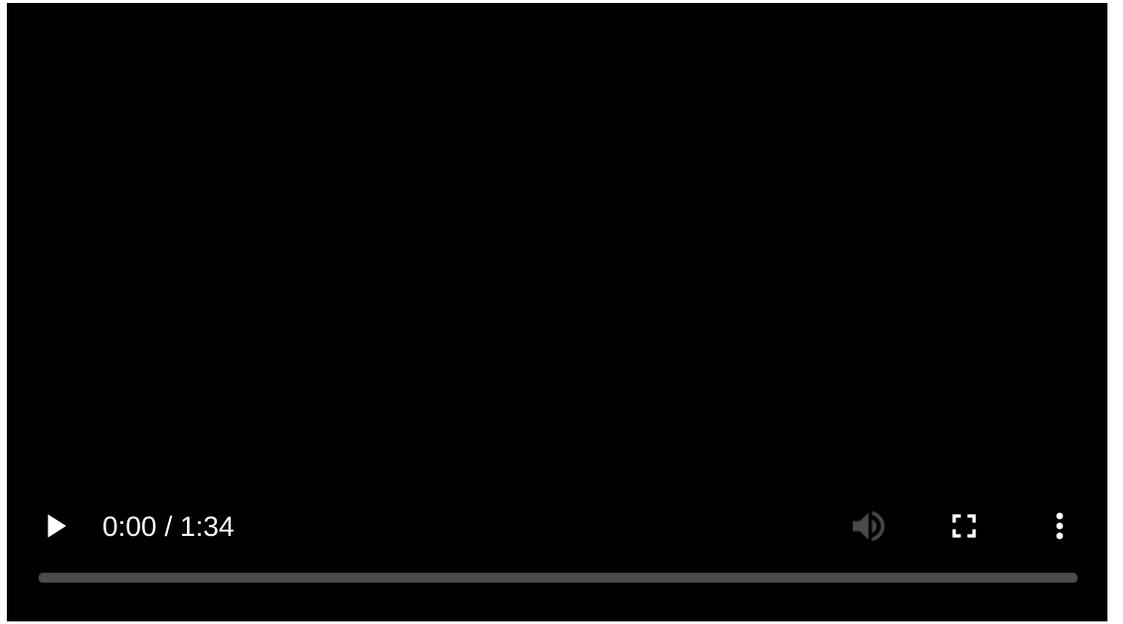


V  
D  
o  
o  
n  
e  
h  
n  
v  
t  
p  
v  
o  
v  
p  
a  
b  
t  
s

S  
L  
V  
C

# Parks Department Updates

Chris, Derek, and Raul have been winterizing our irrigation systems and getting ready for old man winter. A lot of work goes into this as you can imagine. Routine maintenance will continue as well and updates to Nugent Little League field is almost complete. Although we often hire contractors to complete a lot of the work the crew is always there to lend a helping hand and do some of the demolition and construction to cut down on the cost of the projects. They have their normal day to day projects as well as mowing and keeping the Parks and Cemetery in nice condition. In my humble opinion they do excellent work for the small staff that we currently have and look forward to adding a new employee in the future to lessen the load on them. Many projects are forecasted for the winter to repair a lot of the storm damage from our two storms this summer. We will be replanting trees in more strategic locations so that if they are to fall again they won't do so much damage to permanent structures. We are continuing to assist the Community Development Department to apply for grants and loans to continue to update and improve the City's infrastructure.



S

A

c

b

p

t

r

t

c

N

y

T

a

t

a

s

T

a

a

v

c

D

F

# POLICE DEPARTMENT

## QUARTERLY REPORT

First Quarter, Fiscal Year 2020-2021  
Quarter Ended September 30, 2020

Greetings,

Thank you for allowing me to provide this quarterly report on the activities and status of the Umatilla Police Department. Across the country, police agencies are in the spotlight more than ever. Included in this report is a summation of the most recent national police reform called "8 Can't Wait" and the status of our department in relation to that movement. The information and status is based on our current policy and legislation that was enacted by the Legislature during the Special Sessions 2020.

Even with the COVID restrictions that are being imposed on all of us, our commitment is still to provide the best possible service to you. We will continue to do our very best by being involved in the community, training to become more informed and to hone our skills, being as transparent as possible and committing to our professional oath of office.

While reading through this report, if you have any questions or want additional information, please contact me at the police department (541-922-3789).

Darla Huxel  
Chief of Police  
Huxel@umatilla-city.org

## Mission Statement and Values Statement

### **Mission Statement**

It is the mission of the Umatilla Police Department to provide a fast, effective and professional service to the residents and guests of the City of Umatilla.

We strive to accomplish our 3 R's of policing:

- Doing the RIGHT thing,
- For the RIGHT reason,
- At the RIGHT time.

All to protect constitutional guarantees and create an environment of safety, security and respect while maintaining partnerships between the community and police.

### **Values Statement**

Members of the Umatilla Police Department value integrity, honesty, teamwork, respect, Inter-agency relationships, dedication to the protections and preservation of life, harmonious relations with the public, commitment to the guidance of our youth and the success and safety of our fellow officers.

# Umatilla Police Department Activity Summary

## Patrol

During the first quarter of FY20/21, calls for service/self-initiated activity increased by 642 calls from the first quarter of FY19/20.

Response times and average time spent on each call decreased this quarter from last year during the same time period. We continue to provide 24/7 coverage.

	<u>FY20/21</u>	<u>FY19/20</u>
Total Dispatched Incidents	2763	2121
Average Response Time	7:01	8:19
Average Time per incident	36:49	46:52

## Staff Meetings

During the first quarter of FY20/21, regular staff meetings and Supervisor meetings were conducted on July 20, August 10 and September 14, 2020.

## Training

Total training hours during this quarter for department personnel was approximately 52 hours. This included 7 hours of instruction from our staff members. This number does not reflect different policy refresher training that is included in our monthly staff meetings. Topics during staff meetings include areas such as high risk/low frequency issues, mandated annual topics such as harassment in the workplace and case reviews or debriefing of officer involved incidents. Our School Resource Officer (SRO) completed training in two classes "Youth, Drugs, Alcohol & Violence" and "Tobacco, Marijuana & E-Cigarettes (TMIC)".

First quarter FY20/21 training included:

- Defensive Tactics
- Use of force
- Radar/lidar
- Taser updates
- First Aid/CPR/AED updates

## Reserve Officers

• Police Reserve Officers were limited in their activity during this quarter due to COVID 19. We have begun working with our Reserves on a individual basis to make sure they are current with required training.

## Community/School Activities

- July Events – No activities due to COVID 19
- August Events – No activities due to COVID 19
- September Events – SRO began working directly with the school district on a variety of programs/presentations.

## Juvenile Activity

During the first quarter of FY20/21, calls involving juveniles increased from first quarter FY19/20 from 11 to 19. Cases/incidents involving juveniles include all juvenile complaints/contacts, runaways and minor in possession of alcohol or tobacco. Some of these cases/incidents were referred to our Community Accountability Board which generally will see cases/incidents for first time offenders of violations or misdemeanor classed crimes. There were 3 referrals to the CAB and no referrals to the Community Truancy Board during the first quarter of FY20/21.

### **Sex Crimes/Registrations**

- There were a total of 4 sex crimes reported this quarter. Due to the COVID, we are still referring sex offender registrations directly to the sex offender registry handled by the Oregon State Police.

### **Traffic Infractions**

- During the first quarter of FY20/21 the Umatilla PD conducted 872 self-initiated traffic stops/traffic complaints. As a result, 295 traffic citations were issued, which resulted in a traffic infraction citation being issued approximately 33% of the time. This figure includes both criminal and non-criminal traffic infractions.
- The speed limit on the upper portion of Powerline Road was reduced from 45 mph to 35 mph. We incorporated a grace period and performed some "informational" stops where warnings were given in lieu of citations to assist in educating the public of the change. There were approximately 139 traffic stops conducted in the Powerline Road area and 24 separate directed patrols.
- There were no special enforcement operations during this quarter.

Traffic Citations – During the first quarter of FY20/21, there were 295 citations issued compared to 164 citations in the first quarter of FY19/20. Offenses that are tracked include:

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

In an effort to minimize COVID 19 exposure, officers were instructed to focus more on moving violations rather than equipment violations.

**Traffic Crashes** – First quarter of FY20/21 indicates a substantial increase from first quarter of FY19/20 from 19 to 34, however, the increase was a direct result of our officers responding to assist Umatilla County in 11 of those incidents. Normally, these incidents would be listed as an agency assist but instead were logged as a motor vehicle crash.

### **Person Crimes/Incidents** - First Quarter Comparisons.

FY20/21	FY19/20
58	60

### **Property Crimes/Incidents** - First Quarter Comparisons.

FY20/21	FY19/20
109	98

### **Arrests**- First Quarter comparisons.

FY20/21	FY19/20
51	77

### **Other Notable Items of Interest**

Office Administrator workload – In addition to the daily dispatching duties, our office personnel completed 69 records requests. In March, due to the COVID, we stopped providing fingerprinting services for the public. We are in the process of implementing our automated fingerprint system and should be fully operational in the next quarter.

Mental health – Officers continue to have contact with persons who are having mental health issues or are in crisis. Our FY20/21 number for calls dealing with mental/suicidal subjects have decreased from FY19/20 from 9 to 6.

Personnel update – Officer Capers received his police intermediate certification and Office Administrator/Dispatcher Baker received both her intermediate and advanced telecommunicator certifications.

Grant award status – No current grants pending.

**Umatilla Police Officer’s Association activities –**

A \$4,220.00 donation to Kickin Cancer resulting from our Golf Tournament in July

A \$100.00 donation to Domestic Violence Services

## Summary of Offenses

A review of the offenses from this first quarter compared to last first quarter shows

Property crimes saw an overall increase this quarter compared to FY 19/20 first quarter from 98 to 109. Although we saw decreases in the number of criminal mischief, drug and forgery cases we saw increases in burglary, thefts, trespassing and UUMV/UEMV cases. The majority of the property crimes occurred in the downtown residential and commercial areas.

Person crimes saw an overall decrease this quarter compared to FY 19/20 first quarter from 60 to 58.

Snapshot All Offenses Q1 FY20/21		Snapshot All Offenses Q1 FY 19/20	
Offense	Amount	Offense	Amount
Abuse	6	Abuse	10
Assaults	2	Assaults	3
Burglary	8	Burglary	5
Ciminal Mischief	11	Ciminal Mischief	13
Domestic Disturbance/VRO	30	Domestic Disturbance/VRO	29
Drug Activity	4	Drug Activity	9
DUII	4	DUII	4
Fraud/Forgery	3	Fraud/Forgery	6
Harassment/Stalking	19	Harassment/Stalking	17
Kidnapping	0	Kidnapping	0
Menancing	1	Menancing	1
Robbery	0	Robbery	0
Thefts	27	Thefts	24
Trespassing	39	Trespassing	32
UUMV/UEMV	13	UUMV/UEMV	5
Warrants	35	Warrants	32
<b>Total</b>	<b>202</b>	<b>Total</b>	<b>190</b>
Assists	95	Assists	85

## Code Enforcement - Property



In this last quarter, we responded to 98 property calls. The several of these calls were a result of debris from storms and contact with property owners regarding weeds, however, we also dealt with a large number of graffiti calls. Code Officer Coffey tries to quickly address these criminal acts of vandalism by working with the land owners in prompt removal. As I have mentioned before, please report these acts so we can work toward holding those accountable for showing such disrespect for our community.

## Code Enforcement - Animals



In this last quarter, we responded to 77 animal related calls, the majority of which involved dogs running at large or excessive barking.

If your dog is running at large, we want to get you reunited with your pet as soon as possible. Officer Coffey will attempt to locate the dogs home and/or owner, but if she can't, the dog will be taken to Pet Rescue in Hermiston.

## Code Enforcement - Vehicles



In this last quarter, we responded to 114 vehicle calls with the majority involving parking complaints. We have been diligently addressing unlawful parking which includes parking the wrong direction on a street and parking unlicensed vehicles on public ways.

With fall and winter weather rapidly approaching, we will be addressing RV's, trailers and boats parked on the street. These are all violations and will have more of an impact especially if we have snow and the plows are restricted from clearing the streets due to these vehicles.

## UPD Employee Recognition

Officer Gene Wilson was hired in August as our first School Resource Officer (SRO). Officer Wilson has come full circle as he started his law enforcement career right here in Umatilla in August 1995 as a patrol officer. In 1999, he left here and went to work at Hillsboro Police Department. His connection to Eastern Oregon became clear when he came back to this area and started working for the Hermiston Police Department in 2001. After working 5 years at Hermiston, he then spent 2 years in Afghanistan training other law enforcement officers before returning to Hermiston until his move to our department.

Officer Wilson brings with him prior experience as a SRO while in Hermiston. He has experience in developing programs specific to our youth and also has experience as a supervisor to ensure that these new programs are properly vetted and are within required standards. He is an instructor in Confrontational Simulation, a Field Training Officer and has extensive training in negotiation and mediation, CIT and police supervision.

Although this school year is unlike anything Officer Wilson has ever experienced, he has been working closely with school personnel in developing virtual presentations for students at all levels. Officer Wilson believes that engaging with the students is imperative and is thinking of ways to interact with the students. One of the ways to accomplish this, has been spending time riding on the buses assisting with food and school work delivery to the students.

Superintendent Sipe has said that "Officer Wilson is doing a tremendous job. He's learned how to adapt his instruction from the "live" manner he's been able to use before to delivering online services while we're forced into distance learning only. He's been approachable and staff have reached out to him for help on numerous occasions and he's always ready to brainstorm solutions and meet with students and families. He's been a wonderful addition to the district team and we're thankful for the City and your department for supporting this position."



# Umatilla Police Department and the "8 Can't Wait" Reform Movement

## 8 Can't Wait

This document is provided to make you aware of a national movement called 8 Can't Wait regarding police reform measures. I wanted to inform you on where the Umatilla Police Department policies are currently, compared to the 8 Can't Wait recommendations.

Below, I have listed the 8 reforms mentioned in this movement (in bold and underlined) followed with our current policies (italic font) along with some general comments shown in plain text. The 8 Can't Wait areas are not listed in any particular order or form. More information on this movement can be seen with this link. <https://8cantwait.org/>

### 1. Duty to intervene.

*Policy 300.2.1 Duty to intercede.*

*300.2.1 DUTY TO INTERCEDE Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.*

Oregon HB 4202 in summary "requires police officer or reserve officer to intervene to prevent or stop another officer engaged in certain misconduct, unless intervening officer cannot intervene safely" and requires them to "report misconduct to supervisor within 72 hours after witnessing misconduct".

This has been part of our policy for several years. With HB 4205, we will be adding to our policy the reporting requirement within 72 hours to be in compliance with the bill.

### 2. Ban chokeholds & strangleholds.

*Policy 300.1 Purpose and scope – Use of Force.*

*300.1 PURPOSE AND SCOPE This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.*

*Policy 300.3.4 Carotid Control Hold*

*300.3.4 CAROTID CONTROL HOLD The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is subject to the following:*

*(a) The officer shall have successfully completed department-approved training in the use and application of the carotid control hold.*

*(b) The carotid control hold may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:*

- 1. The subject is violent or physically resisting.*
- 2. The subject, by words or actions, has demonstrated an intention to be violent and reasonably appears to have the potential to harm officers, him/herself or others.*

*(c) The application of a carotid control hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold:*

- 1. Females who are known to be pregnant*
- 2. Elderly individuals*
- 3. Obvious juveniles*
- 4. Individuals who appear to have Down syndrome or who appear to have obvious neck deformities or malformations, or visible neck injuries*

*(d) Any individual who has had the carotid control hold applied, regardless of whether he/ she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel.*

*(e) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the subject lost consciousness as a result.*

*(f) Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.*

*(g) The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.*

*Policy 300.4 Deadly force applications*

*300.4 DEADLY FORCE APPLICATIONS Use of deadly force is justified in the following circumstances:*

*(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.*

*(b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.*

*Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:*

- 1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.*
- 2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.*

Oregon HB 4203 in summary states, an officer "may not use force that impedes normal breathing or circulation of blood of another person by applying pressure on throat or neck, unless peace officer may use deadly physical force".

The Carotid control hold is included in our current policy for the purpose of allowing its' use in conformance in HB 4203 in which the officer may use deadly physical force. As stated at the very beginning of our policy, an officer must be trained to use the hold. We do not, and have not for several years, provided training in this hold which is consistent with current practices of DPSST. The majority of our existing policy will be removed and updated to make it clear, concise and consistent with HB 4203.

\*\* The next three items are discussed jointly as the specific policies listed generally cover all of these instances.

### 3. Require de-escalation.

### 4. Required to exhaust all alternatives before shooting.

## **5. Require warning before shooting.**

### **Policy 300.3 Use of force**

**300.3 USE OF FORCE** Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

### **Policy 300.3.2 Factors used to determine use of force**

**300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE** When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).

*Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:*

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

### **Policy 466.7 Use of force – First Amendment Assembly**

**466.7 USE OF FORCE** Use of force is governed by current department policy and applicable law

Individuals refusing to comply with lawful orders (e.g., nonviolent refusal to disperse) should be given a clear verbal warning and a reasonable opportunity to comply. If an individual refuses to comply with lawful orders, the Incident Commander shall evaluate the type of resistance and adopt a reasonable response in order to accomplish the law enforcement mission (such as dispersal or arrest of those acting in violation of the law). Control devices and TASER devices should be considered only when the participants' conduct reasonably appears to present the potential to harm officers, themselves or others, or will result in substantial property loss or damage.

Force or control devices, including oleoresin capsaicin (OC), should be directed toward individuals and not toward groups or crowds, unless specific individuals cannot reasonably be targeted due to extreme circumstances, such as a riotous crowd.

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report. The type of report required may depend on the nature of the incident.

3. Our training and philosophy is geared toward using the lowest level of force in order to accomplish the task at hand. Officers are encouraged, during every encounter, to first attempt to resolve the situation using verbal de-escalation techniques when the situation allows, not just during use of force events. All patrol officers have completed a forty-hour course in crisis intervention (CIT) training except for the newer officers who will be scheduled for this training when it is re-scheduled.

4. To prohibit officers from using deadly force until all other options have been exhausted would leave the officers and the public in increased danger. If an officer sees someone engaging in deadly, life threatening behavior, the officer must be able to respond immediately to that threat level without running through the lower level techniques. For example, if we

(d) The effects of drugs or alcohol.

(e) Subject's mental state or capacity.

(f) Proximity of weapons or dangerous improvised devices.

(g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

(h) The availability of other options and their possible effectiveness.

(i) Seriousness of the suspected offense or reason for contact with the individual.

(j) Training and experience of the officer.

(k) Potential for injury to officers, suspects and others.

(l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.

(m) The risk and reasonably foreseeable consequences of escape.

(n) The apparent need for immediate control of the subject or a prompt resolution of the situation.

(o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

(p) Prior contacts with the subject or awareness of any propensity for violence.

(q) Any other exigent circumstances.

### **Policy 300.4 Deadly force applications**

**300.4 DEADLY FORCE APPLICATIONS** Use of deadly force is justified in the following circumstances:

(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.

(b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

were dealing with an active shooter situation at the school, it would be irresponsible and dangerous to expect officers to use verbal commands, control holds, Tasers, etc., before neutralizing the threat (i.e. using deadly force).

5. Verbal warnings when possible and/or feasible is reflected in several sections of current policy. Additionally, our annual training scenarios that involve use of force require that verbal commands and warnings be used.

## **6. Ban shooting at moving vehicles.**

### **Policy 300.4.1 Shooting at or from moving vehicles**

**300.4.1 SHOOTING AT OR FROM MOVING VEHICLES** Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

A prohibition on shooting at or from a moving vehicle should not be put into place as there have been instances in which that was the only viable option for an officer to defend against a potentially deadly attack. This is an option that should only be used when it is the only one available to the officer to defend against a potentially deadly attack.

## **7. Require use of force continuum.**

The force continuum is seen as being outdated. Oregon DPSST no longer trains use of force based on a continuum (discontinued in 2009) but instead trains to factors that are referenced in the U.S. Supreme court case of *Graham v. Conner*. The force continuum concept was seen as requiring an officer to go through lower level options which may not have been appropriate for the force being used against the officer or others. The concepts would suggest a stairstep approach to use of force in which each step would have to be taken before going to the next step. A stairstep approach does not accurately reflect the dynamic nature of force events.

Training now requires that Officers must consider if they are using the proper amount of force necessary to mitigate the threat or if there are less injurious options that would allow them to achieve the same result. This leads to a resolution with the least amount of force used which is consistent with the *Graham v. Conner* "objective reasonableness" standard and best practices.

**8. Require comprehensive reporting.**

*Policy 300.5 Reporting the use of force*

*300.5 REPORTING THE USE OF FORCE Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.*

*To collect data for purposes of training, resource allocation, analysis and related purposes, the Department also requires the completion of additional report forms, as specified in department policy, procedure or law.*

This has been a part of our policies and practices for several years. All uses of force are reviewed by the Lieutenant and I and are also reviewed in our management meetings. Deadly force would be reported to the FBI and the state via the District Attorney as outlined in SB 111 (Deadly Physical Force Plan).

**SUMMARY:**

As you can see, the majority of the policies that we currently have in place are equal to and/or in accordance with the recommendations with the exception of the use of force continuum. Oregon has been at the forefront of the most current best practices in training and we have subscribed to the philosophy of providing the very best training available to our officers. In addition to annual training, all officers are required to complete daily training bulletins that specifically address various aspects of our policies. This year, Officers have completed over 30 daily training bulletins that specifically deal with use of force. Our current policy manual will be updated in October to reflect the most recent police reform measures enacted in the legislative special sessions this year including those policies previously mentioned.

Since 2016, active participation with the Oregon Association Chief's of Police and the Oregon Accreditation Alliance has helped us to keep abreast of the most current trends and standards in maintaining our accreditation.

Working with Lexipol in providing up to date policies and daily training bulletins, the Umatilla Police Department takes great pride in knowing that we are in line with the best practices recognized nationally and in the state.



POLICE DEPARTMENT QUARTERLY REPORT

[www.umatilla-city.org](http://www.umatilla-city.org)

CITY OF UMATILLA, OREGON

# AGENDA BILL

<b>Agenda Title:</b> Resolution 25 - 2021. A Resolution authorizing the City Manager to Finalize and sign the Wanapa Road Extension Agreement with Amazon Data Services, Inc. for road and utility improvements to Wanapa Road.	<b>Meeting Date:</b> 2020-11-17
--	------------------------------------

<b>Department:</b> City Administration	<b>Director:</b> David Stockdale	<b>Contact Person:</b> David Stockdale	<b>Phone Number:</b>
---	-------------------------------------	---	----------------------

<b>Cost of Proposal:</b> \$4,176,132.00	<b>Fund(s) Name and Number(s):</b> Street - 04
<b>Amount Budgeted:</b> n/a (this will be added to the Supplemental Budget and next Fiscal Year's budget)	

<b>Reviewed by Finance Department:</b> Yes	<b>Previously Presented:</b> n/a
---	-------------------------------------

**Attachments to Agenda Packet Item:**

[Resolution 25.2021 for Wanapa Road Extension Agreement.docx](#)

[Wanapa Road Extension Agreement 11.12.20.DOCX](#)

[Road\\_And\\_Utility\\_Detail.pdf](#)

<b>Summary Statement:</b> Motion to Approve.  On November 3, 2020 Council approved two Long Term Enterprise Zone Abatement Agreements with Amazon Data Services, Inc. (ADS) for the construction of two all-new data center campuses to be located in the Industrial properties along Wanapa Road. This agreement will provide more than \$4 million in road and utility extension services to serve ADS facilities and to continue to expand these services for potential future use for CTUIR industrial businesses. This project will help ADS meet their goal of having their first building of the first new campus operational by October 2022.
--

<b>Consistent with Council Goals:</b> Goal 2: Promote Economic Development and Job Growth.
---

**RESOLUTION NO. 25 – 2021**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO FINALIZE AND SIGN THE WANAPA ROAD EXTENSION AGREEMENT WITH AMAZON DATA SERVICES, INC. FOR ROAD AND UTILITY IMPROVEMENTS TO WANAPA ROAD.**

**WHEREAS**, the City supports Amazon Data Services, Inc. (“ADS”) to develop and construct data centers on property abutting Wanapa Road; and

**WHEREAS**, the City of Umatilla (“City”) owns and maintains Wanapa Road; and

**WHEREAS**, the City, through the Greater Umatilla Enterprise Zone, and ADS entered into a Long Term Enterprise Zone Abatement Agreement on November 3, 2020 for ADS to construct and development more than 250,000 square feet of data center facilities; and

**WHEREAS**, Wanapa Road is a vital roadway and utility corridor that serves industrial businesses and lands and extends those services to industrial lands owned by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), services that will continue to extent to CTUIR properties through the terms of this agreement; and

**WHEREAS**, ADS agrees to fund these contracted improvements to Wanapa Road in anticipation of a condition of their land use and Building Permits requirements, and

**WHEREAS**, it is anticipated, as a requirement of their land use and building permits, that ADS will be required to establish a schedule and parameters for completion of improvements to Wanapa Road prior to issuance of a certificate of occupancy; and

**WHEREAS**, time is of the essence to complete the Wanapa Road Extension Project; and

**WHEREAS**, ADS and City have determined that it is in the best interest of both parties for City to construct the Street Improvements, subject to payment by ADS of ADS’s Proportionate Share, and further subject to the terms and conditions as described in the agreement; and

**WHEREAS**, City agrees to accept ADS’s Proportionate Share in the amount up to \$4,176,132.00, as stipulated in the agreement, and completion of the project as anticipated satisfaction of a road improvement conditions of approval and of ADS’s obligation to improve Wanapa Road in conjunction with this project; and

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

1. The City Manager is authorized to finalize and sign the Wanapa Road Extension Agreement by and between Amazon Data Services, Inc. and the City of Umatilla.

**PASSED** by the City Council and **SIGNED** by the Mayor this 17<sup>th</sup> day of July, 2020.

---

Mary Dedrick, Mayor

ATTEST:

---

Nanci Sandoval, City Recorder

## WANAPA ROAD EXTENSION AGREEMENT

This WANAPA ROAD EXTENSION AGREEMENT (this "Agreement"), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2020, is made by and between AMAZON DATA SERVICES, INC., a Delaware corporation ("Developer"), and the CITY OF UMATILLA, OREGON, an Oregon municipal corporation ("City"). Developer and the City may be referred to individually as a "Party" or collectively as the "Parties."

### RECITALS

A. Developer is the contract purchaser of approximately 180 acres of real property located in the City limits of Umatilla, Oregon, which is more particularly described as Tax Lots #5N29B00000600, #5N28A00002000 and #5N28A00002100 ("Property") and depicted in Exhibit 1. No addresses are currently assigned to the Property. Additional addresses may be attached to all or portions of the Property during the term of this Agreement.

B. Developer intends to develop one or more data center campuses and related facilities on the Property ("Project").

C. The Project site does not currently have frontage on a public street, and it is not currently served by all public facilities and services.

D. Wanapa Road is an existing public street that includes public potable water, sanitary sewer, and fiber utility lines and terminates near the Project site. The Parties agree that extending Wanapa Road and these utility lines across the Property will provide needed public facilities and services to the Project site.

E. The Parties enter this Agreement to establish the terms and conditions of extending these facilities.

F. The City agrees to cause the survey, design, engineering, permitting, and construction of the Wanapa Road Extension described in this Agreement by November 30, 2021, subject to Developer's payment to the City of Developer's Proportionate Share (as defined below), Developer's dedication of the right-of-way for the Wanapa Road Extension to the public, and further subject to the terms and conditions of this Agreement.

G. The City agrees to accept the Developer's Proportionate Share and the dedication of the Wanapa Road Extension right-of-way in full satisfaction of

Developer's obligations to improve and extend Wanapa Road in conjunction with the Project.

H. Developer agrees to pay Developer's Proportionate Share to the City and to dedicate the Wanapa Road Extension right-of-way to the public, subject to the City causing the survey, design, engineering, and construction of the Wanapa Road Extension described in this Agreement by November 30, 2021, and further subject to the terms and conditions of this Agreement.

I. Developer and the City agree to be bound by the terms and conditions of this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### Section 1. Recitals

The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth in this Agreement.

### Section 2. Exhibits

All exhibits referenced in this Agreement are incorporated into and made a part of this Agreement as if fully set forth in this Agreement.

### Section 3. Wanapa Road Extension Defined

When utilized in this Agreement, the term "Wanapa Road Extension" means an approximately 3,200-foot long eastward extension of Wanapa Road from its existing terminus east of the correctional facility within a 100-foot right-of-way on the north side of the Property ("Wanapa Road Extension Right-of-Way"), as depicted in Exhibit 1 (route map) and Exhibit 2 (cross-section). The Wanapa Road Extension includes all of the following improvements:

Section 3.01. Street Improvements. The Wanapa Road Extension includes street improvements consistent with the cross-section of the existing Wanapa Road between Beach Access Road and its existing terminus as of the date of this Agreement. This cross-section requires a 32-foot wide asphalt section (including two 12-foot wide lanes and two four-foot wide shoulders), with three-foot wide gravel

shoulders on each side but does not require curb, gutter, sidewalk, landscape strip, street trees, street lights, bicycle lanes, or on-street parking.

Section 3.02. Utility Improvements. The Wanapa Road Extension also includes extensions of the public potable water, sanitary sewer, and fiber lines from the existing right-of-way for Wanapa Road over, under, across, and through the Wanapa Road Extension Right-of-Way, also as depicted in Exhibit 2.

#### Section 4. Design, Construction, and Dedication of Wanapa Road Extension

4.01. Contractor Selection and Requirements. The City will solicit bids from reputable firms in accordance with the City's adopted Policy for Public Contracting and Purchasing for the cost to survey, design, engineer, permit, and construct the Wanapa Road Extension. Once the City obtains bids in response to this solicitation, the City will identify and accept the lowest-cost, responsive bid as its preferred bid ("Bid").

4.02. Project Tasks. The City will substantially complete, or cause the substantial completion of, the surveying, design, engineering, permitting, and construction of the Wanapa Road Extension in accordance with this Agreement and within the budget identified in the Bid.

4.03. Costs. Pursuant to the procedure in Section 5 of this Agreement, Developer will reimburse the City for the amounts the City actually incurs in connection with completing the Wanapa Road Extension that are not otherwise funded by a State of Oregon grant, up to the amount of the Bid. Developer will also reimburse the City for 50% of the total amount the City actually incurs for cost overruns above the amount of the Bid, provided those cost overruns are not the fault of the City ("Developer's Share of Overruns"). Developer has no liability for cost overruns that are the fault of the City. The Bid, together with Developer's Share of Overruns, will be referred to as "Developer's Proportionate Share." The Parties agree that the foregoing Developer's Proportionate Share will be Developer's entire proportionate share obligation for the Wanapa Road Extension and Developer's maximum contribution under this Agreement.

4.04. Schedule and Milestones. The City will substantially complete construction of the Wanapa Road Extension by November 30, 2021. To remain on track for this completion date, the City will achieve the following project milestones (together, "Milestones" or individually, "Milestone") by the following dates. The Parties agree that time is of the essence in achieving each of these Milestones. The

City agrees to provide Developer updates on the 1st and 15th of each month as to its progress in achieving these Milestones.

A. Completion of Survey of Wanapa Road Extension Right-of-Way. The City will cause the completion of a survey by a licensed surveyor of the Wanapa Road Extension Right-of-Way no later than November 30, 2020.

B. Commencement of Road and Utility Design. The City will cause the commencement of the design for the Wanapa Road Extension no later than December 7, 2020.

C. Completion of Road and Utility Design. The City will cause the completion of 100 percent complete construction documents for the Wanapa Road Extension no later than March 3, 2021.

D. Final Permit List. The City will prepare a list of all required permits associated with construction of the Wanapa Road Extension no later than December 31, 2020.

E. Environmental Permitting. The City will apply for approval of all required state and federal permits authorizing wetland and water quality impacts associated with the Wanapa Road Extension no later than January 22, 2021, and such approvals will become final and not appealed, or if appealed, are upheld on appeal, no later than April 23, 2021.

F. Selection of Contractor. The City will select a contractor for construction of the Wanapa Road Extension pursuant to the bid process provided in Section 4.01 of this Agreement by advertising the Wanapa Road Extension for bid no later than April 8, 2021, opening the bids no later than April 23, 2021, and selecting the contractor no later than April 30, 2021.

G. Commencement of Construction. The City will cause the commencement of on the ground construction of the Wanapa Road Extension no later than May 19, 2021.

H. Completion of Construction. The City will cause the substantial completion of the construction of the Wanapa Road Extension no later than November 30, 2021 ("Substantial Completion Deadline").

4.05. Additional Restrictions. The City will complete the Wanapa Road Extension in compliance with the construction documents approved by the City for

the Wanapa Road Extension and all applicable federal, state, and City laws, rules, regulations, and ordinances.

4.06. Purchase of Property. Developer will purchase the Property, or at least that portion of the Property where the Wanapa Road Extension Right-of-Way will be located, before January 31, 2021.

4.07. Temporary Construction Easement. In consideration of the City's completion of the Wanapa Road Extension, Developer hereby grants to the City, without warranty, a non-exclusive temporary construction easement ("Easement") through, over and upon the Wanapa Road Extension Right-of-Way for the sole and exclusive purpose of performing the work associated with the Wanapa Road Extension. The Easement will automatically terminate upon completion of the Wanapa Road Extension and Developer's dedication of the Wanapa Road Extension Right-of-Way to the public, as provided by Section 4.11 of this Agreement. Notwithstanding this grant of Easement, Developer reserves the right to utilize a 45-foot wide accessway within the Wanapa Road Extension Right-of-Way for travel by Project construction vehicles, as described in Section 4.08 of this Agreement.

4.08. Accessway for Developer. Beginning January 15, 2021, and continuing through Developer's dedication of the Wanapa Road Extension Right-of-Way to the public, the City will require its contractor to complete and maintain a minimum 45-foot wide accessway (35-foot wide roadway and a 10-foot wide setback from the property line) within the Wanapa Road Extension Right-of-Way to allow Developer and its assigns two-way vehicular access between existing Wanapa Road and the portion of the Property where Developer is developing the Project. The Accessway will remain open at all times for Developer's vehicular traffic.

4.09. Insurance. During any activities pursuant to this Agreement, the City will maintain and ensure that the City's contractors have and maintain in force (i) Commercial General Liability insurance with a per occurrence and aggregate limits of not less than \$2,000,000; (ii) Commercial Automobile Liability insurance covering owned, hired, and non-owned vehicles in an amount of not less than \$1,000,000; and (iii) Statutory Workers Compensation insurance covering all employees as required by law. Except for Workers Compensation Insurance, Developer will be named as an additional insured on all such policies.

4.10. Liens. The City will keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under the City, and will indemnify, hold harmless and agree to defend Developer from any liens that may be placed on the Property pertaining to any work

performed, materials furnished, or obligations incurred by, through, for, or under the City or the City's contractor. Any such liens will be released of record within thirty (30) days.

4.11. Dedication of Wanapa Road Extension Right-of-Way. Upon substantial completion of the Wanapa Road Extension in accordance with this Agreement, Developer will dedicate, and the City will accept, the Wanapa Road Extension Right-of-Way, including the street and utility facilities thereon or thereunder, for use by the public for transportation and utilities. Upon such dedication and acceptance, the City will assume all costs for maintenance, insurance, and liability of the Wanapa Road Extension Right-of-Way, including the Wanapa Road Extension and utilities located on or under such lands being accepted. At such time, City will also provide Developer with the certification of a duly authorized City representative that the Wanapa Road Extension has been substantially completed in accordance with this Agreement.

## Section 5. Wanapa Road Extension Costs; Reimbursement Procedure

5.01. Wanapa Road Extension Costs Defined. The "Wanapa Road Extension Costs" will consist of the actual hard and soft costs associated with the improvements identified as part of the Wanapa Road Extension in the project detail sheet in Exhibit 3.

5.02. Reimbursement Procedure. Pursuant to the following procedure, Developer will reimburse the City for the Developer's Proportionate Share of the Wanapa Road Extension Costs incurred by the City:

A. The City will submit to Developer each invoice approved by it reflecting costs charged to the City for completion of all or a portion of the Wanapa Road Extension Costs, together with an itemized explanation of the aspect of the Wanapa Road Extension reflected in the invoice ("Reimbursement Request").

B. Within 14 days after receipt of the City's Reimbursement Request, Developer will review same and either: (i) determine the Reimbursement Request to be reasonable; or (ii) determine the Reimbursement Request to be unreasonable and provide written notice of its specific objections to the City. Developer will only object to the Reimbursement Request if it includes line items that are material additions or changes to the Wanapa Road Extension as defined in this Agreement that have not been previously authorized by Developer, or if the cost for time and materials is, without sufficient justification, significantly higher than Developer's experience in the marketplace. Within 14 days after receipt of Developer's written

objections, the Parties will meet to discuss a resolution. The amount of Developer's reasonable determination or the Parties' mutual agreement will be the amount of the reimbursement awarded in response to the specific Reimbursement Request ("Reimbursement").

C. Within 30 days after Developer's reasonableness determination or the Parties' mutual agreement, Developer will pay an amount equal to the Reimbursement to the City. Developer's share of the Wanapa Road Extension Costs will be capped at the lesser of Developer's Proportionate Share or the actual Wanapa Road Extension Costs incurred by the City and approved for Reimbursement pursuant to this Section 5.

## Section 6. Remedies in Event of City Default

6.01. Developer Self-Help. If the City defaults in the performance of any obligation under Section 4 of this Agreement, including without limitation, failing to achieve one or more Milestones within 14 days after the date established for that Milestone(s) in Section 4.04, Developer will have the right, but will not be obligated, to perform such obligation, notwithstanding the fact that no specific provision for such performance by Developer is made in this Agreement. To facilitate this possibility, the City will ensure that the work performed on the Wanapa Road Extension by each contractor, including any subcontractor (inclusively, "Contractor"), will be pursuant to a written contract, subcontract, or purchase agreement between the City and the Contractor. This contract will contain provisions that require the Contractor to continue and complete its work on the Wanapa Road Extension for Developer under the same terms in the event Developer elects the self-help remedy under this Section 6.01 and requests that the Contractor do so. As an alternative remedy, Developer may elect to hire a new contractor to complete the Wanapa Road Extension. If Developer is making this election, Developer will provide advance written notice to the City. Within 10 days after the City's receipt of this notice, the City will assign any permits or consents to complete the Wanapa Road Extension to Developer. If Developer elects either of the self-help remedies in this subsection, Developer will not materially modify the scope of the Wanapa Road Extension to be completed by the Contractor or Developer's new contractor without the City's written consent, which consent will not be unreasonably withheld. In the event Developer's self-help pursuant to this Section 6.01 causes Developer to incur reasonable expenses in excess of Developer's Proportionate Share, the City will reimburse Developer for same, within 14 days after demand. Developer may exercise the foregoing right without waiving any other of its rights or releasing the City from any of its obligations under this Agreement.

6.02. Failure to Timely Complete Construction. In the event the City fails to cause substantial completion of construction of the Wanapa Road Extension, i.e., achieve the Milestone in Section 4.04.H, within 30 days after the Substantial Completion Deadline, and Developer has not exercised the self-help remedy pursuant to Section 6.01, the City will pay to Developer \$500.00 for each day, or portion thereof, of delay commencing on the first day after the Substantial Completion Deadline until substantial construction of the Wanapa Road Extension occurs (“Delay Liquidated Damages”). The City will pay the Delay Liquidated Damages to Developer within 14 days after demand. The City’s contract with the Contractor will include a provision that obligates Contractor to pay to the City (or the Developer, if Developer has exercised the self-help remedy in Section 6.01 of this Agreement) an amount at least equal to the Delay Liquidated Damages under the circumstances described in this subsection.

## Section 7. Reservation of Rights

Notwithstanding Developer’s commitment to pay Developer’s Proportionate Share pursuant to the terms of this Agreement, Developer reserves any and all rights to challenge any additional exactions imposed by the City through this Agreement or in subsequent applications for the Project.

## Section 8. Continuing Effect of Agreement

In the case of any change in regional policy or federal or state law or other change in circumstance that renders compliance with this Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of this Agreement, but only if such effect does not prejudice the substantial rights of either Party under this Agreement. If the substantial rights of either Party are prejudiced by giving effect to the remainder of this Agreement, then the Parties will negotiate in good faith to revise this Agreement to give effect to its original intent. If, because of a change in policy, law or circumstance, this Agreement fails in its essential purpose then the Parties will be placed into their original position to the extent practical.

## Section 9. Good Faith and Reasonableness

The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable will only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party

being given “sole discretion” or being allowed to make a decision in its “sole judgment.”

#### Section 10. Further Assurances

Each Party will, without further consideration, execute and deliver any and all additional papers, documents and other assurances, and will do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the Parties. Without limiting the foregoing, the Parties agree that compliance with this Agreement fully satisfies Developer’s obligations to contribute to the Wanapa Road Extension and, for purposes of obtaining future permits or certificates of occupancy for data center buildings in the Project, Developer will have no further obligations to fund or complete improvements to the Wanapa Road Extension.

#### Section 11. Nature of Agreement

The Parties agree that this Agreement does not constitute or concern the adoption, amendment, or application of the Statewide Planning Goals, a comprehensive plan provision, or a land use regulation, the City and Developer acknowledging and agreeing that any and all land use approvals required for the Project and/or the Wanapa Road Extension are to be obtained (or have been obtained) in due course on another date in accordance with all applicable laws and regulations.

#### Section 12. Modification or Amendment

No amendment, change or modification of this Agreement will be valid, unless in writing and signed by the Parties.

#### Section 13. Indemnification

13.01. City Indemnity of Developer. The City will indemnify, defend and hold harmless Developer and its officials, employees, affiliates, shareholders, and agents from and against all claims, losses, demands, damages, payments, suits, actions, costs, expenses, and judgments of every nature and kind brought or recovered against Developer by reason of an act or omission of the City and its contractor(s) and agents in the performance of its obligations under this Agreement. The City’s obligations under this Section 13 do not include any claims to the extent arising from the gross negligence or willful misconduct of Developer and/or Developer’s officials, employees, and/or agents. This Section 13 will not be construed to negate

Developer's obligation to pay the Developer's Proportionate Share as provided in this Agreement.

13.02. Developer Indemnity of City. In the event Developer exercises the self-help remedy pursuant to Section 6.02 of this Agreement, Developer will indemnify, defend and hold harmless the City and its officials, employees, and agents from and against all claims, losses, demands, damages, payments, suits, actions, costs, expenses, and judgments of every nature and kind brought or recovered against the City by reason of an act or omission of Developer and its contractor(s) and agents in the performance of its obligations under Section 6.02 of this Agreement. Developer's obligations under this Section 13 do not include any claims to the extent arising from the gross negligence or willful misconduct of the City and/or the City's officials, employees, and/or agents nor do they preclude Developer from seeking Delay Liquidated Damages directly from the Contractor.

#### Section 14. Relationship

Nothing in this Agreement will be construed to create an agency relationship or a partnership or joint venture between the Parties.

#### Section 15. Burden and Benefit; Assignment

The covenants and agreements contained in this Agreement are binding upon and inure to the benefit of the Parties and their successors and assigns. Developer covenants and agrees that it will notify any successor in interest of Developer's obligations under this Agreement. Neither Party will assign its obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned, or delayed.

#### Section 16. No Continuing Waiver

The waiver of either Party of any breach of this Agreement will not operate or be construed to be a waiver of any subsequent breach.

#### Section 17. Governing Laws/Venue

The laws of the State of Oregon will govern the interpretation and enforcement of this Agreement without regard to principles of conflicts of laws. In the event any dispute arising out of this Agreement results in litigation, the sole and exclusive venue will be in the Umatilla County Circuit Court. The Parties will seek to amicably resolve any disputes arising out of this Agreement. ALL PARTIES, BY

EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 18. Time of Essence

Time is expressly declared to be of the essence in this Agreement.

Section 19. Notices

All notices for this Agreement will be given in writing, will refer to this Agreement and will be personally delivered or sent by registered or certified mail (return receipt requested) to the address set forth below. Any party may from time to time change its notice address by giving the other party notice of the change in accordance with this Section 19.

To the City: David Stockdale, City Manager  
City of Umatilla  
700 Sixth Street  
PO Box 130  
Umatilla, Oregon 97882

With a copy to: Tonkon Torp LLP  
Attn: Rachel Atchison  
888 SW Fifth Avenue, Suite 1600  
Portland, Oregon 97204  
email: rachel.atchison@tonkon.com

To Developer: Amazon Data Services, Inc.  
410 Terry Avenue North  
Seattle, Washington 98109  
Attn: General Counsel (AWS Real Estate PDX63)

With a copy to: Seth King  
Perkins Coie LLP  
1120 NW Couch Street, Tenth Floor  
Portland Oregon 97209  
sking@perkinscoie.com

With a copy via email to: [NADCRent@amazon.com](mailto:NADCRent@amazon.com)

## Section 20. Rights Cumulative

All rights, remedies, powers, and privileges conferred under this Agreement on the Parties are cumulative of and in addition to, but not restrictive or in lieu of, those conferred by law.

## Section 21. Counterparts

This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of such counterparts together will constitute one and the same instrument. All such fully executed counterparts will collectively constitute a single agreement. The Parties expressly agree that if the signature of Developer and/or the City on this Agreement is not an original, but is a digital, mechanical, or electronic reproduction (such as, but not limited to, a photocopy, fax, e-mail, PDF, Adobe image, JPEG, telegram, telex, or telecopy), then such digital, mechanical, or electrical reproduction is as enforceable, valid, and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by their signatory. Further, the Parties may deliver executed signature pages to this Agreement by electronic means to the other party, and the electronic copy will be deemed to be effective as an original.

## Section 22. No Third-Party Beneficiaries

This Agreement is made entirely for the benefit of the Parties, their successors and assigns, and no third person or party has any rights hereunder whether by agency, as a third party, or otherwise.

## Section 23. Merger

This Agreement and its attached exhibits set forth the entire understanding among the Parties hereto with respect to the subject matter of this Agreement, there being no terms, conditions, warranties, or representations with respect to its subject matter other than as contained in this Agreement.

## Section 24. Headings

Any titles of the sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

## Section 25. Calculation of Time

All periods of time referred to in this Agreement include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Oregon, the period will be extended to the next day that is not a Saturday, Sunday, or such holiday.

## Section 26. Construction

In construing this Agreement, singular pronouns will be taken to mean and include the plural and the masculine pronoun will be taken to mean and include the feminine and the neuter, as the context may require.

## Section 27. Severability

If any clause, sentence, or other portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

## Section 28. Condition of City Obligations

All City obligations pursuant to this Agreement that require the expenditure of funds are contingent upon future appropriations by the City as part of its budget process. Nothing in this Agreement implies an obligation to appropriate any such monies.

## Section 29. Interpretation of Agreement

This Agreement is the result of arm's length negotiations between the Parties and will not be construed against any Party by reason of its preparation of this Agreement.

## Section 30. Capacity to Execute; Mutual Representations

The Parties each warrant and represent to the other that this Agreement constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, each Party represents that its governing authority has authorized the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting. Each Party represents to the other that neither the execution and delivery of this Agreement, nor performance of the obligations under this Agreement will conflict

with, result in a breach of, or constitute a default under, any other agreement to which it is a party or by which it is bound.

Section 31. Effective Date

This Agreement will take effect upon execution and approval by both Parties.

IN WITNESS WHEREOF, the Parties have set their hands as of the day and year first written above.

DEVELOPER:

AMAZON DATA SERVICES, INC.,  
a Delaware corporation

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY:

CITY OF UMATILLA, OREGON,  
an Oregon municipal corporation

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit 1

Map of Wanapa Road Extension Route

Exhibit 2

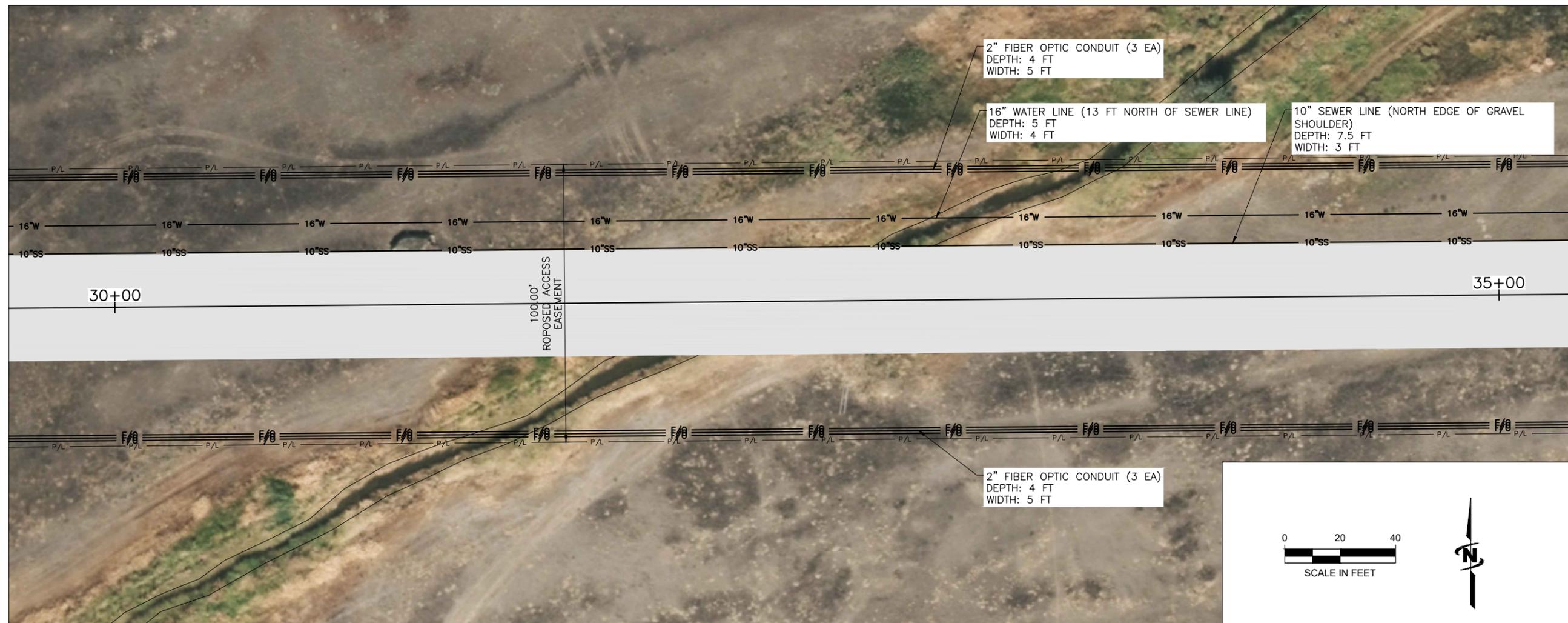
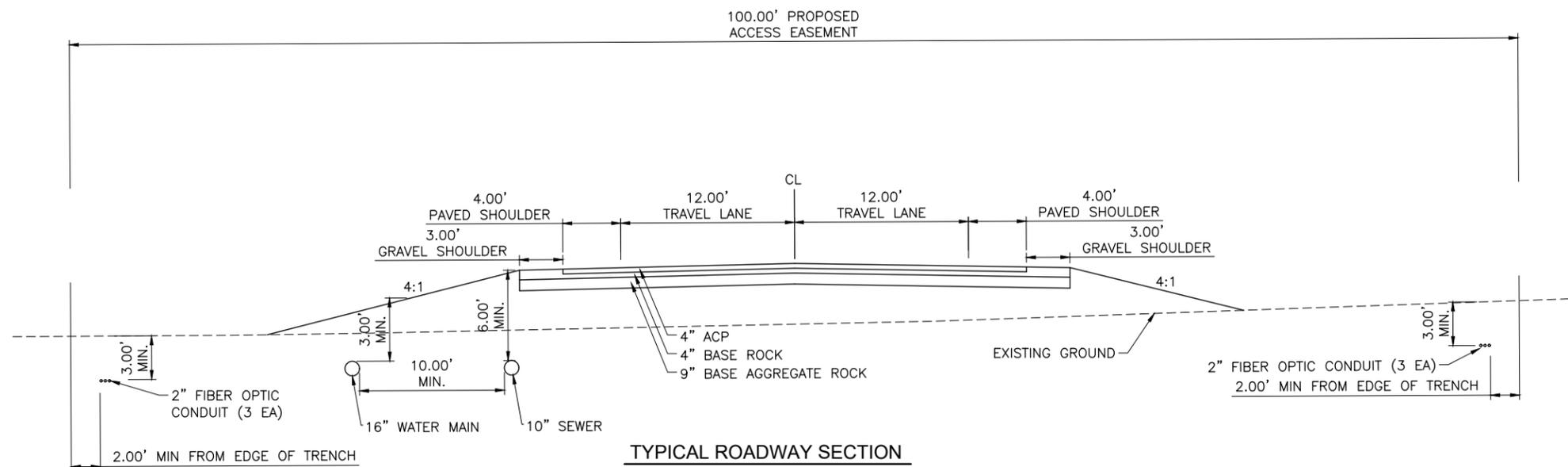
Cross-Section of Wanapa Road Extension Right-of-Way

DRAFT

Exhibit 3

Project Detail

Project consists of at least the following services:  
Traffic Control, Clearing & Grubbing, Embankment, Ditch Excavation, Aggregate Base, Rock Excavation, Hydrant installation, 16" valves, 6" valves, 3,200 linear feet of 16" waterline, 480 linear feet of 6" waterline, manhole installation, 3,200 linear feet of 10" sewer line, 16,000 linear feet of 1" conduit, wetland work, seeding, surveying, construction, and mobilization.



J-U-B ENGINEERS, INC.  
1201 Adams Avenue  
La Grande, OR 97850  
Phone: 541.963.7100  
www.jub.com

PRELIMINARY PLANS  
NOT FOR CONSTRUCTION

REUSE OF DRAWINGS AND THE IDEAS AND DESIGNS INCORPORATED HEREIN ARE THE PROPERTY OF J-U-B ENGINEERS, INC. AND IS NOT TO BE USED IN WHOLE OR PART FOR ANY OTHER PROJECT WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF J-U-B ENGINEERS, INC.

NO.	REVISION	DESCRIPTION	BY	APPR.	DATE

WANAPA RD AND UTILITY EXTENSION  
CITY OF UMATILLA

ROAD AND UTILITY DETAIL

FILE: ROAD\_AND\_UTILITY\_DETAIL  
JUB PROJ. #: 33-20-023  
DRAWN BY:  
DESIGN BY:  
CHECKED BY:  
AT FULL SIZE, IF NOT ONE INCH SCALE ACCORDINGLY  
LAST UPDATED: 10/22/2020

SHEET NUMBER:  
**FIG-1**

Plot Date: 10/22/2020 2:59 PM Plotted By: William Gillen  
Date Created: 10/22/2020 JUB.COM\CENTRAL\Clients\GRUMA\UTILITY PROJECTS\33-20-023 WANAPA RD DESIGN\CAD\EXHIBITS\ROAD AND UTILITY DETAIL.DWG