

MORROW COUNTY BOARD OF COMMISSIONERS MEETING AGENDA

Monday, June 29, 2020 at 2:00 p.m.

Bartholomew Building Upper Conference Room

110 N. Court St., Heppner, Oregon

See Electronic Meeting Information on Page 2

1. **Call to Order and Pledge of Allegiance – 2:00 p.m.**
2. **City/Citizen Comments:** Individuals may address the Board on topics not on the agenda
3. **Open Agenda:** The Board may introduce subjects not on the agenda
4. **Consent Calendar**
 - a. Oregon Public Service Retirement Plan Coverage Agreement
5. **Business Items**
 - a. Resolution No. R-2020-14: First Amendment to Amazon Long-Term Rural Enterprise Zone Agreement (December 4, 2017)
 - b. Resolution No. R-2020-15: Second Amendment to Amazon Long-Term Rural Enterprise Zone Agreement (December 4, 2017)
 - c. Resolution No. R-2020-16: First Amendment to Amazon Long-Term Rural Enterprise Zone Agreement (December 12, 2018)
 - d. Resolution No. R-2020-17: First Amendment to Amazon Long-Term Rural Enterprise Zone Agreement (April 17, 2020)
 - e. Resolution No. R-2020-18: Klean Industries Boardman LLC Application for Long-Term Rural Enterprise Zone Exemption
 - f. Resolution No. R-2020-19: Morrow County and Port of Morrow Joint Sponsorship of an Application for Designation of an Enterprise Zone
 - g. Morrow County Professional Services Contract, “CREZ Manager – Short-Term” with Greg Sweek to administer the State of Oregon application process for creation of CREZ III
 - h. Pat and Silvia Suter Partition Plat
6. **Executive Session:** Pursuant to ORS 192.660(2)(f) – To consider information or records that are exempt by law from public inspection
7. **Signing of documents**
8. **Adjournment**

Agendas are available every Friday on our website (www.co.morrow.or.us/boc under “Upcoming Events”). Meeting Packets can also be found the following Monday.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Roberta Lutchter at (541) 676-5613.

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the meeting; however, the Board may consider additional subjects as well. This meeting is open to the public and interested citizens are invited to attend. Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media. The Board may recess for lunch depending on the anticipated length of the meeting and the topics on the agenda. If you have anything that needs to be on the agenda, please notify the

Board office before noon of the preceding Friday. If something urgent comes up after this publication deadline, please notify the office as soon as possible. If you have any questions about items listed on the agenda, please contact Darrell J. Green, County Administrator at (541) 676-2529.

Electronic Meeting Information

Morrow County Board of Commissioners is inviting you to a scheduled Zoom meeting. Join Zoom Meeting

<https://zoom.us/j/5416762546>

PASSWORD: 97836

Meeting ID: 541-676-2546

Zoom Call-In Numbers for Audio Only:

- 1-346-248-7799, Meeting ID: 541 676 2546#
- 1-669-900-6833, Meeting ID: 541 676 2546#
- 1-312-626-6799, Meeting ID: 541-676-2546#
- 1-929-436-2866, Meeting ID: 541-676-2546#
- 1-253-215-8782, Meeting ID: 541-676-2546#
- 1-301-715-8592, Meeting ID: 541-676-2546#

Meeting ID: 541-676-2546

Find your local number: <https://zoom.us/u/abD3eWKYVW>



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
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(For BOC Use)
Item #
4a

Please complete for each agenda item submitted for consideration by the Board of Commissioners
(See notations at bottom of form)

Presenter at BOC: Kate Knop
Department: Finance Department
Short Title of Agenda Item:
(No acronyms please)

Phone Number (Ext): ext 5302
Requested Agenda Date: 06/29/2020

Oregon Public Service Retirement Plan Coverage Agreement (PERS)

This Item Involves: (Check all that apply for this meeting.)
Order or Resolution
Ordinance/Public Hearing:
1st Reading 2nd Reading
Public Comment Anticipated:
Estimated Time:
Document Recording Required
Contract/Agreement
Appointments
Update on Project/Committee
Consent Agenda Eligible
Discussion & Action
Estimated Time: 1
Purchase Pre-Authorization
Other

N/A
Purchase Pre-Authorizations, Contracts & Agreements
Contractor/Entity:
Contractor/Entity Address:
Effective Dates - From: Through:
Total Contract Amount: Budget Line:
Does the contract amount exceed \$5,000? Yes No

Reviewed By:
Department Director Required for all BOC meetings
Administrator Required for all BOC meetings
County Counsel *Required for all legal documents
Finance Office *Required for all contracts; other items as appropriate.
Human Resources *If appropriate

*Allow 1 week for review (submit to all simultaneously). When each office has notified the submitting department of approval, then submit the request to the BOC for placement on the agenda.

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Counsel, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET
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1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

The attached Oregon Public Service Retirement Plan Coverage Agreement is a result of negotiation terms agreed upon with Teamsters Local 223 representing twenty - five Sheriff Office County Employees. The agreement establishes that Morrow County is an employer of public employees, and will begin participating as a PERS-covered employer effective July 1, 2020.

The Board of Commissioners approved Resolution R-2020-5 on April 8, 2020 and then submitted the application to the PERS program for the Sheriff's Office County Employees who are represented by Teamster Local 223 and are hired on or after July 1, 2020.

The approval of the Agreement is time sensitive and will be submitted to PERS with an effective date of July 1, 2020.

2. FISCAL IMPACT:

The County intends to submit 9% contribution of employer and 6% contribution of employee paid using the pre-tax method. There is a probationary waiting period for new Sheriff's Office Employees hired on or after July 1, 2020

3. SUGGESTED ACTION(S)/MOTION(S):

Move to approve the Oregon Public Service Retirement Plan Coverage Agreement establishing participation in Oregon PERS, the Public Employee Retirement System, for Teamster Local 223 Members who qualify and are hired on or after July 1, 2020.

Attach additional background documentation as needed.

Oregon Public Service Retirement Plan Coverage Agreement

This agreement is made between the State of Oregon by and through the PUBLIC EMPLOYEES RETIREMENT BOARD (hereinafter referred to as “the Board”) on behalf of the PUBLIC EMPLOYEES RETIREMENT SYSTEM (hereinafter referred to as “PERS”) and MORROW COUNTY (hereinafter referred to as “the County”) for the purpose of establishing new employer coverage for certain County employees pursuant to ORS 238A.070 and ORS 238A.025.

WHEREAS, on April 8, 2020, the County adopted Resolution No. R-2020-5, by which the County announced its intention to participate in PERS with respect to all Sheriff’s Office County employees who are represented by Teamsters Local 223, work in qualifying positions and are hired on or after July 1, 2020;

WHEREAS, Resolution No. R-2020-5 further provided:

that the County intended to provide the “unused sick leave benefit” available under ORS 238.350 to members of PERS entitled to benefits under ORS chapter 238;

that the County did not intend to participate in the State and Local Government Rate pool with respect to its contributions for members of PERS entitled to benefits under ORS chapter 238; and

that the County intended to pay the six percent contribution for the Individual Account Program that is due from members under ORS 238A.330 on behalf of its employees, pursuant to ORS 238A.335;

THEREFORE, the parties agree that:

- (1) As used in this agreement, the term “Eligible County Employee” shall mean any Sheriff’s Office County employees who are represented by Teamsters Local 223 who work in qualifying positions and are hired on or after July 1, 2020, and is either an “employee” as that term is defined in ORS 238.005(8) or an “eligible employee” as that term is defined in ORS 238A.005(4).
- (2) As of the effective date of this agreement, the County shall participate for its Eligible County Employees in the Public Employees Retirement System (“PERS”), which consists of ORS chapter 238 and the Oregon Public Service Retirement Plan Pension Program (“OPSRP Pension Program”) and Individual Account Program (“IAP”) in ORS chapter 238A. The County understands and agrees that participation in PERS for its Eligible County Employees is irrevocable.
- (3) The County shall provide coverage to its Eligible County Employees as follows:
 - (a) For those Eligible County Employees who establish membership in the OPSRP Pension Program under ORS 238A.100 and any related administrative rules promulgated by the Board, the County shall provide coverage in the OPSRP Pension Program.

- (b) For those Eligible County Employees who establish membership in the Individual Account Program under ORS 238A.300 and ORS 238A.305 and any related administrative rules promulgated by the Board, the County shall provide coverage in the Individual Account Program.
 - (c) For those Eligible County Employees who have established membership in PERS under ORS 238.015 and ORS 238A.025(4) and any related administrative rules promulgated by the Board, the County shall provide coverage under ORS chapter 238.
 - (d) No Eligible County Employee shall receive retirement credit or any other benefit under ORS chapters 238 or 238A for service performed for the County prior to the effective date of this agreement.
- (4) The County understands that the Oregon Legislature may in the future amend ORS chapters 237, 238 and 238A. The County also understands that the Board may amend its administrative rules promulgated pursuant to those statutes. The County agrees to comply with the statutes and rules governing those programs, including any additions or amendments to those statutes and rules.
- (5) The County has the following initial employer contribution rates. The County understands that employer contribution rates are subject to change based on periodic actuarial valuations or as directed by the Board pursuant to ORS 238.225 and ORS 238A.220, and the County agrees that the Board may change those contribution rates without amending this agreement.
- (a) For Eligible County Employees who establish membership in the OPSRP Pension Program, the initial employer contribution rate shall be 10.00 percent of salary for employees who are classified as general service, and 14.63 percent of salary for employees who are classified as police officers or firefighters. For purposes of this subsection, "salary" is defined in ORS 238A.005(17).
 - (b) For Eligible County Employees who have established membership in PERS under ORS 238.015 and ORS 238A.025(4), if any, the County shall have the initial employer contribution rate of 19.01 percent of salary. For purposes of this subsection, "salary" is defined in ORS 238.005(26).
- (6) The County understands that Eligible County Employees who establish membership in the IAP are required by ORS 238A.330 to contribute six percent of their salaries to the IAP. In accordance with Resolution R-2020-5, the County hereby agrees to assume and pay those IAP contributions on behalf of Eligible County Employees, and will not reduce employee compensation in order to generate the funds needed to make those contributions, under ORS 238A.335(2)(b). If the County changes the manner in which IAP contributions are to be paid in the future, such a change shall be effective with respect to employee contributions made on and after the date that the Board receives notice as required by ORS 238A.335(3). For purposes of this section, "salary" is defined in ORS 238A.005(17).

- (7) In accordance with Resolution R-2020-5, PERS will not include the County in the State & Local Government Rate Pool, as of the effective date of this agreement, for purposes of contributions made on behalf of Eligible County Employees who have established membership in PERS under ORS 238.015 and ORS 238A.025(4). The County may elect to participate in the State & Local Government Rate Pool in the future by adopting a resolution or ordinance and submitting a copy to the Board, in accordance with OAR 459-009-0070(4).
- (8) In accordance with Resolution R-2020-5, Eligible County Employees who have established membership in PERS under ORS 238.005 and ORS 238A.025(4) will be compensated for accumulated unused sick leave by increasing their retirement benefits upon service or disability retirement pursuant to ORS 238.350. The County understands and agrees that its election to provide increased retirement benefits for accumulated unused sick leave is irrevocable.
- (9) The County understands and agrees that once this agreement is in effect the County must continue to provide coverage under the OPSRP Pension Program and ORS chapter 238 for all Eligible County Employees. In the event that the County at any time does not employ any Eligible County Employees, the County shall still be required to make contributions necessary to fund any unfunded liability for benefits under the OPSRP Pension Program and ORS chapter 238, as determined by the Board. These obligations shall be binding on the successors and assignees of the County.
- (10) The County warrants that it is a “public employer” as defined by ORS 238.005(21), and a governmental agency or instrumentality as defined in Internal Revenue Code §414(d). If at any time the County for any reason fails to meet the definition of ORS 238.005(21) or IRC §414(d), the County’s participation in PERS shall terminate as of that date. In the event of any termination the County shall continue to make contributions necessary to fund any unfunded liability for benefits under the OPSRP Pension Program and ORS chapter 238, as determined by the Board.
- (11) By virtue of this coverage agreement, neither the Board nor PERS assumes any contractual obligations of the County toward any employee, other than the responsibility to administer benefits funded by the County as specifically provided for in this coverage agreement.
- (12) The parties agree that if any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, or if any part of this agreement conflicts with any law, the validity of the remaining terms and provisions shall not be affected, and rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.
- (13) In addition to the provisions of this agreement, ORS chapters 237, 238, and 238A and all administrative rules promulgated by the Board apply to the County and all Eligible County Employees. If a provision of this agreement conflicts with any provision of ORS chapters 237, 238, or 238A, or with any administrative rules promulgated by the Board, the statute or rule shall govern.

(14) This agreement is effective **7/1/2020**, but shall have no effect until the agreement has been approved and signed by the County and by the Board.



For Morrow County this _____ day of June, 2020.

By _____
Melissa Lindsay, Chair
Morrow County

For the Oregon Public Employees Retirement System this _____ day of June, 2020.

By _____
Kevin Olineck, Director
Oregon Public Employees Retirement System

For the Oregon Public Employees Retirement Board this _____ day of June, 2020.

By _____
Sadhana Shenoy, Chair
Oregon Public Employees Retirement Board

Approved as to form _____
Assistant Attorney General

AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

First Amendment to 2017 Amazon CREZ Agreement.

2. FISCAL IMPACT:

3. SUGGESTED ACTION(S)/MOTION(S):

Motion to approve Resolution R-2020-14.

Attach additional background documentation as needed.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MORROW COUNTY, OREGON**

IN THE MATTER OF APPROVING)
AN ADDENDUM TO AGREEMENT) RESOLUTION NO. R-2020-14
BETWEEN THE SPONSORS OF THE)
COLUMBIA RIVER ENTERPRISE ZONE)
AND VADATA INC.)

WHEREAS, Morrow County, the Port of Morrow and the City of Boardman are Sponsors of the Columbia River Enterprise Zone (II); and

WHEREAS, the Columbia River Enterprise Zone (I) was originally established in 1998 and the Columbia River Enterprise Zone (II) was reauthorized in 2009; and

WHEREAS, the Columbia River Enterprise Zone (II) is governed by an Intergovernmental Agreement which sets forth governance and authorizes the Columbia River Enterprise Zone II Board to negotiate and enter into Agreements on behalf of the Sponsoring Entities; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Vadata Inc., for extended abatement under the Long-Term Rural Enterprise Zone requirements outlined in Oregon Administrative Rule Chapter 123 Division 690, that was approved in 2017; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Vadata Inc., for an addendum to the original agreement; and

WHEREAS, the Columbia River Enterprise Zone (II) Board and Manager have executed the Agreement (Attachment A); and

WHEREAS, Vadata Inc., has submitted the necessary application to the Columbia River Enterprise Zone Manager;

THE MORROW COUNTY BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:

To support the Agreement as negotiated by the Columbia River Enterprise Zone (II) Board with Vadata Inc., by signing this statutorily required Resolution.

This Resolution shall be effective immediately.

Dated this 29th day of June 2020.

**MORROW COUNTY BOARD OF COMMISSIONERS
MORROW COUNTY, OREGON**

Melissa Lindsay, Chair

Don Russell, Commissioner

Jim Doherty, Commissioner

Approved as to Form:

Morrow County Counsel

Attachment A - 1

FIRST ADDENDUM TO THE AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE ABATEMENT

This First Addendum to the Long-Term Rural Enterprise Zone Tax Abatement ("Addendum") is made and entered into as of May 15, 2020 ("Addendum Effective Date"), by the COLUMBIA RIVER ENTERPRISE ZONE II BOARD, representing the sponsor entities MORROW COUNTY, OREGON ("Morrow County"), the CITY OF BOARDMAN, OREGON ("City of Boardman"), the PORT OF MORROW, OREGON ("Port of Morrow") and AMAZON DATA SERVICES, INC., formerly known as VADATA, INC. (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Addendum as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Addendum as "Parties."

RECITALS

WHEREAS, the Sponsors and the Company are parties to that certain Agreement for Long-Term Rural Enterprise Zone Abatement dated December 4, 2017 (the "Agreement").

WHEREAS, the Sponsors and the Company desire to clarify the Annual Improvement Payment (defined below) due for small data centers included within the Facility, and subject to exemption under the Agreement.

WHEREAS, the Parties hereby acknowledge and agree that, due to their anticipated building design specifications, certain investments and facilities will be subject to the obligations contained herein.

WHEREAS, the Parties hereby agree that this Addendum is necessary to clarify certain provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, each to the other giving, the parties do hereby agree as follows:

ADDENDUM

- I. Section B of the Agreement is deleted in its entirety and replaced with the following:**
- B. Additional Obligations:** As established solely under this Agreement, the Parties agree to the additional obligations set forth below:
 - 1. Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP in the amount of (i) \$1,000,000 for each data center located within the Facility that is equal to or greater than 15,000 square feet and that is issued, and maintains, a certificate of occupancy, and (ii) \$60,000 for each data center located within the Facility that does not exceed 15,000 square feet and that is issued, and maintains, a certificate of occupancy; provided, however, the minimum total AIP for each year of the Exemption Period will be \$2,000,000.



Attachment A - 2

2. **Additional Annual Fee ("AAF"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AAF in an amount determined by applying the tax code area ad valorem property tax rate to \$25,000,000, increased annually at the rate of 3%.
 3. The Company shall make the AIP and AAF payable to the "Columbia River Enterprise Zone II Board" and deposit the AIP and AAF to the Morrow County Assessor on or before November 15 of each year of the Exemption Period.
 - a. The mailing address for payment is: Morrow County Assessor, P.O. Box 247, Heppner, OR 97836.
 4. **Payment Reduction for Charitable Payment:** The Company may make payments to or for the benefit of charities or non-profit entities that benefit Morrow County, or residents of Morrow County, and that are reasonably approved by the Sponsors (a "Charitable Payment"). Additionally, the Company may make housing allowance payments to its employees, or employees of affiliates of the Company, who reside in Morrow County (a "Morrow County Housing Allowance Payment"). If the Company makes a Charitable Payment or a Morrow County Housing Allowance Payment (a "Qualifying Payment"), the Company may reduce its payments due under this Paragraph B on a dollar-for-dollar basis in an amount equal to the Qualifying Payment made during each year, up to a total reduction each year in the amount of \$150,000.
 5. **Permit Fees:** The Company will pay all standard building permit and other permit fees related to the Facility. The Company further agrees that if it has a choice between obtaining an equivalent permit, license, or similar approval for the Facility from either a local governmental entity or a state entity, the Company will obtain the permit, license, or similar approval from the local governmental entity.
 6. **Payments Generally:** With respect to the Facility, and to the fullest extent of applicable law, the Company will not be required to pay sums to any local taxing authority in which the Facility are located other than the AIP, AAF, or any amounts due under this Section V.
- II. **Entire Agreement:** This Addendum contains the entire understanding of the Parties regarding the subject matter of this Addendum. Except as specifically provided herein, all terms and provisions contained in the Agreement shall remain unchanged and in full force and effect as written for the duration of the Agreement.
- III. **Counterparts.** This Addendum may be executed by the signing of counterparts. The execution of this instrument by each of the parties signing a counterpart hereof shall constitute a valid execution, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument. Signatures transmitted by telecopy or electronic mail shall be binding as originals.

[Signature page follows]



IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Addendum on the date shown below.

Columbia River Enterprise Zone II Board

Dated this 8th day of May, 2020



Don Russell, CREZ II Chair

Attest:



Greg Sweek, CREZ II Manager

Amazon Data Services, Inc.

Dated this _____ day of _____, 2020.
May 6, 2020

DocuSigned by:


00F3FB1185AD478
Roger Wehner



AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE ABATEMENT

This agreement for Long-Term Rural Enterprise Zone Tax Abatement ("Agreement") is executed by the COLUMBIA RIVER ENTERPRISE ZONE II BOARD, representing the sponsor entities MORROW COUNTY, OREGON ("Morrow County"), the CITY OF BOARDMAN, OREGON ("City of Boardman"), the PORT OF MORROW, OREGON ("Port of Morrow") and VADATA, INC. (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Agreement as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Agreement as "Parties."

RECITALS

The Sponsors have established the Columbia River Enterprise Zone II pursuant to Oregon Revised Statute (ORS) 285C.045, *et seq.*

With the aid of tax incentives from the Sponsors, the Company, either directly or through an affiliate, intends to make investments exceeding \$200 million in the Columbia River Enterprise Zone II (the "Zone") by building and operating new data centers located in the Zone.

The Company has previously made significant investments in the Zone that have contributed to long-term investment and employment in the Zone.

The Company and the Sponsors desire to enter into this Agreement to encourage the Company to continue to make investments in the Zone and to streamline and simplify the reporting and administration of tax abatements made available to the Company.

The Company has timely and properly filed the Oregon Department of Revenue's Certification Application for Long-Term Rural Oregon Tax Incentive ("Application") with respect to the Facility (as defined herein).

The Company must execute a first-source hiring agreement, pursuant to ORS 285C.215, regarding the new permanent jobs to be created in Morrow County upon completion and operation of the Facility.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the covenants contained herein, and in accordance with ORS 285C.400 through 285C.420, the Parties hereby agree as follows:

AGREEMENT

- I. **The Facility:** The "Facility" will consist of investments in data centers to be developed by the Company or its affiliates and located in the Zone, which will include the land, real property improvements, machinery and equipment, related personal property, and related support facilities and buildings, which may be installed, constructed, added, or placed in service in the Zone during the term of this Agreement. The Facility is currently expected to be located in the Zone at or near 75300 Lewis & Clark Drive, Boardman, Oregon 97818; 79553 Rippee Road, Boardman, Oregon 97818, including 79539, 79531, 79536, and 79540 Rippee Road; provided, however, the Facility (and addresses) shall

be amended to account for any changes, modifications, or additional addresses to future data centers developed in the Zone during the term of this Agreement.

- II. **Exemption for the Facility:** The Sponsors jointly acknowledge and agree that, upon approval of the Company's Application, and upon certification by the Sponsors and the Morrow County Assessor, and conditioned upon the satisfaction of other requirements under ORS 285C.400 to 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax on the Facility as provided in ORS 285C.409(1). The property tax exemption granted by this Agreement will to the maximum extent permitted by this law exempt from all *ad valorem* property taxation the real property improvements, personal improvements, and tangible and intangible personal property (excluding land, as set forth in ORS 285C.409(5)(a)) comprising or installed, constructed, added or otherwise placed at the Facility, all as set forth in ORS 285C.409 and OAR 123-690-0100 and 123-690-6200.
- III. **Term of Exemption:** Pursuant to ORS 285C.409(1), and conditioned upon the satisfaction of other requirements under ORS 285C.400 to 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax as follows:
 - A. For the first tax year following the calendar year in which the Company is certified or after which construction of the Facility commences, whichever event occurs later;
 - B. For each subsequent tax year in which the Facility is not yet in service as of the assessment date; and
 - C. For a period of 15 consecutive property tax years commencing as of the first tax year in which the Facility is in service as of the assessment date (the "Exemption Period"). As used in this Agreement, the Facility is "in service" or "in operation" on the date the Facility is issued its first certificate of occupancy.
- IV. **Scope of Exemption:** Pursuant to ORS 285C.409(1)(a) and (b) and subject to Section II, the Company and its affiliates are entitled to exemption from *ad valorem* property tax with respect to all qualified property, whether leased or owned and whether tangible or intangible, of the Company and its affiliates used in connection with the development and construction on the Facility.
- V. **Obligations of the Company:** The Company will comply with the following conditions as authorized under ORS 285C.403(3)(c):
 - A. **Statutory and Administrative Requirements:** The Company agrees to comply with the requirements of ORS 285C.409 and 285C.412(5) as well as those provided in Oregon Administrative Rules ("OAR") Chapter 123, Division 690, including:
 - 1. **Minimum Facility Investment:** As provided in ORS 285C.412(5), by the end of the year in which the Facility is placed in service, the total cost of the Facility will exceed \$200 million.
 - 2. **Minimum Distance:** At the time the Company will be certified, the location of the Facility will be 10 or more miles from Interstate Highway 5, as measured between the two closest points between the Facility and anywhere along that interstate highway.



3. **Minimum Employment:** The Company and its affiliates will hire and thereafter continue to employ during the term of this exemption at least 10 full-time employees at the Facility by the end of the third calendar year following the year in which the Facility is first placed in service. In accordance with OAR 123-690-4200, the Minimum Employment requirement will be satisfied for any given year if:

a. The number of employees performing their jobs at the Facility during the year, less the number of employees performing their jobs at the Facility 12 months before the Facility was placed in service, is greater than or equal to 10.

4. **Minimum Employee Compensation:** The annual average compensation for the Company's employees and employees of its affiliates at the Facility will be at least equal to or greater than 130 percent of the County average annual wage, in accordance with the definitions and guidelines in OAR Chapter 123, Division 690. This requirement may be initially met in any year during the first five years after the year in which operation of the Facility begins, and thereafter is met if the annual average compensation for employees at the Facility for the year exceeds the average wage in the County for the year in which the requirement was initially met.

B. **Additional Obligations:** As established solely under this Agreement, the Parties agree to the additional obligations set forth below:

1. **Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP in the amount of \$1,000,000 for each data center located within the Facility that is issued, and maintains, a certificate of occupancy; provided, however, the minimum total AIP for each year of the Exemption Period will be \$2,000,000.

2. **Additional Annual Fee:** For each year of the Exemption Period, the Company shall pay to the Sponsors an Additional Annual Fee in an amount determined by applying the County's ad valorem property tax rate to \$25 million, increased annually at the rate of 3%.

3. The Company shall make the AIP and Additional Annual Fee payable to the "Columbia River Enterprise Zone II Board" and deposit the AIP and Additional Annual Fee to the Morrow County Assessor on or before November 15 of each year of the Exemption Period.

a. The mailing address for payment to the Morrow County Assessor is: Morrow County Assessor, P.O. Box 247, Heppner, Oregon 97836.

4. **Payment Reduction for Charitable Payment:** The Company may make payments to or for the benefit of charities or non-profit entities that benefit Morrow County, or residents of Morrow County, and that are reasonably approved by the Sponsors (a "Charitable Payment"). Additionally, the Company may make housing allowance payments to its employees, or employees of affiliates of the Company, who reside in Morrow County (a

"Morrow County Housing Allowance Payment"). If the Company makes a Charitable Payment or a Morrow County Housing Allowance Payment (a "Qualifying Payment"), the Company may reduce its payments due under this Paragraph B on a dollar-for-dollar basis in an amount equal to the Qualifying Payment made during each year, up to a total reduction each year in the amount of \$150,000.

5. **Permit Fees:** The Company will pay all standard building permit and other permit fees related to the Facility. The Company further agrees that if it has a choice between obtaining an equivalent permit, license, or similar approval for the Facility from either a local governmental entity or a state entity, the Company will obtain the permit, license, or similar approval from the local governmental entity.
6. **Payments Generally:** With respect to the Facility, and to the fullest extent of applicable law, the Company will not be required to pay sums to any local taxing authority in which the Facility is located other than the AIP, the Additional Annual Fee, or any amounts due under this Section V.

VI. Obligations of Sponsors: Sponsors will comply with the following conditions:

- A. **Resolutions:** Within 30 days of the Effective Date (as that capitalized term is defined below), the governing body of each of the County, the City, and the Port of Morrow will adopt resolutions approving and authorizing the execution of this Agreement. Such resolutions will serve to approve the Facility for a property tax exemption under ORS 285C.409 and constitute the resolutions described in ORS 285C.403(3)(a).
- B. **Certification:** Within 30 days of satisfaction of the criteria set forth under ORS 285C.403(3), Sponsors and the Assessor will approve and countersign the application submitted by the Company, thereby certifying the Company as eligible for the property tax exemption contemplated by this Agreement.
- C. **Tax Exemption:** Sponsors hereby sets the period of the property tax exemption for the Facility for purposes of ORS 285C.409(1)(c) to be 15 consecutive years, beginning with the first tax year following the calendar year in which the Facility is first placed in service.
- D. **Allocation of Payments:** Sponsors are solely responsible for the allocation, budgeting, division, and disposition of the AIP, Additional Annual Fee, and any other payment due under this Agreement, including any portions that may be due or payable to the City, County, Port of Morrow, or any other jurisdiction. In no event shall the Company have any liability in connection with any disagreement, error, or conflict related to the division, allocation, or distribution of such amounts by the Sponsors or County. In no event will the Company have any liability or obligation to any other person with respect to the AIP and Additional Annual Fee after the Company has discharged its duty to pay as set forth in Section V above, and Sponsors shall hold the Company harmless with respect to any claims to the contrary.
- E. **Sponsors' Support:** Sponsors will support the Company in the Company's efforts to qualify for and obtain other tax incentives in connection with the Facility, including by promptly executing such letters or other documentation of support as

may be reasonably requested by the Company, but Sponsors make no warranty with respect to its ability to affect any outcome in such regards.

VII. Termination Rights: Each party may terminate this Agreement as follows:

- A. The Company's Termination Right:** The Company may elect to terminate this Agreement for any reason or no reason by delivery of written notice thereof to Sponsors. Upon delivery of any such notice, this Agreement will be of no further force or effect and no party will have any further rights or obligations hereunder, except for obligations owing and unpaid on the date of termination.
- B. Sponsors' Termination Right:** If the Company fails to make any payment required under this Agreement within 30 days of the due date of such payment, or fails to fulfill any other obligation of this agreement within 30 days of written notice specifying the obligation which is in default, Sponsors may terminate the Agreement upon written notice to the Company. Such notice must provide an additional 60 days in which the Company may cure any such payment deficiency or default. Notwithstanding the foregoing, Sponsors may not terminate the Agreement if the Company's failure to pay is due to Sponsors' error.
- C. Mutual Termination Right:** The parties may terminate this Agreement at any time upon mutual written agreement of termination.

VIII. Confidentiality:

- A.** The Parties acknowledge that this Agreement is a public record subject to Oregon's public records laws. If any person or entity requests any data, documents, or notes about the Company or its business practices (other than this Agreement) that are related to this Agreement or its tax exemption, whether by court order, subpoena, Oregon Public Records Request, or other reason, the Sponsors shall not release any such information until all of the following steps are completed:
 - 1. the Sponsors shall notify Company within three (3) business days of the receipt of such request;
 - 2. if the Company elects to challenge or appeal the release of such information, the Company shall notify the Sponsors within nine (9) business days of receipt of the request, and the Company shall assume all responsibilities, costs, and expenses for such defense;
 - 3. if the Company does not notify the Sponsors within nine (9) business days of receipt of such request, the Sponsors shall be authorized to release the requested information to the requestor and the Sponsors shall have no liability to the Company for such release of such Confidential Information.

Notwithstanding the above, the Sponsors agree to cooperate with the Company in any challenge or appeal to a court order, subpoena, public records request, or other applicable law requiring the release of Confidential Information. The Company shall indemnify and hold the Sponsors harmless for all costs and expenses incurred in the challenge or appeal to the release of such information, including court and appeal costs and the Sponsors' attorney's fees and expenses. Nothing in this section requires the parties to refuse to disclose such

information after a final order, including any appeal, by a competent judicial authority. If Oregon law is amended to require responses to public records requests be made less than twelve (12) business days from the request, the number of business days the Company has to respond pursuant to Paragraphs (1) and (2) above shall be reduced to the number of business days to respond to a public records request as mandated by Oregon law, less two business days.

IX. Miscellaneous Provisions:

- A. Effective Date:** This Agreement becomes effective on the date at which this Agreement has been signed by all of the Parties.
- B. Assignment:** Neither party may assign this Agreement without the prior written consent of the other party, except that the Company may assign this Agreement to any of its affiliates or to any wholly owned subsidiary of its ultimate holding company, or to a new entity without the prior written consent of the other party. Subject to this limitation, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.
- C. Amendment:** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought.
- D. Waiver:** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof.
- E. Notices:** All notices and communications relating to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or delivered by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by facsimile, three (3) days after mailing if sent by mail, and one (1) business day after dispatch if sent by express courier, to the following addresses:

<p><u>If to the Company:</u></p> <p>Amazon.com, Inc. 410 Terry Ave. N Seattle, WA 98109 Attn: Mike Grella, Director, Infrastructure Global Expansion, Economic Development</p> <p><u>With copies to:</u> Amazon.com, Inc. Attn: General Counsel (Real Estate) P.O. Box 81226 Seattle, WA 98108-1226</p> <p>Amazon.com, Inc.</p>	<p><u>If to Sponsors:</u></p> <p>Morrow County Planning Department Attn: Enterprise Zone Manager 205 Third Street NE, Irrigon, OR 97844</p> <p><u>With copies to:</u> Morrow County Planning Department Attn: Enterprise Zone Manager P.O. Box 40 Irrigon, OR 97844</p>
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Attn: Property Tax P.O. Box 80416 Seattle, WA 98108-0416	
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- F. Limitation of Liability:** Notwithstanding anything to the contrary in this Agreement, neither the Company, nor any of its affiliates, shall be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishment in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) the financial benefit realized by the Company under this Agreement and (ii) \$3,000,000.
- G. Force Majeure:** A party will not be deemed to be in breach, material breach, default or otherwise in violation of any term of this Agreement to the extent such party's action, inaction or omission is the result of a Force Majeure Event. The Company and Sponsors agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A force majeure event pauses a party's performance obligation for the duration of the event, but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its affiliates and prevents a party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Facility or over a party's operations.
- H. Severability:** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. It is the intent of the Parties that, in the event a clause or provision is stricken, that there be added as part of this Agreement a clause or provision as similar in terms as may be possible, legal, and enforceable so as to provide a comparable property tax exemption and comparable payments as provided for in this Agreement.
- I. Governing Law:** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.
- J. Venue:** Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Morrow County, Oregon. Each

party consents and submits to the jurisdiction of any local, state, or federal court located in Morrow County, Oregon.

- K. **Attorney's Fees:** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. Notwithstanding the foregoing, each Party's maximum liability under this Section 4(K) is \$75,000 and in no event will any Party be obligated by this Section 4(K) to pay an amount in excess of \$75,000.
- L. **Entire Agreement:** This Agreement contains the entire understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.
- M. **Signatures:** This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.
- N. **Waiver of Jury Trial:** With respect to any proceeding or action arising out of or in any way relating to this Agreement (whether in contract, tort, equity or otherwise), the parties knowingly, intentionally and irrevocably waive their right to trial by jury.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the date shown below.

Columbia River Enterprise Zone II Board

Dated this 4 day of December, 2017.



Don Russell, CREZ II Chair

Attest:



Carla McLane, CREZ II Manager



Vadata, Inc.

Dated this 26 day of December, 2017.

DocuSigned by:

Mike Grella

By: Mike Grella

Its: Vice President



AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

Second Amendment to 2017 Amazon CREZ Agreement.

2. FISCAL IMPACT:

3. SUGGESTED ACTION(S)/MOTION(S):

Motion to approve Resolution R-2020-15.

Attach additional background documentation as needed.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MORROW COUNTY, OREGON**

IN THE MATTER OF APPROVING)
AN ADDENDUM TO AGREEMENT)
BETWEEN THE SPONSORS OF THE) RESOLUTION NO. R-2020-15
COLUMBIA RIVER ENTERPRISE ZONE)
AND VADATA INC.)

WHEREAS, Morrow County, the Port of Morrow and the City of Boardman are Sponsors of the Columbia River Enterprise Zone (II); and

WHEREAS, the Columbia River Enterprise Zone (I) was originally established in 1998 and the Columbia River Enterprise Zone (II) was reauthorized in 2009; and

WHEREAS, the Columbia River Enterprise Zone (II) is governed by an Intergovernmental Agreement which sets forth governance and authorizes the Columbia River Enterprise Zone II Board to negotiate and enter into Agreements on behalf of the Sponsoring Entities; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Vadata, Inc., for extended abatement under the Long-Term Rural Enterprise Zone requirements outlined in Oregon Administrative Rule Chapter 123 Division 690, that was approved in 2017; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Vadata Inc., for a second addendum to the original agreement; and

WHEREAS, the Columbia River Enterprise Zone (II) Board and Manager have executed the Agreement (Attachment A); and

WHEREAS, Vadata Inc., has submitted the necessary application to the Columbia River Enterprise Zone Manager;

WHEREAS, the Columbia River Enterprise Zone (II) Board received assurances from Vadata Inc., on June 25, 2020 that the intent of the addendum is not to decrease project size or decrease the Annual Improvement Payments to the Columbia River Enterprise Zone (II).

**THE MORROW COUNTY BOARD OF COMMISSIONERS RESOLVES AS
FOLLOWS:**

To support the Agreement as negotiated by the Columbia River Enterprise Zone (II) Board with Vadata Inc., by signing this statutorily required Resolution.

This Resolution shall be effective immediately.

Dated this 29th day of June 2020.

**MORROW COUNTY BOARD OF COMMISSIONERS
MORROW COUNTY, OREGON**

Melissa Lindsay, Chair

Don Russell, Commissioner

Jim Doherty, Commissioner

Approved as to Form:

Morrow County Counsel

SECOND ADDENDUM TO THE AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE ABATEMENT

This Second Addendum to the Long-Term Rural Enterprise Zone Abatement (this "Second Addendum") is made and entered into as of June 25, 2020 ("Addendum Effective Date"), by the COLUMBIA RIVER ENTERPRISE ZONE II BOARD, representing the sponsor entities MORROW COUNTY, OREGON ("Morrow County"), the CITY OF BOARDMAN, OREGON ("City of Boardman"), the PORT OF MORROW, OREGON ("Port of Morrow") and AMAZON DATA SERVICES, INC., formerly known as VADATA, INC. (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Second Addendum as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Second Addendum as "Parties."

RECITALS

WHEREAS, the Sponsors and the Company are parties to that certain Agreement for Long-Term Rural Enterprise Zone Abatement dated December 4, 2017, as amended by that certain First Addendum to the Agreement for Long-Term Rural Enterprise Zone Abatement dated May 6, 2020 (collectively, the "Agreement").

WHEREAS, the Sponsors and the Company desire to further develop the method for calculating the Annual Improvement Payment (as defined below) due on small data centers included within the Facility (as defined in the Agreement), and subject to exemption under the Agreement.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the covenants contained herein, the parties hereby agree as follows:

ADDENDUM

- I. **Paragraph V.B.1 of the Agreement is deleted in its entirety and replaced with the following:**
 1. **Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP in the amount of (i) \$1,000,000 for each data center located within the Facility that is equal to or greater than 200,000 square feet and that is issued, and maintains, a certificate of occupancy, and (ii) \$5 per square foot for each data center located within the Facility that is less than 200,000 square feet and that is issued, and maintains, a certificate of occupancy; provided, however, the minimum total AIP for each year of the Exemption Period will be \$2,000,000. The references to data center square footage in this paragraph refer to the gross square footage within the exterior walls of each data center building.
- II. **Entire Agreement:** This Second Addendum contains the entire understanding of the Parties regarding the subject matter of this Second Addendum. Except as specifically provided herein, all terms and provisions contained in the Agreement shall remain unchanged and in full force and effect as written for the duration of the Agreement.

- III. **Counterparts.** This Second Addendum may be executed by electronic signature and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Second Addendum on the date shown below.

Columbia River Enterprise Zone II Board

Dated this 29 day of June, 2020

Karen Pettigrew City Manager
CREZ II Boardman

Attest:

[Signature]
Greg Sweek, CREZ II Manager

Amazon Data Services, Inc.

Dated this 29 day of June, 2020.

DocuSigned by:
Roger Wehner
90F9FB1105A817B

Roger Wehner, Vice President

AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE ABATEMENT

This agreement for Long-Term Rural Enterprise Zone Tax Abatement ("Agreement") is executed by the COLUMBIA RIVER ENTERPRISE ZONE II BOARD, representing the sponsor entities MORROW COUNTY, OREGON ("Morrow County"), the CITY OF BOARDMAN, OREGON ("City of Boardman"), the PORT OF MORROW, OREGON ("Port of Morrow") and VADATA, INC. (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Agreement as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Agreement as "Parties."

RECITALS

The Sponsors have established the Columbia River Enterprise Zone II pursuant to Oregon Revised Statute (ORS) 285C.045, *et seq.*

With the aid of tax incentives from the Sponsors, the Company, either directly or through an affiliate, intends to make investments exceeding \$200 million in the Columbia River Enterprise Zone II (the "Zone") by building and operating new data centers located in the Zone.

The Company has previously made significant investments in the Zone that have contributed to long-term investment and employment in the Zone.

The Company and the Sponsors desire to enter into this Agreement to encourage the Company to continue to make investments in the Zone and to streamline and simplify the reporting and administration of tax abatements made available to the Company.

The Company has timely and properly filed the Oregon Department of Revenue's Certification Application for Long-Term Rural Oregon Tax Incentive ("Application") with respect to the Facility (as defined herein).

The Company must execute a first-source hiring agreement, pursuant to ORS 285C.215, regarding the new permanent jobs to be created in Morrow County upon completion and operation of the Facility.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the covenants contained herein, and in accordance with ORS 285C.400 through 285C.420, the Parties hereby agree as follows:

AGREEMENT

- I. **The Facility:** The "Facility" will consist of investments in data centers to be developed by the Company or its affiliates and located in the Zone, which will include the land, real property improvements, machinery and equipment, related personal property, and related support facilities and buildings, which may be installed, constructed, added, or placed in service in the Zone during the term of this Agreement. The Facility is currently expected to be located in the Zone at or near 75300 Lewis & Clark Drive, Boardman, Oregon 97818; 79553 Rippee Road, Boardman, Oregon 97818, including 79539, 79531, 79536, and 79540 Rippee Road; provided, however, the Facility (and addresses) shall



be amended to account for any changes, modifications, or additional addresses to future data centers developed in the Zone during the term of this Agreement.

- II. **Exemption for the Facility:** The Sponsors jointly acknowledge and agree that, upon approval of the Company's Application, and upon certification by the Sponsors and the Morrow County Assessor, and conditioned upon the satisfaction of other requirements under ORS 285C.400 to 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax on the Facility as provided in ORS 285C.409(1). The property tax exemption granted by this Agreement will to the maximum extent permitted by this law exempt from all *ad valorem* property taxation the real property improvements, personal improvements, and tangible and intangible personal property (excluding land, as set forth in ORS 285C.409(5)(a)) comprising or installed, constructed, added or otherwise placed at the Facility, all as set forth in ORS 285C.409 and OAR 123-690-0100 and 123-690-6200.

- III. **Term of Exemption:** Pursuant to ORS 285C.409(1), and conditioned upon the satisfaction of other requirements under ORS 285C.400 to 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax as follows:
 - A. For the first tax year following the calendar year in which the Company is certified or after which construction of the Facility commences, whichever event occurs later;
 - B. For each subsequent tax year in which the Facility is not yet in service as of the assessment date; and
 - C. For a period of 15 consecutive property tax years commencing as of the first tax year in which the Facility is in service as of the assessment date (the "Exemption Period"). As used in this Agreement, the Facility is "in service" or "in operation" on the date the Facility is issued its first certificate of occupancy.

- IV. **Scope of Exemption:** Pursuant to ORS 285C.409(1)(a) and (b) and subject to Section II, the Company and its affiliates are entitled to exemption from *ad valorem* property tax with respect to all qualified property, whether leased or owned and whether tangible or intangible, of the Company and its affiliates used in connection with the development and construction on the Facility.

- V. **Obligations of the Company:** The Company will comply with the following conditions as authorized under ORS 285C.403(3)(c):
 - A. **Statutory and Administrative Requirements:** The Company agrees to comply with the requirements of ORS 285C.409 and 285C.412(5) as well as those provided in Oregon Administrative Rules ("OAR") Chapter 123, Division 690, including:
 - 1. **Minimum Facility Investment:** As provided in ORS 285C.412(5), by the end of the year in which the Facility is placed in service, the total cost of the Facility will exceed \$200 million.
 - 2. **Minimum Distance:** At the time the Company will be certified, the location of the Facility will be 10 or more miles from Interstate Highway 5, as measured between the two closest points between the Facility and anywhere along that interstate highway.



- 3. **Minimum Employment:** The Company and its affiliates will hire and thereafter continue to employ during the term of this exemption at least 10 full-time employees at the Facility by the end of the third calendar year following the year in which the Facility is first placed in service. In accordance with OAR 123-690-4200, the Minimum Employment requirement will be satisfied for any given year if:
 - a. The number of employees performing their jobs at the Facility during the year, less the number of employees performing their jobs at the Facility 12 months before the Facility was placed in service, is greater than or equal to 10.
- 4. **Minimum Employee Compensation:** The annual average compensation for the Company's employees and employees of its affiliates at the Facility will be at least equal to or greater than 130 percent of the County average annual wage, in accordance with the definitions and guidelines in OAR Chapter 123, Division 690. This requirement may be initially met in any year during the first five years after the year in which operation of the Facility begins, and thereafter is met if the annual average compensation for employees at the Facility for the year exceeds the average wage in the County for the year in which the requirement was initially met.

B. Additional Obligations: As established solely under this Agreement, the Parties agree to the additional obligations set forth below:

- 1. **Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP in the amount of \$1,000,000 for each data center located within the Facility that is issued, and maintains, a certificate of occupancy; provided, however, the minimum total AIP for each year of the Exemption Period will be \$2,000,000.
- 2. **Additional Annual Fee:** For each year of the Exemption Period, the Company shall pay to the Sponsors an Additional Annual Fee in an amount determined by applying the County's ad valorem property tax rate to \$25 million, increased annually at the rate of 3%.
- 3. The Company shall make the AIP and Additional Annual Fee payable to the "Columbia River Enterprise Zone II Board" and deposit the AIP and Additional Annual Fee to the Morrow County Assessor on or before November 15 of each year of the Exemption Period.
 - a. The mailing address for payment to the Morrow County Assessor is: Morrow County Assessor, P.O. Box 247, Heppner, Oregon 97836.
- 4. **Payment Reduction for Charitable Payment:** The Company may make payments to or for the benefit of charities or non-profit entities that benefit Morrow County, or residents of Morrow County, and that are reasonably approved by the Sponsors (a "Charitable Payment"). Additionally, the Company may make housing allowance payments to its employees, or employees of affiliates of the Company, who reside in Morrow County (a



"Morrow County Housing Allowance Payment"). If the Company makes a Charitable Payment or a Morrow County Housing Allowance Payment (a "Qualifying Payment"), the Company may reduce its payments due under this Paragraph B on a dollar-for-dollar basis in an amount equal to the Qualifying Payment made during each year, up to a total reduction each year in the amount of \$150,000.

5. **Permit Fees:** The Company will pay all standard building permit and other permit fees related to the Facility. The Company further agrees that if it has a choice between obtaining an equivalent permit, license, or similar approval for the Facility from either a local governmental entity or a state entity, the Company will obtain the permit, license, or similar approval from the local governmental entity.
6. **Payments Generally:** With respect to the Facility, and to the fullest extent of applicable law, the Company will not be required to pay sums to any local taxing authority in which the Facility is located other than the AIP, the Additional Annual Fee, or any amounts due under this Section V.

VI. Obligations of Sponsors: Sponsors will comply with the following conditions:

- A. **Resolutions:** Within 30 days of the Effective Date (as that capitalized term is defined below), the governing body of each of the County, the City, and the Port of Morrow will adopt resolutions approving and authorizing the execution of this Agreement. Such resolutions will serve to approve the Facility for a property tax exemption under ORS 285C.409 and constitute the resolutions described in ORS 285C.403(3)(a).
- B. **Certification:** Within 30 days of satisfaction of the criteria set forth under ORS 285C.403(3), Sponsors and the Assessor will approve and countersign the application submitted by the Company, thereby certifying the Company as eligible for the property tax exemption contemplated by this Agreement.
- C. **Tax Exemption:** Sponsors hereby sets the period of the property tax exemption for the Facility for purposes of ORS 285C.409(1)(c) to be 15 consecutive years, beginning with the first tax year following the calendar year in which the Facility is first placed in service.
- D. **Allocation of Payments:** Sponsors are solely responsible for the allocation, budgeting, division, and disposition of the AIP, Additional Annual Fee, and any other payment due under this Agreement, including any portions that may be due or payable to the City, County, Port of Morrow, or any other jurisdiction. In no event shall the Company have any liability in connection with any disagreement, error, or conflict related to the division, allocation, or distribution of such amounts by the Sponsors or County. In no event will the Company have any liability or obligation to any other person with respect to the AIP and Additional Annual Fee after the Company has discharged its duty to pay as set forth in Section V above, and Sponsors shall hold the Company harmless with respect to any claims to the contrary.
- E. **Sponsors' Support:** Sponsors will support the Company in the Company's efforts to qualify for and obtain other tax incentives in connection with the Facility, including by promptly executing such letters or other documentation of support as



may be reasonably requested by the Company, but Sponsors make no warranty with respect to its ability to affect any outcome in such regards.

VII. Termination Rights: Each party may terminate this Agreement as follows:

- A. The Company's Termination Right:** The Company may elect to terminate this Agreement for any reason or no reason by delivery of written notice thereof to Sponsors. Upon delivery of any such notice, this Agreement will be of no further force or effect and no party will have any further rights or obligations hereunder, except for obligations owing and unpaid on the date of termination.
- B. Sponsors' Termination Right:** If the Company fails to make any payment required under this Agreement within 30 days of the due date of such payment, or fails to fulfill any other obligation of this agreement within 30 days of written notice specifying the obligation which is in default, Sponsors may terminate the Agreement upon written notice to the Company. Such notice must provide an additional 60 days in which the Company may cure any such payment deficiency or default. Notwithstanding the foregoing, Sponsors may not terminate the Agreement if the Company's failure to pay is due to Sponsors' error.
- C. Mutual Termination Right:** The parties may terminate this Agreement at any time upon mutual written agreement of termination.

VIII. Confidentiality:

- A.** The Parties acknowledge that this Agreement is a public record subject to Oregon's public records laws. If any person or entity requests any data, documents, or notes about the Company or its business practices (other than this Agreement) that are related to this Agreement or its tax exemption, whether by court order, subpoena, Oregon Public Records Request, or other reason, the Sponsors shall not release any such information until all of the following steps are completed:
 - 1. the Sponsors shall notify Company within three (3) business days of the receipt of such request;
 - 2. if the Company elects to challenge or appeal the release of such information, the Company shall notify the Sponsors within nine (9) business days of receipt of the request, and the Company shall assume all responsibilities, costs, and expenses for such defense;
 - 3. if the Company does not notify the Sponsors within nine (9) business days of receipt of such request, the Sponsors shall be authorized to release the requested information to the requestor and the Sponsors shall have no liability to the Company for such release of such Confidential Information.

Notwithstanding the above, the Sponsors agree to cooperate with the Company in any challenge or appeal to a court order, subpoena, public records request, or other applicable law requiring the release of Confidential Information. The Company shall indemnify and hold the Sponsors harmless for all costs and expenses incurred in the challenge or appeal to the release of such information, including court and appeal costs and the Sponsors' attorney's fees and expenses. Nothing in this section requires the parties to refuse to disclose such

information after a final order, including any appeal, by a competent judicial authority. If Oregon law is amended to require responses to public records requests be made less than twelve (12) business days from the request, the number of business days the Company has to respond pursuant to Paragraphs (1) and (2) above shall be reduced to the number of business days to respond to a public records request as mandated by Oregon law, less two business days.

IX. Miscellaneous Provisions:

- A. Effective Date:** This Agreement becomes effective on the date at which this Agreement has been signed by all of the Parties.
- B. Assignment:** Neither party may assign this Agreement without the prior written consent of the other party, except that the Company may assign this Agreement to any of its affiliates or to any wholly owned subsidiary of its ultimate holding company, or to a new entity without the prior written consent of the other party. Subject to this limitation, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.
- C. Amendment:** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought.
- D. Waiver:** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof.
- E. Notices:** All notices and communications relating to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or delivered by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by facsimile, three (3) days after mailing if sent by mail, and one (1) business day after dispatch if sent by express courier, to the following addresses:

<p><u>If to the Company:</u></p> <p>Amazon.com, Inc. 410 Terry Ave. N Seattle, WA 98109 Attn: Mike Grella, Director, Infrastructure Global Expansion, Economic Development</p> <p><u>With copies to:</u> Amazon.com, Inc. Attn: General Counsel (Real Estate) P.O. Box 81226 Seattle, WA 98108-1226</p> <p>Amazon.com, Inc.</p>	<p><u>If to Sponsors:</u></p> <p>Morrow County Planning Department Attn: Enterprise Zone Manager 205 Third Street NE, Irrigon, OR 97844</p> <p><u>With copies to:</u> Morrow County Planning Department Attn: Enterprise Zone Manager P.O. Box 40 Irrigon, OR 97844</p>
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Attn: Property Tax P.O. Box 80416 Seattle, WA 98108-0416	
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- F. Limitation of Liability:** Notwithstanding anything to the contrary in this Agreement, neither the Company, nor any of its affiliates, shall be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishments in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) the financial benefit realized by the Company under this Agreement and (ii) \$3,000,000.

- G. Force Majeure:** A party will not be deemed to be in breach, material breach, default or otherwise in violation of any term of this Agreement to the extent such party's action, inaction or omission is the result of a Force Majeure Event. The Company and Sponsors agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A force majeure event pauses a party's performance obligation for the duration of the event, but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its affiliates and prevents a party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Facility or over a party's operations.

- H. Severability:** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. It is the intent of the Parties that, in the event a clause or provision is stricken, that there be added as part of this Agreement a clause or provision as similar in terms as may be possible, legal, and enforceable so as to provide a comparable property tax exemption and comparable payments as provided for in this Agreement.

- I. Governing Law:** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

- J. Venue:** Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Morrow County, Oregon. Each



party consents and submits to the jurisdiction of any local, state, or federal court located in Morrow County, Oregon.

- K. Attorney's Fees:** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. Notwithstanding the foregoing, each Party's maximum liability under this Section 4(K) is \$75,000 and in no event will any Party be obligated by this Section 4(K) to pay an amount in excess of \$75,000.
- L. Entire Agreement:** This Agreement contains the entire understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.
- M. Signatures:** This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.
- N. Waiver of Jury Trial:** With respect to any proceeding or action arising out of or in any way relating to this Agreement (whether in contract, tort, equity or otherwise), the parties knowingly, intentionally and irrevocably waive their right to trial by jury.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the date shown below.

Columbia River Enterprise Zone II Board

Dated this 4 day of December, 2017.



Don Russell, CREZ II Chair

Attest:



Carla McLane, CREZ II Manager



Vadata, Inc.

Dated this 26 day of December, 2017.

DocuSigned by:

Mike Grella

By: Mike Grella

Its: Vice President





AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
 (Page 1 of 2)

(For BOC Use)
 Item #
 50

Please complete for each agenda item submitted for consideration by the Board of Commissioners
 (See notations at bottom of form)

Presenter at BOC: Justin Nelson
 Department: County Counsel
 Short Title of Agenda Item:
 (No acronyms please)

Phone Number (Ext): 5626
 Requested Agenda Date: 6/29/2020

Resolution No. R-2020-16: First Amendment to Amazon Long-Term Rural Enterprise Zone Agreement (December 12, 2018)

This Item Involves: (Check all that apply for this meeting.)

<input checked="" type="checkbox"/> Order or Resolution	<input type="checkbox"/> Appointments
<input type="checkbox"/> Ordinance/Public Hearing:	<input type="checkbox"/> Update on Project/Committee
<input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading	<input type="checkbox"/> Consent Agenda Eligible
<input type="checkbox"/> Public Comment Anticipated:	<input type="checkbox"/> Discussion & Action
Estimated Time:	Estimated Time:
<input type="checkbox"/> Document Recording Required	<input type="checkbox"/> Purchase Pre-Authorization
<input type="checkbox"/> Contract/Agreement	<input type="checkbox"/> Other

N/A Purchase Pre-Authorizations, Contracts & Agreements

Contractor/Entity:
 Contractor/Entity Address:
 Effective Dates – From: Through:
 Total Contract Amount: Budget Line:
 Does the contract amount exceed \$5,000? Yes No

Reviewed By:

_____ DATE	Department Director	Required for all BOC meetings
_____ DATE	Administrator	Required for all BOC meetings
_____ DATE	County Counsel	*Required for all legal documents
_____ DATE	Finance Office	*Required for all contracts; other items as appropriate.
_____ DATE	Human Resources	*If appropriate

*Allow 1 week for review (submit to all simultaneously). When each office has notified the submitting department of approval, then submit the request to the BOC for placement on the agenda.

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Counsel, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

First Amendment to 2018 Amazon CREZ Agreement.

2. FISCAL IMPACT:

3. SUGGESTED ACTION(S)/MOTION(S):

Motion to approve Resolution R-2020-16.

Attach additional background documentation as needed.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MORROW COUNTY, OREGON**

IN THE MATTER OF APPROVING)
AN ADDENDUM TO AGREEMENT)
BETWEEN THE SPONSORS OF THE) RESOLUTION NO. R-2020-16
COLUMBIA RIVER ENTERPRISE ZONE)
AND VADATA, INC.)

WHEREAS, Morrow County, the Port of Morrow and the City of Boardman are Sponsors of the Columbia River Enterprise Zone (II); and

WHEREAS, the Columbia River Enterprise Zone (I) was originally established in 1998 and the Columbia River Enterprise Zone (II) was reauthorized in 2009; and

WHEREAS, the Columbia River Enterprise Zone (II) is governed by an Intergovernmental Agreement which sets forth governance and authorizes the Columbia River Enterprise Zone II Board to negotiate and enter into Agreements on behalf of the Sponsoring Entities; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Vadata Inc., for extended abatement under the Long-Term Rural Enterprise Zone requirements outlined in Oregon Administrative Rule Chapter 123 Division 690, that was approved in 2018; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Vadata Inc., for an addendum to the original agreement; and

WHEREAS, the Columbia River Enterprise Zone (II) Board and Manager have executed the Agreement (Attachment A); and

WHEREAS, Vadata Inc., has submitted the necessary application to the Columbia River Enterprise Zone Manager;

WHEREAS, the Columbia River Enterprise Zone (II) Board received assurances from Vadata Inc., on June 25, 2020 that the intent of the addendum is not to decrease project size or decrease the Annual Improvement Payments to the Columbia River Enterprise Zone (II).

THE MORROW COUNTY BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:

To support the Agreement as negotiated by the Columbia River Enterprise Zone (II) Board with Vadata Inc., by signing this statutorily required Resolution.

This Resolution shall be effective immediately.

Dated this 29th day of June 2020.

**MORROW COUNTY BOARD OF COMMISSIONERS
MORROW COUNTY, OREGON**

Melissa Lindsay, Chair

Don Russell, Commissioner

Jim Doherty, Commissioner

Approved as to Form:

Morrow County Counsel

FIRST AMENDMENT TO THE AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE ABATEMENT

This First Amendment to the Long-Term Rural Enterprise Zone Tax Abatement ("Amendment") is made and entered into as of June 25, 2020 ("Amendment Effective Date"), by the COLUMBIA RIVER ENTERPRISE ZONE II BOARD, representing the sponsor entities MORROW COUNTY, OREGON ("Morrow County"), the CITY OF BOARDMAN, OREGON ("City of Boardman"), the PORT OF MORROW, OREGON ("Port of Morrow") and AMAZON DATA SERVICES, INC., formerly known as VADATA, INC. (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Amendment as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Amendment as "Parties."

RECITALS

WHEREAS, the Sponsors and the Company are parties to that certain Agreement for Long-Term Rural Enterprise Zone Abatement dated December 12, 2018 (the "Agreement").

WHEREAS, the Sponsors and the Company desire to establish a method for calculating the Annual Improvement Payment (as defined below) due on small data centers included within the Facility (as defined in the Agreement), and subject to exemption under the Agreement.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the covenants contained herein, the parties hereby agree as follows:

AMENDMENT

- I. Paragraph V.B.1 of the Agreement is deleted in its entirety and replaced with the following:**
 - 1. Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP in the amount of (i) \$1,000,000 for each data center located within the Facility that is equal to or greater than 200,000 square feet and that is issued, and maintains, a certificate of occupancy, and (ii) \$5 per square foot for each data center located within the Facility that is less than 200,000 square feet and that is issued, and maintains, a certificate of occupancy; provided, however, the minimum total AIP for each year of the Exemption Period will be \$2,000,000. The references to data center square footage in this paragraph refer to the gross square footage within the exterior walls of each data center building.
- II. Entire Agreement:** This Amendment contains the entire understanding of the Parties regarding the subject matter of this Amendment. Except as specifically provided herein, all terms and provisions contained in the Agreement shall remain unchanged and in full force and effect as written for the duration of the Agreement.
- III. Counterparts.** This Amendment may be executed by electronic signature and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Amendment on the date shown below.

Columbia River Enterprise Zone II Board

Dated this 29 day of June, 2020

Karen Pettigrew, City Manager
CREZ II Boardman

Attest:

Greg Sweek
Greg Sweek, CREZ II Manager

Amazon Data Services, Inc.

Dated this 29 day of June, 2020.

DocuSigned by:
Roger Wehner
00F3PRT16204475
Roger Wehner, Vice President

AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE ABATEMENT

This agreement for Long-Term Rural Enterprise Zone Tax Abatement ("Agreement") is executed by COLUMBIA RIVER ENTERPRISE ZONE II BOARD, representing the sponsor entities MORROW COUNTY, OREGON ("Morrow County"), the CITY OF BOARDMAN, OREGON ("City of Boardman"), the PORT OF MORROW, OREGON ("Port of Morrow") and VADATA, INC. (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Agreement as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Agreement as "Parties."

RECITALS

The Sponsors have established the Columbia River Enterprise Zone II pursuant to Oregon Revised Statute (ORS) 285C.045, *et seq.*

With the aid of tax incentives from the Sponsors, the Company, either directly or through an affiliate, intends to make investments exceeding \$200,000,000 in the Columbia River Enterprise Zone II (the "Zone") by building and operating new data centers located in the Zone.

The Company has previously made significant investments in the Zone that have contributed to long-term investment and employment in the Zone.

The Company and the Sponsors desire to enter into this Agreement to encourage the Company to continue to make investments in the Zone and to streamline and simplify the reporting and administration of tax abatements made available to the Company.

The Company has timely and properly filed the Oregon Department of Revenue's Certification Application for Long-Term Rural Oregon Tax Incentive ("Application") with respect to the Facility (as defined herein).

The Company must execute a first-source hiring agreement, pursuant to ORS 285C.215, regarding the new permanent jobs to be created in Morrow County upon completion and operation of the Facility.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the covenants contained herein, and in accordance with ORS 285C.400 through 285C.420, the Parties hereby agree as follows:

AGREEMENT

- I. **The Facility:** The "Facility" will consist of investments in data centers to be developed by the Company or its affiliates and located in the Zone, which will include the land, real property improvements, machinery and equipment, related personal property, and related support facilities and buildings, which may be installed, constructed, added, or placed in service in the Zone during the term of this Agreement. The Facility is currently expected to be located in the Zone on Parcel 1 of Partition Plat 2013-6, City of Boardman, County of Morrow, State of Oregon. The addresses currently attached to this location include 100, 104, 106, 108 SE Olson Road, Boardman, Oregon 97818.

Additional addresses may be attached to Parcel 1 of Partition Plat 2013-6 for future data centers developed in the Zone during the term of this Agreement.

- II. **Exemption for the Facility:** The Sponsors jointly acknowledge and agree that, upon approval of the Company's Application, and upon certification by the Sponsors and the Morrow County Assessor, and conditioned upon the satisfaction of other requirements under ORS 285C.400 to 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax on the Facility as provided in ORS 285C.409(1). The property tax exemption granted by this Agreement will to the maximum extent permitted by this law exempt from all *ad valorem* property taxation the real property improvements, personal improvements, and tangible and intangible personal property (excluding land, as set forth in ORS 285C.409(5)(a)) comprising or installed, constructed, added or otherwise placed at the Facility, all as set forth in ORS 285C.409 and OAR 123-690-0100 and 123-690-6200.
- III. **Term of Exemption:** Pursuant to ORS 285C.409(1), and conditioned upon the satisfaction of other requirements under ORS 285C.400 to 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax as follows:
- A. For the first tax year following the calendar year in which the Company is certified or after which construction of the Facility commences, whichever event occurs later;
 - B. For each subsequent tax year in which the Facility is not yet in service as of the assessment date; and
 - C. For a period of 15 consecutive property tax years commencing as of the first tax year in which the Facility is in service as of the assessment date (the "Exemption Period"). As used in this Agreement, the Facility is "in service" or "in operation" on the date the Facility is issued its first certificate of occupancy.
- IV. **Scope of Exemption:** Pursuant to ORS 285C.409(1)(a) and (b) and subject to Section II, the Company and its affiliates are entitled to exemption from *ad valorem* property tax with respect to all qualified property, whether leased or owned and whether tangible or intangible, of the Company and its affiliates used in connection with the development and construction on the Facility.
- V. **Obligations of the Company:** The Company will comply with the following conditions as authorized under ORS 285C.403(3)(c):
- A. **Statutory and Administrative Requirements:** The Company agrees to comply with the requirements of ORS 285C.409 and 285C.412(5) as well as those provided in Oregon Administrative Rules ("OAR") Chapter 123, Division 690, including:
 - 1. **Minimum Facility Investment:** As provided in ORS 285C.412(5), by the end of the year in which the Facility is placed in service, the total cost of the Facility will exceed \$200,000,000.
 - 2. **Minimum Distance:** At the time the Company will be certified, the location of the Facility will be 10 or more miles from Interstate Highway 5, as measured between the two closest points between the Facility and anywhere along that interstate highway.

3. **Minimum Employment:** The Company and its affiliates will hire and thereafter continue to employ during the term of this exemption at least 10 full-time employees at the Facility by the end of the third calendar year following the year in which the Facility is first placed in service. In accordance with OAR 123-690-4200, the Minimum Employment requirement will be satisfied for any given year if:
 - a. The number of employees performing their jobs at the Facility during the year, less the number of employees performing their jobs at the Facility 12 months before the Facility was placed in service, is greater than or equal to 10.
4. **Minimum Employee Compensation:** The annual average compensation for the Company's employees and employees of its affiliates at the Facility will be at least equal to or greater than 130 percent of the County average annual wage, in accordance with the definitions and guidelines in OAR Chapter 123, Division 690. This requirement may be initially met in any year during the first five years after the year in which operation of the Facility begins, and thereafter is met if the annual average compensation for employees at the Facility for the year exceeds the average wage in the County for the year in which the requirement was initially met.

B. Additional Obligations: As established solely under this Agreement, the Parties agree to the additional obligations set forth below:

1. **Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP in the amount of \$1,000,000 for each data center located within the Facility that is issued, and maintains, a certificate of occupancy, provided, however, the minimum total AIP for each year of the Exemption Period will be \$2,000,000.
2. **Additional Annual Fee:** For each year of the Exemption Period, the Company shall pay to the Sponsors an Additional Annual Fee in an amount determined by applying the tax code area ad valorem property tax rate to \$25,000,000, increased annually at the rate of 3%.
3. The Company shall make the AIP and Additional Annual Fee payable to the "Columbia River Enterprise Zone II Board" and deposit the AIP and Additional Annual Fee to the Morrow County Assessor on or before November 15 of each year of Exemption Period.
 - a. The mailing address for payment is: Morrow County Assessor, P.O. Box 247, Heppner, OR 97836.
4. **Payment Reduction for Charitable Payment:** The Company may make payments to or for the benefit of charities or non-profit entities that benefit Morrow County, or residents of Morrow County, and that are reasonably approved by the Sponsors (a "Charitable Payment"). Additionally, the Company may make housing allowance payments to its employees, or employees of affiliates of the Company, who reside in Morrow County (a "Morrow County Housing Allowance Payment"). If the Company makes a

Charitable Payment or a Morrow County Housing Allowance Payment (a "Qualifying Payment"), the Company may reduce its payments due under this Paragraph B on a dollar-for-dollar basis in an amount equal to the Qualifying Payment made during each year, up to a total reduction each year in the amount of \$150,000.

5. **Future Bonding:** The Company may consider, on a case-by-case basis, any newly-issued bonded indebtedness in the consolidated tax code area of the Facility's location. Newly-issued bonded indebtedness shall be those bonds first issued pursuant to voter approval of a measure passed on or after July 1, 2020 if the proceeds are used for purposes authorized under applicable law. The Parties will negotiate in good faith on any allocation or additional payments for newly-issued bonded indebtedness; provided, however, nothing in this Section V.B.5 shall modify, extend, waive, or otherwise affect the exemption provided under this Agreement. The Company shall not unreasonably object to any local measures for newly-issued bonded indebtedness incurred to finance public educational services, fire services, and public safety services.
6. **Permit Fees:** The Company will pay all standard building permit and other permit fees related to the Facility. The Company further agrees that if it has a choice between obtaining an equivalent permit, license, or similar approval for the Facility from either a local governmental entity or a state entity, the Company will obtain the permit, license, or similar approval from the local governmental entity.
7. **Payments Generally:** With respect to the Facility, and to the fullest extent of applicable law, the Company will not be required to pay sums to any local taxing authority in which the Facility are located other than the AIP, the Additional Annual Fee, or any amounts due under this Section V.

VI. Obligations of Sponsors: Sponsors will comply with the following conditions:

- A. **Resolutions:** Within 30 days of the Effective Date (as that capitalized term is defined below), the governing body of each of the County, the City, and the Port will adopt resolutions approving and authorizing the execution of this Agreement. Such resolutions will serve to approve the Facility for a property tax exemption under ORS 285C.409 and constitute the resolutions described in ORS 285C.403(3)(a).
- B. **Certification:** Within 30 days of satisfaction of the criteria set forth under ORS 285C.403(3), Sponsors and the Assessor will approve and countersign the application submitted by the Company, thereby certifying the Company as eligible for the property tax exemption contemplated by this Agreement.
- C. **Tax Exemption:** Sponsors hereby sets the period of the property tax exemption for the Facility for purposes of ORS 285C.409(1)(c) to be 15 consecutive years, beginning with the first tax year following the calendar year in which the Facility is first placed in service.
- D. **Allocation of Payments:** Sponsors are solely responsible for the allocation, budgeting, division, and disposition of the AIP, Additional Annual Fee, and any other payment due under this Agreement, including any portions that may be due or payable to the City, County, Port of Morrow, or any other jurisdiction. In no

event shall the Company have any liability in connection with any disagreement, error, or conflict related to the division, allocation, or distribution of such amounts by the Sponsors or County. In no event will the Company have any liability or obligation to any other person with respect to the AIP and Additional Annual Fee after the Company has discharged its duty to pay as set forth in Section V above, and Sponsors shall hold the Company harmless with respect to any claims to the contrary.

- E. Sponsors' Support:** Sponsors will support the Company in the Company's efforts to qualify for and obtain other tax incentives in connection with the Facility, including by promptly executing such letters or other documentation of support as may be reasonably requested by the Company, but Sponsors make no warranty with respect to its ability to affect any outcome in such regards.

VII. Termination Rights: Each party may terminate this Agreement as follows:

- A. The Company's Termination Right:** The Company may elect to terminate this Agreement for any reason or no reason by delivery of written notice thereof to Sponsors. Upon delivery of any such notice, this Agreement will be of no further force or effect and no party will have any further rights or obligations hereunder, except for obligations owing and unpaid on the date of termination.
- B. Sponsors' Termination Right:** If the Company fails to make any payment required under this Agreement within 30 days of the due date of such payment, or fails to fulfill any other obligation of this agreement within 30 days of written notice specifying the obligation which is in default, Sponsors may terminate the Agreement upon written notice to the Company. Such notice must provide an additional 60 days in which the Company may cure any such payment deficiency or default. Notwithstanding the foregoing, Sponsors may not terminate the Agreement if the Company's failure to pay is due to Sponsors' error.
- C. Mutual Termination Right:** The parties may terminate this Agreement at any time upon mutual written agreement of termination.

VIII. Confidentiality:

- A.** The Parties acknowledge that this Agreement is a public record subject to Oregon's public records laws. If any person or entity requests any data, documents, or notes about the Company or its business practices (other than this Agreement) that are related to this Agreement or its tax exemption, whether by court order, subpoena, Oregon Public Records Request, or other reason, the Sponsors shall not release any such information until all of the following steps are completed:
1. the Sponsors shall notify Company within three (3) business days of the receipt of such request;
 2. if the Company elects to challenge or appeal the release of such information, the Company shall notify the Sponsors within nine (9) business days of receipt of the request, and the Company shall assume all responsibilities, costs, and expenses for such defense;
 3. if the Company does not notify the Sponsors within nine (9) business days of receipt of such request, the Sponsors shall be authorized to

release the requested information to the requestor and the Sponsors shall have no liability to the Company for such release of such Confidential Information.

Notwithstanding the above, the Sponsors agree to cooperate with the Company in any challenge or appeal to a court order, subpoena, public records request, or other applicable law requiring the release of Confidential Information. The Company shall indemnify and hold the Sponsors harmless for all costs and expenses incurred in the challenge or appeal to the release of such information, including court and appeal costs and the Sponsors' attorney's fees and expenses. Nothing in this section requires the parties to refuse to disclose such information after a final order, including any appeal, by a competent judicial authority. If Oregon law is amended to require responses to public records requests be made less than twelve (12) business days from the request, the number of business days the Company has to respond pursuant to Paragraphs (1) and (2) above shall be reduced to the number of business days to respond to a public records request as mandated by Oregon law, less two business days.

IX. Miscellaneous Provisions:

- A. Effective Date:** This Agreement becomes effective on the date at which this Agreement has been signed by all of the Parties.
- B. Assignment:** Neither party may assign this Agreement without the prior written consent of the other party, except that the Company may assign this Agreement to any of its affiliates or to any wholly owned subsidiary of its ultimate holding company, or to a new entity without the prior written consent of the other party. Subject to this limitation, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.
- C. Amendment:** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought.
- D. Waiver:** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof.
- E. Notices:** All notices and communications relating to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or delivered by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by facsimile, three (3) days after mailing if sent by mail, and one (1) business day after dispatch if sent by express courier, to the following addresses:

<p><u>If to the Company:</u></p> <p>Amazon.com, Inc. 410 Terry Ave. N Seattle, WA 98109</p>	<p><u>If to Sponsors:</u></p> <p>Morrow County Assessor P.O. Box 247 Heppner, OR 97836</p>
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<p>Attn: Mike Grella, Director, Infrastructure Global Expansion, Economic Development</p> <p><u>With copies to:</u> Amazon.com, Inc. Attn: General Counsel (Real Estate) P.O. Box 81226 Seattle, WA 98108-1226</p> <p>Amazon.com, Inc. Attn: Property Tax P.O. Box 80416 Seattle, WA 98108-0416</p>	<p>With copies to:</p> <p>Morrow County Assessor Attn: CREZ II Manager P.O. Box 247 Heppner, OR 97836</p>
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- F. **Limitation of Liability:** Notwithstanding anything to the contrary in this Agreement, neither the Company, nor any of its affiliates, shall be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishment in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) the financial benefit realized by the Company under this Agreement and (ii) \$3,000,000.

- G. **Force Majeure:** A party will not be deemed to be in breach, material breach, default or otherwise in violation of any term of this Agreement to the extent such party's action, inaction or omission is the result of a Force Majeure Event. The Company and Sponsors agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A force majeure event pauses a party's performance obligation for the duration of the event, but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its affiliates and prevents a party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Facility or over a party's operations.

- H. **Severability:** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. It is the intent of the Parties that, in the event a clause or provision is stricken, that there be added as part of this Agreement a clause or provision as similar in terms

as may be possible, legal, and enforceable so as to provide a comparable property tax exemption and comparable payments as provided for in this Agreement.

- I. **Governing Law:** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.
- J. **Venue:** Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Morrow County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Morrow County, Oregon.
- K. **Attorney's Fees:** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. Notwithstanding the foregoing, each Party's maximum liability under this Section IX(K) is \$75,000 and in no event will any Party be obligated by this Section IX(K) to pay an amount in excess of \$75,000.
- L. **Entire Agreement:** This Agreement contains the entire understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.
- M. **Signatures:** This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.
- N. **Waiver of Jury Trial:** With respect to any proceeding or action arising out of or in any way relating to this Agreement (whether in contract, tort, equity or otherwise), the parties knowingly, intentionally and irrevocably waive their right to trial by jury.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the date shown below.

Columbia River Enterprise Zone II Board

Dated this 12th day of December, 2018.



 Don Russell, CREZ II Chair

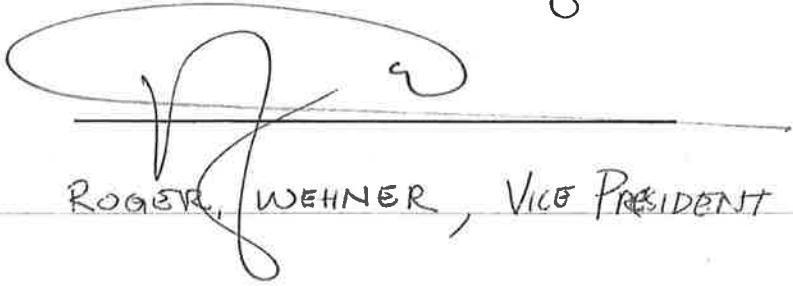
Attest:



Greg Sweek, CREZ II Manager

Vadata, Inc.

Dated this 28 day of February, 2018.



ROGER WEHNER, VICE PRESIDENT

AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

First Amendment to 2020 Amazon CREZ Agreement.

2. FISCAL IMPACT:

3. SUGGESTED ACTION(S)/MOTION(S):

Motion to approve Resolution R-2020-17.

Attach additional background documentation as needed.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MORROW COUNTY, OREGON**

IN THE MATTER OF APPROVING)
AN ADDENDUM TO AGREEMENT)
BETWEEN THE SPONSORS OF THE) RESOLUTION NO. R-2020-17
COLUMBIA RIVER ENTERPRISE ZONE)
AND AMAZON DATA SERVICES, INC.)

WHEREAS, Morrow County, the Port of Morrow and the City of Boardman are Sponsors of the Columbia River Enterprise Zone (II); and

WHEREAS, the Columbia River Enterprise Zone (I) was originally established in 1998 and the Columbia River Enterprise Zone (II) was reauthorized in 2009; and

WHEREAS, the Columbia River Enterprise Zone (II) is governed by an Intergovernmental Agreement which sets forth governance and authorizes the Columbia River Enterprise Zone II Board to negotiate and enter into Agreements on behalf of the Sponsoring Entities; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Amazon Data Services, Inc., for extended abatement under the Long-Term Rural Enterprise Zone requirements outlined in Oregon Administrative Rule Chapter 123 Division 690, that was approved in 2020; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Amazon Data Services, Inc., for an addendum to the original agreement; and

WHEREAS, the Columbia River Enterprise Zone (II) Board and Manager have executed the Agreement (Attachment A); and

WHEREAS, Amazon Data Services, Inc., has submitted the necessary application to the Columbia River Enterprise Zone Manager;

WHEREAS, the Columbia River Enterprise Zone (II) Board received assurances from Amazon Data Services, Inc., on June 25, 2020 that the intent of the addendum is not to decrease project size or decrease the Annual Improvement Payments to the Columbia River Enterprise Zone (II).

THE MORROW COUNTY BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:

To support the Agreement as negotiated by the Columbia River Enterprise Zone (II) Board with Amazon Data Services, Inc., by signing this statutorily required Resolution.

This Resolution shall be effective immediately.

Dated this 29th day of June 2020.

**MORROW COUNTY BOARD OF COMMISSIONERS
MORROW COUNTY, OREGON**

Melissa Lindsay, Chair

Don Russell, Commissioner

Jim Doherty, Commissioner

Approved as to Form:

Morrow County Counsel

FIRST AMENDMENT TO THE AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE ABATEMENT

This First Amendment to the Long-Term Rural Enterprise Zone Tax Abatement ("Amendment") is made and entered into as of June 25, 2020 ("Amendment Effective Date"), by the COLUMBIA RIVER ENTERPRISE ZONE II BOARD, representing the sponsor entities MORROW COUNTY, OREGON ("Morrow County"), the CITY OF BOARDMAN, OREGON ("City of Boardman"), the PORT OF MORROW, OREGON ("Port of Morrow") and AMAZON DATA SERVICES, INC., formerly known as VADATA, INC. (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Amendment as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Amendment as "Parties."

RECITALS

WHEREAS, the Sponsors and the Company are parties to that certain Agreement for Long-Term Rural Enterprise Zone Abatement dated April 17, 2020 (the "Agreement").

WHEREAS, the Sponsors and the Company desire to establish a method for calculating the Annual Improvement Payment (as defined below) due on small data centers included within the Facility (as defined in the Agreement), and subject to exemption under the Agreement.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the covenants contained herein, the parties hereby agree as follows:

AMENDMENT

- I. **Paragraph V.B.1 of the Agreement is deleted in its entirety and replaced with the following:**
 1. **Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP in the amount of (i) \$1,000,000 for each data center located within the Facility that is equal to or greater than 200,000 square feet and that is issued, and maintains, a certificate of occupancy, and (ii) \$5 per square foot for each data center located within the Facility that is less than 200,000 square feet and that is issued, and maintains, a certificate of occupancy; provided, however, the minimum total AIP for each year of the Exemption Period will be \$2,000,000. The references to data center square footage in this paragraph refer to the gross square footage within the exterior walls of each data center building.
- II. **Entire Agreement:** This Amendment contains the entire understanding of the Parties regarding the subject matter of this Amendment. Except as specifically provided herein, all terms and provisions contained in the Agreement shall remain unchanged and in full force and effect as written for the duration of the Agreement.
- III. **Counterparts.** This Amendment may be executed by electronic signature and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Amendment on the date shown below.

Columbia River Enterprise Zone II Board

Dated this 29 day of June, 2020

Karen Pettigrew City Manager
CREZ II Boardman

Attest:

[Signature]
Greg Sweek, CREZ II Manager

Amazon Data Services, Inc.

Dated this 29 day of June, 2020.

DocuSigned by:
Roger Wehner
90C95B1105A9478

Roger Wehner, Vice President

AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE TAX ABATEMENT

This agreement for Long-Term Rural Enterprise Zone Tax Abatement ("Agreement") is executed by COLUMBIA RIVER ENTERPRISE ZONE II BOARD, representing the sponsor entities MORROW COUNTY, OREGON ("Morrow County"), the CITY OF BOARDMAN, OREGON ("City of Boardman"), the PORT OF MORROW, OREGON ("Port of Morrow"), and Amazon Data Services, Inc. (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Agreement as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Agreement as "Parties."

RECITALS

The Sponsors have established the Columbia River Enterprise Zone II pursuant to Oregon Revised Statute (ORS) 285C.045, *et seq.*

With the aid of tax incentives from the Sponsors, the Company, either directly or through an affiliate, intends to make investments exceeding \$200,000,000 in the Columbia River Enterprise Zone II (the "Zone") by building and operating one or more new data centers located in the Zone.

The Company has previously made significant investments in the Zone that have contributed to long-term investment and employment in the Zone.

The Company and the Sponsors desire to enter into this Agreement to encourage the Company to continue to make investments in the Zone and to streamline and simplify the reporting and administration of tax abatements made available to the Company.

The Company has timely and properly filed the Oregon Department of Revenue's Certification Application for Long-Term Rural Oregon Tax Incentive ("Application") with respect to the Facility (as defined herein).

The Company must execute a first-source hiring agreement, pursuant to ORS 285C.215, regarding the new permanent jobs to be created in Morrow County upon completion and operation of the Facility.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the covenants contained herein, and in accordance with ORS 285C.400 through 285C.420, the Parties hereby agree as follows:

AGREEMENT

- I. **The Facility:** The "Facility" will consist of investments in data centers to be developed by the Company or its affiliates and located in the Zone, which will include the land, real property improvements, machinery and equipment, related personal property, and related support facilities and buildings, which may be installed, constructed, added, or placed in service in the Zone during the term of this Agreement. The Facility is currently expected to be located in the Zone on Parcel 2 of Partition Plat 2019-16, County of Morrow, State of Oregon. No addresses are currently attached to this location. Additional addresses may be attached to Parcel 2 of Partition Plat 2019-16 for future data centers developed in the Zone during the term of this Agreement.

- II. Exemption for the Facility:** The Sponsors jointly acknowledge and agree that, upon approval of the Company's Application, and upon certification by the Sponsors and the Morrow County Assessor, and conditioned upon the satisfaction of other requirements under ORS 285C.400 to 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax on the Facility as provided in ORS 285C.409(1). The property tax exemption granted by this Agreement will to the maximum extent permitted by this law exempt from all *ad valorem* property taxation the real property improvements, personal improvements, and tangible and intangible personal property (excluding land, as set forth in ORS 285C.409(5)(a)) comprising or installed, constructed, added or otherwise placed at the Facility, all as set forth in ORS 285C.409 and Oregon Administrative Rules (OAR) 123-690-0100 and 123-690-6200.
- III. Term of Exemption:** Pursuant to ORS 285C.409(1), and conditioned upon the satisfaction of other requirements under ORS 285C.400 to 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax as follows:
- A.** For the first tax year following the calendar year in which the Company is certified or after which construction of the Facility commences, whichever event occurs later;
 - B.** For each subsequent tax year in which the Facility is not yet in service as of the assessment date; and
 - C.** For a period of 15 consecutive property tax years commencing as of the first tax year in which the Facility is in service as of the assessment date (the "Exemption Period"). As used in this Agreement, the Facility is "in service" or "in operation" on the date the Facility is issued its first certificate of occupancy.
 - 1. The Company shall provide notification to the Morrow County Assessor upon the Facility's receipt of its certificate of occupancy within ninety (90) days of such receipt.
- IV. Scope of Exemption:** Pursuant to ORS 285C.409(1)(a) and (b) and subject to Section II, the Company and its affiliates are entitled to exemption from *ad valorem* property tax with respect to all qualified property, whether leased or owned and whether tangible or intangible, of the Company and its affiliates used in connection with the development and construction on the Facility.
- V. Obligations of the Company:** The Company will comply with the following conditions as authorized under ORS 285C.403(3)(c):
- A. Statutory and Administrative Requirements:** The Company agrees to comply with the requirements of ORS 285C.409 and 285C.412(5) as well as those provided in OAR Chapter 123, Division 690, including:
 - 1. **Minimum Facility Investment:** As provided in ORS 285C.412(5), by the end of the year in which the Facility is placed in service, the total cost of the Facility will exceed \$200,000,000.
 - 2. **Minimum Distance:** At the time the Company will be certified, the location of the Facility will be 10 or more miles from Interstate Highway 5, as measured between the two closest points between the Facility and anywhere along that interstate highway.

3. **Minimum Employment:** The Company and its affiliates will hire and thereafter continue to employ during the term of this exemption at least 10 full-time employees at the Facility by the end of the third calendar year following the year in which the Facility is first placed in service. In accordance with OAR 123-690-4200, the Minimum Employment requirement will be satisfied for any given year if:
 - a. The number of employees performing their jobs at the Facility during the year, less the number of employees performing their jobs at the Facility 12 months before the Facility was placed in service, is greater than or equal to 10.
4. **Minimum Employee Compensation:** The annual average compensation for the Company's employees and employees of its affiliates at the Facility will be at least equal to or greater than 130 percent of the County average annual wage, in accordance with the definitions and guidelines in OAR Chapter 123, Division 690. This requirement may be initially met in any year during the first five years after the year in which operation of the Facility begins, and thereafter is met if the annual average compensation for employees at the Facility for the year exceeds the average wage in the County for the year in which the requirement was initially met.

B. Additional Obligations: As established solely under this Agreement, the Parties agree to the additional obligations set forth below:

1. **Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP in the amount of \$1,000,000 for each data center located within the Facility that is issued, and maintains, a certificate of occupancy, provided, however, the minimum total AIP for each year of the Exemption Period will be \$2,000,000.
2. **Additional Annual Fee ("AAF"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AAF in an amount determined by applying the tax code area ad valorem property tax rate to \$25,000,000, increased annually at the rate of 3%.
3. **Public Safety Impact Fee ("PSIF"):** For each year of the Exemption Period, the Company shall pay to the Sponsors a PSIF in the amount of \$50,000, increased annually at the rate of 3%.
4. **Student Success Fee ("SSF"):** For each year of the Exemption Period, the Company shall pay to the Sponsors a SSF in the amount of \$50,000, increased annually at the rate of 3%.
5. The Company shall make the AIP, AAF, PSIF, and the SSF payable to the "Columbia River Enterprise Zone II Board" and deposit the payments to the Morrow County Assessor on or before November 15 of each year of the Exemption Period.
 - a. The mailing address for payment is: Morrow County Assessor, P.O. Box 247, Heppner, OR 97836.

6. **Payment Reduction for Charitable Payment:** The Company may make payments to or for the benefit of charities or non-profit entities that benefit Morrow County, or residents of Morrow County, and that are reasonably approved by the Sponsors (a "Charitable Payment"). Additionally, the Company may make housing allowance payments to its employees, or employees of affiliates of the Company, who reside in Morrow County (a "Morrow County Housing Allowance Payment"). If the Company makes a Charitable Payment or a Morrow County Housing Allowance Payment (a "Qualifying Payment"), the Company may reduce its payments due under this Paragraph B on a dollar-for-dollar basis in an amount equal to the Qualifying Payment made during each year, up to a total reduction each year in the amount of \$150,000.
7. **Permit Fees:** The Company will pay all standard building permit and other permit fees related to the Facility. The Company further agrees that if it has a choice between obtaining an equivalent permit, license, or similar approval for the Facility from either a local governmental entity or a state entity, the Company will obtain the permit, license, or similar approval from the local governmental entity.
8. **Payments Generally:** With respect to the Facility, and to the fullest extent of applicable law, the Company will not be required to pay sums to any local taxing authority in which the Facility are located other than the AIP, AAF, PSIF, and SSF due under this Section V.

VI. Obligations of Sponsors: Sponsors will comply with the following conditions:

- A. **Resolutions:** Within 30 days of the Effective Date (as that capitalized term is defined below), the governing body of each of Morrow County, the City of Boardman, and the Port of Morrow will adopt resolutions approving and authorizing the execution of this Agreement. Such resolutions will serve to approve the Facility for a property tax exemption under ORS 285C.409 and constitute the resolutions described in ORS 285C.403(3)(a).
- B. **Certification:** Within 30 days of satisfaction of the criteria set forth under ORS 285C.403(3), Sponsors and the Morrow County Assessor will approve and countersign the application submitted by the Company, thereby certifying the Company as eligible for the property tax exemption contemplated by this Agreement.
- C. **Tax Exemption:** Sponsors hereby sets the period of the property tax exemption for the Facility for purposes of ORS 285C.409(1)(c) to be 15 consecutive years, beginning with the first tax year following the calendar year in which the Facility is first placed in service.
- D. **Allocation of Payments:** Sponsors are solely responsible for the allocation, budgeting, division, and disposition of any payment due under this Agreement, including any portions that may be due or payable to any other jurisdiction. In no event shall the Company have any liability in connection with any disagreement, error, or conflict related to the division, allocation, or distribution of such amounts. In no event will the Company have any liability or obligation to any other person with respect to any payment due under this Agreement after the Company has discharged its duty to pay as set forth in Section V above, and Sponsors shall hold the Company harmless with respect to any claims to the contrary.

- E. **Sponsors' Support:** Sponsors will support the Company in the Company's efforts to qualify for and obtain other tax incentives in connection with the Facility, including by promptly executing such letters or other documentation of support as may be reasonably requested by the Company, but Sponsors make no warranty with respect to its ability to affect any outcome in such regards.

VII. Termination Rights: Each party may terminate this Agreement as follows:

- A. **The Company's Termination Right:** The Company may elect to terminate this Agreement for any reason or no reason by delivery of written notice thereof to Sponsors. Upon delivery of any such notice, this Agreement will be of no further force or effect and no party will have any further rights or obligations hereunder, except for obligations owing and unpaid on the date of termination.
- B. **Sponsors' Termination Right:** If the Company fails to make any payment required under this Agreement within 30 days of the due date of such payment, or fails to fulfill any other obligation of this Agreement within 30 days of written notice specifying the obligation which is in default, Sponsors may terminate the Agreement upon written notice to the Company. Such notice must provide an additional 60 days in which the Company may cure any such payment deficiency or default. Notwithstanding the foregoing, Sponsors may not terminate the Agreement if the Company's failure to pay is due to Sponsors' error.
- C. **Mutual Termination Right:** The Parties may terminate this Agreement at any time upon mutual written agreement of termination.

VIII. Confidentiality:

- A. The Parties acknowledge that this Agreement is a public record subject to Oregon's public records laws. If any person or entity requests any data, documents, or notes about the Company or its business practices (other than this Agreement) that are related to this Agreement or its tax exemption ("Confidential Information"), whether by court order, subpoena, Oregon Public Records Request, or other reason, the Sponsors shall not release any such information until all of the following steps are completed:
1. the Sponsors shall notify Company within three (3) business days of the receipt of such request;
 2. if the Company elects to challenge or appeal the release of such information, the Company shall notify the Sponsors within nine (9) business days of receipt of the request, and the Company shall assume all responsibilities, costs, and expenses for such defense;
 3. if the Company does not notify the Sponsors within nine (9) business days of receipt of such request, the Sponsors shall be authorized to release the requested information to the requestor and the Sponsors shall have no liability to the Company for such release of such Confidential Information.

Notwithstanding the above, the Sponsors agree to cooperate with the Company in any challenge or appeal to a court order, subpoena, public records request, or other applicable law requiring the release of Confidential Information. The Company shall indemnify and hold the Sponsors harmless for all costs and

expenses incurred in the challenge or appeal to the release of such information, including court and appeal costs and the Sponsors' attorney's fees and expenses. Nothing in this section requires the Parties to refuse to disclose such information after a final order, including any appeal, by a competent judicial authority. If Oregon law is amended to require responses to public records requests be made less than twelve (12) business days from the request, the number of business days specified in Paragraphs (1) and (2) above shall be reduced to two (2) business days, and the number of business days to respond to a public records request as mandated by Oregon law less two (2) business days, respectively.

IX. Miscellaneous Provisions:

- A. Effective Date:** This Agreement becomes effective on the date at which this Agreement has been signed by all of the Parties.
- B. Assignment:** Neither party may assign this Agreement without the prior written consent of the other party, except that the Company may assign this Agreement to any of its affiliates or to any wholly owned subsidiary of its ultimate holding company, or to a new entity without the prior written consent of the other party. Subject to this limitation, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns.
- C. Amendment:** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought.
- D. Waiver:** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof.
- E. Notices:** All notices and communications relating to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or delivered by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered, three (3) days after mailing if sent by mail, and one (1) business day after dispatch if sent by express courier, to the following addresses:

<p><u>If to the Company:</u></p> <p>Amazon.com, Inc. 410 Terry Ave. N Seattle, WA 98109 Attn: Infrastructure Global Expansion, Economic Development</p> <p><u>With copies to:</u> Amazon.com, Inc. Attn: General Counsel P.O. Box 81226</p>	<p><u>If to Sponsors:</u></p> <p>Morrow County Assessor P.O. Box 247 Heppner, OR 97836</p> <p><u>With copies to:</u> Morrow County Assessor Attn: CREZ II Manager P.O. Box 247</p>
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Seattle, WA 98108-1226 Amazon.com, Inc. Attn: Property Tax P.O. Box 80416 Seattle, WA 98108-0416	Heppner, OR 97836
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A copy of all notices and communications relating to this Agreement shall also be sent, on or before the date in which they become effective, by email to:

<u>If to the Company:</u> Aws-econ-dev@amazon.com	<u>If to Sponsors:</u>
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- F. Limitation of Liability:** Notwithstanding anything to the contrary in this Agreement, neither the Company, nor any of its affiliates, shall be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishment in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) the financial benefit realized by the Company under this Agreement and (ii) \$3,000,000.
- G. Force Majeure:** A party will not be deemed to be in breach, material breach, default or otherwise in violation of any term of this Agreement to the extent such party's action, inaction or omission is the result of a Force Majeure Event. The Company and Sponsors agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A Force Majeure Event pauses a party's performance obligation for the duration of the event, but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its affiliates and prevents a party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Facility or over a party's operations.
- H. Severability:** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. It is

the intent of the Parties that, in the event a clause or provision is stricken, that there be added as part of this Agreement a clause or provision as similar in terms as may be possible, legal, and enforceable so as to provide a comparable property tax exemption and comparable payments as provided for in this Agreement.

- I. **Governing Law:** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.
- J. **Venue:** Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Morrow County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Morrow County, Oregon.
- K. **Attorney's Fees:** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. Notwithstanding the foregoing, each party's maximum liability under this Section IX(K) is \$75,000 and in no event will any party be obligated by this Section IX(K) to pay an amount in excess of \$75,000.
- L. **Entire Agreement:** This Agreement contains the entire understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.
- M. **Signatures:** This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.
- N. **Waiver of Jury Trial:** With respect to any proceeding or action arising out of or in any way relating to this Agreement (whether in contract, tort, equity or otherwise), the Parties knowingly, intentionally and irrevocably waive their right to trial by jury.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the date shown below.

Columbia River Enterprise Zone II Board

Dated this 19th day of April, 2020.



Don Russell, CREZ II Chair

Attest:



Greg Sweek, CREZ II Manager

Amazon Data Services, Inc.

Dated this _____ day of _____, 2020.
April 17, 2020

DocuSigned by:

9DF9FB1105A8478



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 1 of 2)

(For BOC Use)
Item #
5e

Please complete for each agenda item submitted for consideration by the Board of Commissioners
(See notations at bottom of form)

Presenter at BOC: Justin Nelson
Department: County Counsel
Short Title of Agenda Item:
(No acronyms please)

Phone Number (Ext): 5626
Requested Agenda Date: 6/29/2020

Resolution No. R-2020-18: Klean Industries Boardman LLC
Application for Long-Term Rural Enterprise Zone Exemption

This Item Involves: (Check all that apply for this meeting.)

- Order or Resolution
Ordinance/Public Hearing:
1st Reading 2nd Reading
Public Comment Anticipated:
Estimated Time:
Document Recording Required
Contract/Agreement
Appointments
Update on Project/Committee
Consent Agenda Eligible
Discussion & Action
Estimated Time:
Purchase Pre-Authorization
Other

N/A

Purchase Pre-Authorizations, Contracts & Agreements

Contractor/Entity:
Contractor/Entity Address:
Effective Dates - From: Through:
Total Contract Amount: Budget Line:
Does the contract amount exceed \$5,000? Yes No

Reviewed By:

Department Director Required for all BOC meetings
Administrator Required for all BOC meetings
County Counsel *Required for all legal documents
Finance Office *Required for all contracts; other items as appropriate.
Human Resources *If appropriate

*Allow 1 week for review (submit to all simultaneously). When each office has notified the submitting department of approval, then submit the request to the BOC for placement on the agenda.

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Counsel, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

Resolution to approve 2020 Klean Industries application for Long-Term Rural Enterprise Zone Exemption.

2. FISCAL IMPACT:

3. SUGGESTED ACTION(S)/MOTION(S):

Motion to approve Resolution R-2020-18.

Attach additional background documentation as needed.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MORROW COUNTY, OREGON**

IN THE MATTER OF APPROVING)
AN AGREEMENT BETWEEN THE)
SPONSORS OF THE COLUMBIA) RESOLUTION NO. R-2020-18
RIVER ENTERPRISE ZONE AND)
KLEAN INDUSTRIES BOARDMAN)
LLC)

WHEREAS, Morrow County, the Port of Morrow and the City of Boardman are Sponsors of the Columbia River Enterprise Zone (II); and

WHEREAS, the Columbia River Enterprise Zone (I) was originally established in 1998 and the Columbia River Enterprise Zone (II) was reauthorized in 2009; and

WHEREAS, the Columbia River Enterprise Zone (II) is governed by an Intergovernmental Agreement which sets forth governance and authorizes the Columbia River Enterprise Zone II Board to negotiate and enter into Agreements on behalf of the Sponsoring Entities; and

WHEREAS, the Columbia River Enterprise Zone (II) Board has negotiated with Klean Industries Boardman LLC for extended abatement under the Long-Term Rural Enterprise Zone requirements outlined in Oregon Administrative Rule Chapter 123 Division 690; and

WHEREAS, the Columbia River Enterprise Zone (II) Board and Manager have executed the Agreement (Attachment A); and

WHEREAS, Klean Industries Boardman LLC, has submitted the necessary application to the Columbia River Enterprise Zone Manager;

THE MORROW COUNTY BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:

To support the Agreement as negotiated by the Columbia River Enterprise Zone (II) Board with Klean Industries Boardman LLC by signing this statutorily required Resolution.

This Resolution shall be effective immediately.

Dated this 29th day of June 2020.

**MORROW COUNTY BOARD OF COMMISSIONERS
MORROW COUNTY, OREGON**

Melissa Lindsay, Chair

Don Russell, Commissioner

Jim Doherty, Commissioner

Approved as to Form:

Morrow County Counsel

AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE ABATEMENT

This agreement for Long-Term Rural Enterprise Zone Tax Abatement ("Agreement") is executed by the Columbia River Enterprise Zone II Board representing MORROW COUNTY OREGON ("Morrow County"), the CITY OF BOARDMAN OREGON ("City of Boardman"), the PORT OF MORROW OREGON ("Port of Morrow") and Klean Industries Boardman LLC (the "Company"). Morrow County, the City of Boardman, and the Port of Morrow are referenced collectively in this Agreement as "Sponsors." Sponsors and Company are sometimes collectively referenced in this Agreement as "Parties."

RECITALS

The Sponsors have established the Columbia River Enterprise Zone II pursuant to Oregon Revised Statute (ORS) 285C 045, *et seq*.

With the aid of tax incentives from the Sponsors, Klean Industries Boardman LLC, either directly or through an affiliate, intends to invest approximately \$65,000,000 in the Columbia River Enterprise Zone II by building a new tire recycling facility ("Facility").

Klean Industries Boardman LLC must execute a first-source hiring agreement, pursuant to ORS 285C 215, regarding the new permanent jobs to be created in Morrow County.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the covenants contained herein, and in accordance with ORS 285C 400 through 285C 420, the Parties hereby agree as follows:

AGREEMENT

- I. **Exemption:** The Sponsors jointly acknowledge and agree that, upon timely submission by Klean Industries Boardman LLC of an application for authorization, and upon certification by the Sponsors and the Morrow County Assessor, and conditioned upon the satisfaction of other requirements under ORS 285C 400 to 285C 420 and this Agreement, the Facility will be exempt from *ad valorem* property tax on the Facility as provided in ORS 285C 409(1). The property tax exemption granted by this Agreement will to the maximum extent permitted by this law exempt from all *ad valorem* property taxation the real property improvements, personal improvements, and tangible and intangible personal property (excluding land, as set forth in ORS 285C 409(5)(a)) comprising or installed, constructed, added or otherwise placed at the Facility, all as set forth in ORS 285C 409 and OAR 123-690-0100 and 123-690-6200. The Facility location is described in Exhibit A and Exhibit B.
- II. **Term of Exemption:** Pursuant to ORS 285C 409(1)(c) and conditioned upon the satisfaction of other requirements under ORS 285C 400 to 285C 420 and this Agreement, the Facility will be exempt from *ad valorem* property tax for a total of 15 consecutive property tax years ("Exemption Period") and shall commence as of the first tax year in which the Facility is in service as of the assessment date.

- III. **Certificate of Occupancy:** The Company shall notify the Morrow County Assessor upon the Facility's receipt of its certificate of occupancy within sixty (60) days of such receipt.
- IV. **Scope of Exemption:** Pursuant to ORS 285C.409(1)(a) and (b) and subject to Section I, Klean Industries Boardman LLC is entitled to exemption from *ad valorem* property tax with respect to all qualified property, whether leased or owned and whether tangible or intangible, of Klean Industries Boardman LLC and used in connection with the development and construction on the Property.
- V. **Obligations of Klean Industries Boardman LLC:** Klean Industries Boardman LLC will comply with the following conditions as authorized under ORS 285C 403(3)(c), which constitutes consideration for the extension of the exemption beyond seven years.
- A. **Statutory and Administrative Requirements:** Klean Industries Boardman LLC agrees to comply with the requirements of ORS 285C.409 and 285C 412(2) as well as those provided in Oregon Administrative Rules ("OAR") Chapter 123 Division 690, including:
1. **Minimum Facility Investment:** As provided in ORS 285C.412 by the end of the year in which the Facility is placed in service, the total cost of the facility will be approximately \$65,000,000.
 2. **Minimum Employment:** Klean Industries Boardman LLC will hire and thereafter continue to employ during the term of this exemption at least 35 full-time employees at the Facility by the end of the third calendar year following the year in which the Facility is placed in service.
 3. **Minimum Employee Compensation:** Klean Industries Boardman LLC agrees that the annual average compensation for all employees at the Facility will be at least equal to or greater than 130 percent of the County average annual wage in accordance with the definitions and guidelines in OAR Chapter 123 Division 690. This requirement may be initially met in any year during the first five years after the year in which operation of the Facility begins, and thereafter is met if the annual average compensation for employees related to the Facility for the year exceeds the average wage in the County for the year in which the requirement was initially met.
- B. **Fee Payments:** No later than November 15 of each calendar year, Klean Industries Boardman LLC agrees to pay:
1. **Annual Payment:** The first payment will be due November 15 of the first year that Klean Industries Boardman LLC is eligible for exemption. So long as it remains eligible for exemption, Klean Industries Boardman LLC will pay the annual fee payment of \$300,000.00 and continue making that payment for fifteen (15) consecutive years. Klean Industries Boardman LLC will remit the Fee Payments to the Morrow County Assessor. Such payments will be disbursed pursuant to the direction of the Board of Directors of the Columbia River Enterprise Zone II established by the Sponsors.
 2. **Investment Variance in excess of 5 Percent More or 5% Less:** Should the investment be in excess of 5% more or 5% less of the indicated \$65,000,000 the annual payments would be prorated upward or

downward accordingly. As an example, if the final investment is 8 percent over the \$65,000,000 then the annual payment would also increase by 8 percent.

3. **Payment Reduction Opportunities:** Klean Industries Boardman LLC may make payments to or for the benefit of any charity or governmental entity that directly benefits Morrow County ("Charitable Payment"). Additionally, if Klean Industries Boardman LLC makes a Charitable Payment it may reduce its payments due under Section IV(B)(1) on a dollar for dollar basis up to a total reduction each year in the amount of ten percent of the Annual Payment amount.
4. **Future Bonding:** In each of the years of the exemption, Klean Industries Boardman LLC shall pay to the Morrow County Assessor, on or before November 15th of each year, an amount equal to one-hundred percent (100%) of the bond tax rate times \$48,750,000.00 (generally 75 percent of the cost of the facility as presented on the authorization application) for all newly issued bonded indebtedness in the consolidated tax code area of the Facility's location. Newly issued bonded indebtedness shall be those bonds first issued pursuant to voter approval of a measure passed on or after July 1, 2020 if the proceeds are used for purposes authorized under applicable law.
5. **Permit Fees:** Klean Industries Boardman LLC will pay all standard building permit and other permit fees. Klean Industries Boardman LLC further agrees that if it has a choice between obtaining an equivalent permit, license, or similar approval from either a local governmental entity or a state entity, Klean Industries Boardman LLC will obtain the permit, license, or similar approval from the local governmental entity.
6. **Past Due & Delinquent Taxes:** All past due and delinquent taxes due on the real property, real property improvements, personal improvements and tangible & intangible personal property that are described in Exhibit A and Exhibit B must be paid by 8-01-2020 to the Morrow County Tax Collector. If all the past due and delinquent taxes are not paid by that date, this agreement becomes null and void in its entirety.

VI. Obligations of Sponsors: Sponsors will comply with the following conditions:

- A. **Resolutions:** Within 30 days of the Effective Date (as that capitalized term is defined below), the governing body of each of the County, the City, and the Port will adopt resolutions approving and authorizing the execution of this Agreement. Such resolutions will serve to approve the Facility for a property tax exemption under ORS 285C 409 and constitute the resolutions described in ORS 285C 403(3)(a).
- B. **Certification:** As soon as reasonably practicable following the adoption of the resolutions by the County, the City and the Port referenced in Section VI A of this Agreement, and confirmation of the satisfaction of the criteria set forth under ORS 285C 403(3), and in no event later than July 29, 2020, Sponsors and the Assessor will approve and countersign the application submitted by Klean Industries Boardman LLC, thereby certifying Klean Industries Boardman LLC as eligible for the property tax exemption contemplated by this Agreement.

- C. **Tax Exemption:** Sponsors hereby set the period of the property tax exemption for purposes of ORS 285C.409(1)(c) to be 15 consecutive years
- D. **Sponsors Support:** Sponsors will support Klean Industries Boardman LLC efforts to qualify for and obtain other tax incentives in connection with the Facility including by promptly executing such letters or other documentation of support as may be reasonably requested by Klean Industries Boardman LLC, but Sponsors make no warranty with respect to its/their ability to affect any outcome in such regards

VII. **Termination Rights:** Each party may terminate this Agreement as follows

- A. **Klean Industries Boardman LLC Termination Right:** If any condition contained in the Agreement fails to be satisfied for any reason, Klean Industries Boardman LLC may elect to terminate this Agreement by delivery of written notice thereof to Sponsors at the address set forth herein. Upon delivery of any such notice, this Agreement will be of no further force or effect and no party will have any further rights or obligations hereunder, except for obligations owing and unpaid on the date of termination.
- B. **Sponsors' Termination Right:** If Klean Industries Boardman LLC fails to make any payment required under this Agreement within 30 days of the due date of such payment, or fails to fulfill any other obligation of this agreement within 30 days of written notice specifying the obligation which is in default, Sponsors may terminate the Agreement upon written notice to Klean Industries Boardman LLC. Such notice must provide an additional 60 days in which Klean Industries Boardman LLC may cure any such payment deficiency or default. Notwithstanding the foregoing, Sponsors may not terminate the Agreement if Klean Industries Boardman LLC's failure to pay is due to Sponsors' error.
- C. **Mutual Termination Right:** The parties may terminate this Agreement at any time upon mutual written agreement of termination.

VIII. **Miscellaneous Provisions:**

- A. **Effective Date:** This Agreement becomes effective on the date at which this Agreement has been signed by all of the Parties.
- B. **Assignment:** Klean Industries Boardman LLC may assign, upon written notice and authorization in the name of the assignee, its rights and obligations under this Agreement to a new entity without any further consent of Sponsors.
- C. **Amendment:** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought.
- D. **Waiver:** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof.
- E. **Notices:** All notices, communications, and payments required relating to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or delivered by nationally



recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered, three days after mailing if sent by mail, and one business day after dispatch if sent by express courier, to the following addresses:

If to Sponsors

If to Company

Morrow County Assessor
 PO Box 247
 Heppner, OR 97836

Klean Industries Boardman LLC
 Suite 2500
 700 West Georgia Street
 Vancouver, B.C., Canada
 V7Y 1B3

- F. **Severability:** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- G. **Governing Law:** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.
- H. **Venue:** Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Morrow County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Morrow County, Oregon.
- I. **Attorney's Fees:** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
- J. **Entire Agreement:** This Agreement contains the entire understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.
- K. **Signatures:** This Agreement may be signed in counterparts. A facsimile transmission of a signature page or electronic mail transmission of a signature page in pdf format will be considered an original signature page. At the request of a party, the other party will confirm a facsimile-transmitted or electronic mail-transmitted signature page by delivering an original signature page to the requesting party.



IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the date shown below.

Columbia River Enterprise Zone II Board

Dated this _____ day of _____, 2020

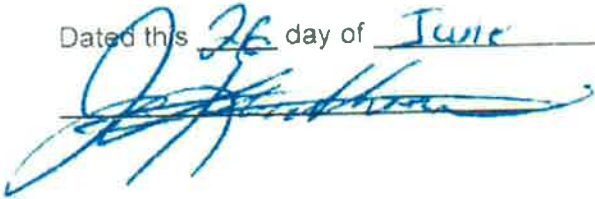
Don Russell, CREZ II Chair

Attest:

Greg Sweek, CREZ II Manager

Klean Industries Boardman LLC

Dated this 26 day of June, 2020.



IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the date shown below.

Columbia River Enterprise Zone II Board

Washed on 26th day of June 2021


Tom Kupper, CREZ II Chair

Witness:


Greg Smith, CREZ II Manager

Klean Industries Boardman LLC

Washed on 26th day of June 2021


Jeff Hutton



Exhibit "A"

Legal Description of Leased Property

Lease Parcel 1 Description

A 5.00 Acre portion, more or less, for the development of an Industrial Recycling Facility, located in Sections 1 & 2, Township 4 North, Range 25, East of the Willamette Meridian located within Morrow County, Oregon, more particularly described as follows:
Beginning at a Point being North 40° 02' 14" East a distance of 3,190.39 feet from the South Quarter Corner of Section 2, in Township 4 North, Range 25 East, said point being 73.30 feet from, and at right angles to, the centerline of East Columbia Avenue. Thence parallel to and at a distance of 73.30 feet from said centerline of East Columbia Avenue, North 47° 52' 25" East a distance of 545.00 feet; Thence South 42° 07' 35" East a distance of 400.00 feet; Thence South 47° 52' 25" West a distance of 545.00 feet; Thence North 42° 07' 35" West a distance of 400.00 feet to the Point of Beginning; all being located in Sections 1 and 2, of Township 4 North, Range 25, East of the Willamette Meridian, in the County of Morrow, and State of Oregon.

Lease Parcel 2 Description

A 3.00 Acre portion, more or less, for the development of an Industrial Recycling Facility, located in Sections 1 & 2, Township 4 North, Range 25, East of the Willamette Meridian located within Morrow County, Oregon, more particularly described as follows:
Commencing at a Point being North 40° 02' 14" East a distance of 3,190.39 feet from the South Quarter Corner of Section 2, in Township 4 North, Range 25 East, said point being 73.30 feet from, and at right angles to, the centerline of East Columbia Avenue. Thence parallel to and at a distance of 73.30 feet from said centerline of East Columbia Avenue, North 47° 52' 25" East a distance of 545.00 feet to the True Point of Beginning of this description. Thence parallel to and at a distance of 73.30 feet from said centerline of East Columbia Avenue, North 47° 52' 25" East a distance of 326.70 feet; Thence South 42° 07' 35" East a distance of 400.00 feet; Thence South 47° 52' 25" West a distance of 326.70 feet; Thence North 42° 07' 35" West a distance of 400.00 feet to the True Point of Beginning; all being located in Sections 1 and 2, of Township 4 North, Range 25, East of the Willamette Meridian, Morrow County, Oregon.

Exhibit "B"

Port of Morrow / Klean Lease Boundary EXHIBIT "B" LEGAL DESCRIPTION

A 10.17 Acre Parcel of land located in Sections 1&2, Township 4 North, Range 25, East of the Willamette Meridian, in the County of Morrow and State of Oregon, more particularly described as follows:

Commencing at the South West Corner of Section 1, of Township 4 North, Range 25 E/W/M:
Thence North $0^{\circ} 18' 19''$ East a distance of 1507.25 feet to a point, said point being the True Point of Beginning of this Lease Property description: Thence North $48^{\circ} 25' 26''$ East a distance of 495.90 feet: Thence North $41^{\circ} 35' 28''$ East a distance of 270.88 feet: Thence North $41^{\circ} 44' 35''$ West a distance of 555.00 feet: Thence South $48^{\circ} 01' 25''$ West a distance of 765.00 feet: Thence South $41^{\circ} 44' 57''$ East a distance of 581.88 feet to the True Point of Beginning for this Lease Property description.

Containing 10.17 acres, more or less.





AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 1 of 2)

(For BOC Use)
Item #
5f

Please complete for each agenda item submitted for consideration by the Board of Commissioners
(See notations at bottom of form)

Presenter at BOC: Justin Nelson
Department: County Counsel
Short Title of Agenda Item:
(No acronyms please)

Phone Number (Ext): 5626
Requested Agenda Date: 6/29/2020

Resolution No. R-2020-19: Morrow County and Port of Morrow Joint Sponsorship of an Application for Designation of an Enterprise Zone

This Item Involves: (Check all that apply for this meeting.)

- Order or Resolution
Ordinance/Public Hearing:
1st Reading 2nd Reading
Public Comment Anticipated:
Estimated Time:
Document Recording Required
Contract/Agreement
Appointments
Update on Project/Committee
Consent Agenda Eligible
Discussion & Action
Estimated Time:
Purchase Pre-Authorization
Other

N/A

Purchase Pre-Authorizations, Contracts & Agreements

Contractor/Entity:
Contractor/Entity Address:
Effective Dates - From: Through:
Total Contract Amount: Budget Line:
Does the contract amount exceed \$5,000? Yes No

Reviewed By:

Department Director Required for all BOC meetings
Administrator Required for all BOC meetings
County Counsel *Required for all legal documents
Finance Office *Required for all contracts; other items as appropriate.
Human Resources *If appropriate

*Allow 1 week for review (submit to all simultaneously). When each office has notified the submitting department of approval, then submit the request to the BOC for placement on the agenda.

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Counsel, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

Final resolution for the creation of Columbia River Enterprise Zone 3.

2. FISCAL IMPACT:

3. SUGGESTED ACTION(S)/MOTION(S):

Motion to approve Resolution R-2020-19.

Attach additional background documentation as needed.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MORROW COUNTY, OREGON**

A RESOLUTION TO JOINTLY SPONSOR)
BETWEEN THE PORT OF MORROW AND) RESOLUTION NO. R-2020-19
MORROW COUNTY AN APPLICATION FOR)
DESIGNATION OF AN ENTERPRISE ZONE)

WHEREAS, the Port of Morrow and Morrow County are jointly sponsoring an application for designation of an enterprise zone; and

WHEREAS, the Port of Morrow and Morrow County are interested in an enterprise zone to encourage new business investment, job creation, higher incomes for local residents, and greater diversity of economic activity; and

WHEREAS, the proposed enterprise zone has a current total area of approximately 13 square miles and it meets other statutory limitations on size and configuration; it is depicted on the drawn-to-scale map (Exhibit A) and described in (Exhibit A); and

WHEREAS, the proposed enterprise zone contains significant land that is reserved for industrial use, as indicated by land use zoning map(s) with the application, consistent with Comprehensive Plan(s) acknowledged by the State of Oregon Land Conservation and Development Commission (LCDC), such industrial sites are accessible, serviced or serviceable, and otherwise ready for use and further development; and

WHEREAS, the designation of an enterprise zone does not grant or imply permission to develop land within the zone without complying with prevailing zoning, regulatory and permitting processes and restrictions for applicable jurisdictions; nor does it indicate any intent to modify those processes or restrictions, except as otherwise in accordance with Comprehensive Plans; and

WHEREAS, the Port of Morrow and Morrow County appreciate the impacts that a designated enterprise zone would have and the property tax exemptions that eligible business firms might receive therein, as governed by Oregon Revised Statutes (ORS) Chapter 285C and other provisions of Oregon Law; and

WHEREAS, all of the other municipal corporations, school districts, special service districts and so forth, other than the sponsoring governments, that receive operating revenue through the levying of *ad valorem* taxes on real and personal property in any area of the proposed enterprise zone were sent notice and invited to a public meeting regarding this proposal, in order for these sponsoring governments to effectively consult with these other local taxing districts of the proposed enterprise zone's designation; and

WHEREAS, the Port of Morrow and Morrow County appreciate the impacts that the designated enterprise zone would have and the property tax exemptions that eligible business firms might receive therein.

NOW THEREFORE BE IT RESOLVED that the Port of Morrow and Morrow County propose and apply as joint sponsors and will include Port of Morrow with three voting members, Morrow County with three voting members, for an Oregon enterprise zone to be named: The Columbia River Enterprise Zone III, and request that the director of the Oregon Business Development Department (OBDD) order the designation of this enterprise zone. Each agency to determine its voting members. Approval to enter into a written agreement with a business firm will be based on majority rule (four of six members must vote affirmative).

BE IT FURTHER RESOLVED that if a Columbia River Enterprise Zone III project being considered is located in a city's or community's area of influence as defined in the map attached as Exhibit B, then the voting members for approval shall be as follows: Port of Morrow (two voting members), Morrow County (two voting members), and city (two voting members).

BE IT FURTHER RESOLVED that the current Enterprise Zone Manager is authorized to submit the enterprise zone application to OBDD on behalf of the Port of Morrow and Morrow County for purposes of a positive determination in favor under ORS 285C.074.

BE IT FURTHER RESOLVED, the Port of Morrow and Morrow County commit, upon designation, to jointly appoint a local enterprise zone manager within 90 days.

BE IT FURTHER RESOLVED, Port of Morrow and Morrow County will jointly comply with the requirements and provisions of ORS 285C.105 and otherwise fulfill its duties under ORS 285C.050 to 285C.250.

BE IT FURTHER RESOLVED, the Port of Morrow and Morrow County jointly commit to implement and to confirm for the department its fulfillment of such duties, as specified in OAR 123-065-0210, including but not limited to preparation of a list or map of local lands and buildings owned by the state or by municipal corporations within the enterprise zone that are not being used or designated for a public purpose, and that have appropriate land use zoning, and to efforts for making such real property available for lease or purchase by authorized business firms under ORS 285C.110.

BE IT FURTHER RESOLVED, the Port of Morrow and Morrow County jointly request that the Director of OBDD waive the distance maximum of 25 miles overall and/or of 15 miles between separate areas within the proposed enterprise zone pursuant to this application for designation.

BE IT FURTHER RESOLVED, the Port of Morrow and Morrow County as a sponsor of the proposed Columbia River Enterprise Zone exercise its option herewith under ORS 285C.070 that qualified property of and operated by a qualified business firm as a hotel, motel or destination resort may receive a property tax exemption in the Zone, and that such business firms are eligible for purposes of authorization upon the effective designation of the Zone.

BE IT FURTHER RESOLVED, that said boundaries for determining any specific and local municipality involvement or voting authority will be determined by designated area of influence around each city in Morrow County, of which all entities are in Morrow County described in Exhibit B.

BE IT FURTHER RESOLVED, that if and when a business or project to be sited/developed in an area of influence described in Exhibit B, that local municipality will be seated at the negotiating table to determine and agree to such impact, support and distribution of funds.

BE IT FURTHER RESOLVED, that the Columbia Enterprise Zone III designates the following as key priorities for any disbursement of funds received, of which are not prioritized; Infrastructure, Education, Public Safety, Housing, and Community Enhancement. These may be modified in the future to benefit economic and community development.

BE IT FURTHER RESOLVED, that more specific Intergovernmental Agreements and mapping will be developed between the sponsors and local municipalities (area of influence as defined in the map attached as Exhibit B) on the siting of a potential project(s), the disbursement of potential funds, and the process to ensure full community support and inclusiveness.

BE IT FURTHER RESOLVED, that any disbursement of funds will be developed and agreed to through the Intergovernmental Agreements, using the Portland State University (PSU) population numbers as means for disbursement of any specific funds to jurisdictions for taxing organizations.

BE IT FURTHER RESOLVED, nothing in this Resolution is intended to supersede or go counter to any applicable Oregon Revised Statutes or Oregon Administrative Rules. It is the intent of sponsor entities to comply with all applicable Oregon Revised Statutes or Oregon Administrative Rules.

Morrow County

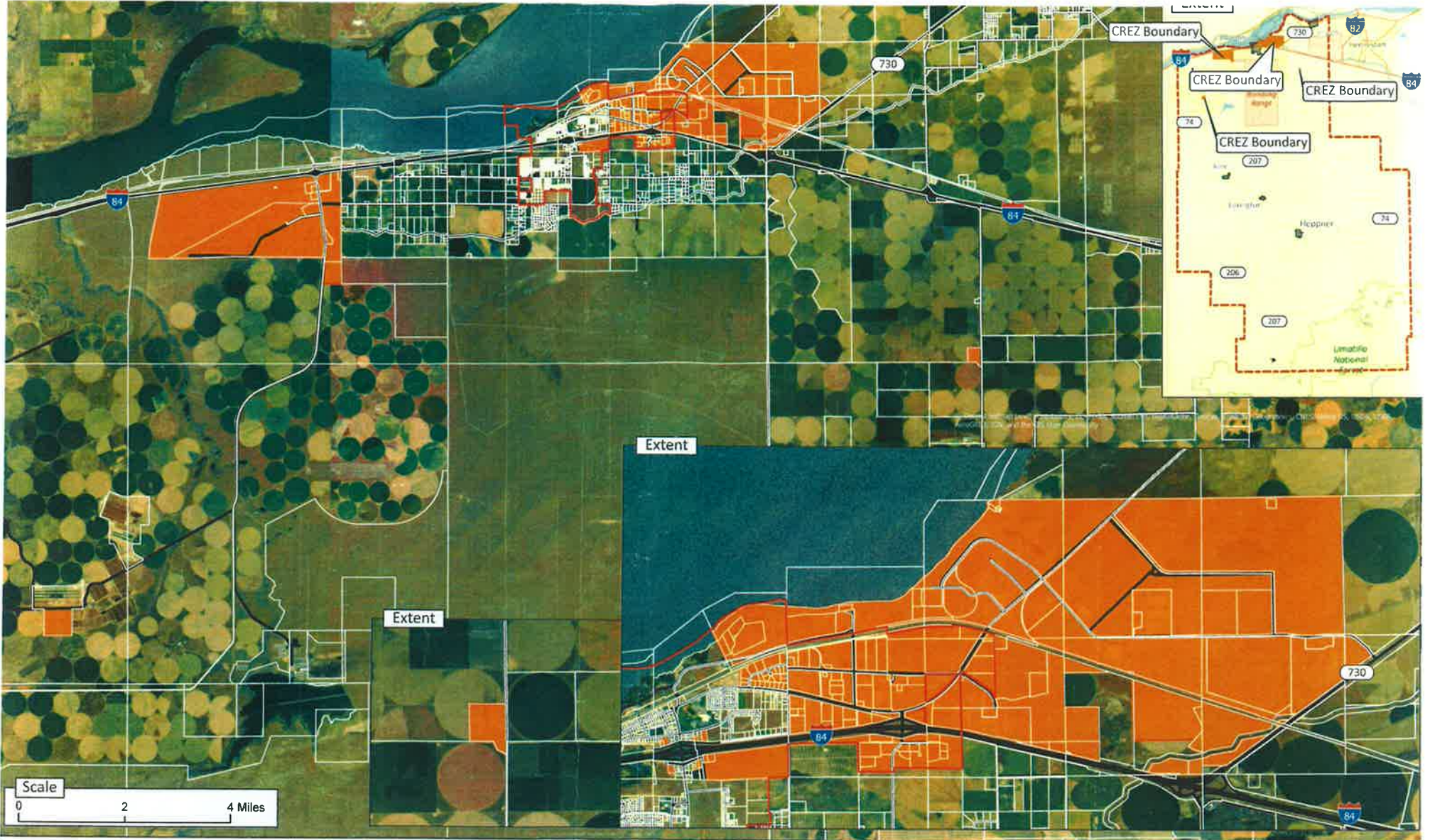
DATED this 29th day of June 2020.

Melissa Lindsay, Chair

Don Russell, Commissioner

Jim Doherty, Commissioner

Port of Morrow: Approved by Port of Morrow in Resolution R-2020-17, approved on June 24,2020



Legend

City Limits

Tax Lots

2020 CREZ Boundary



**CREZ Boundaries
Exhibit A**



Cartography By: Stephen Wrecics
 Morrow County Planning Department
 Coordinate System: NAD83 Oregon GIC Lambert II
 Datum: North American 1983
 Projection: Lambert Conformal Conic



Fig. 1

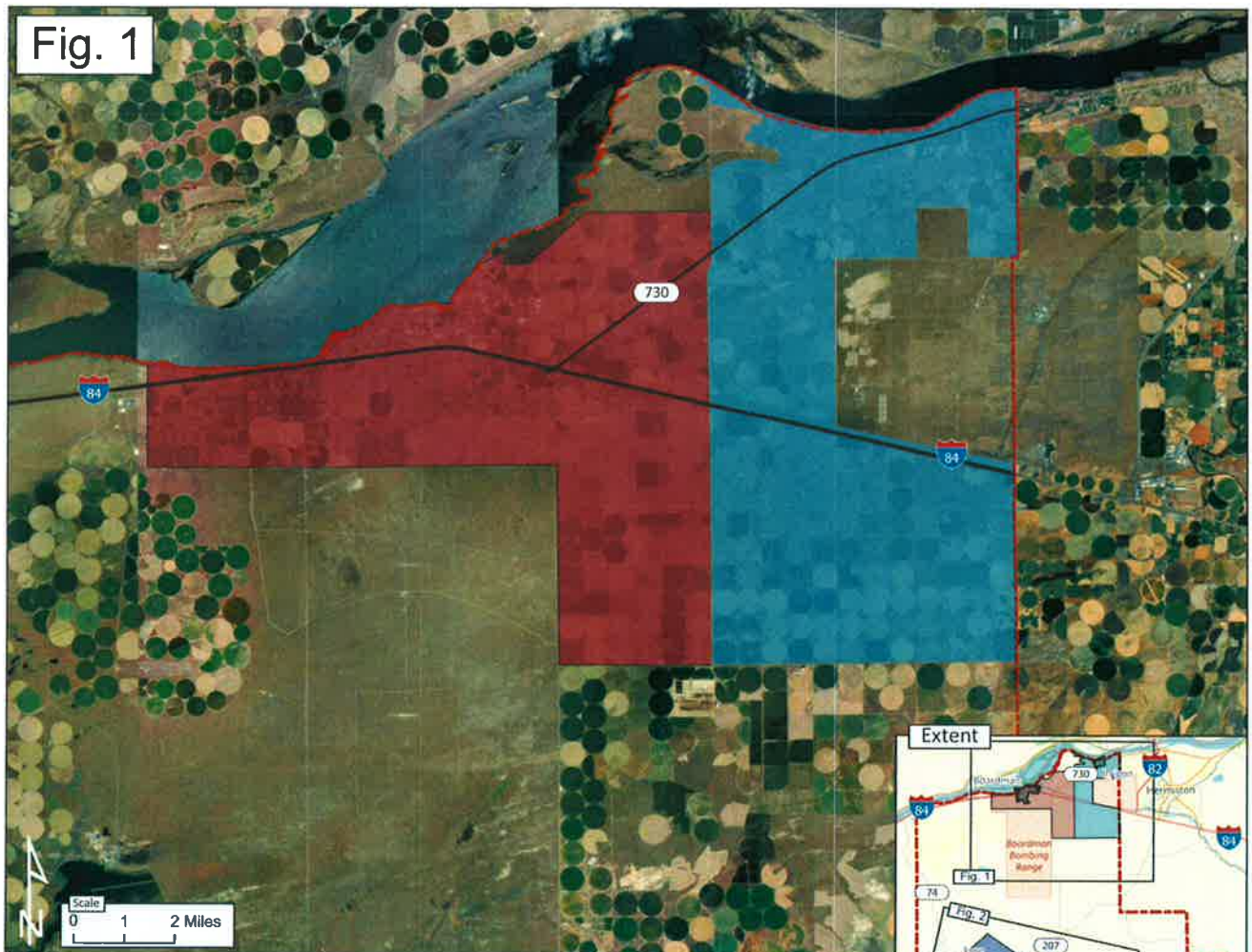
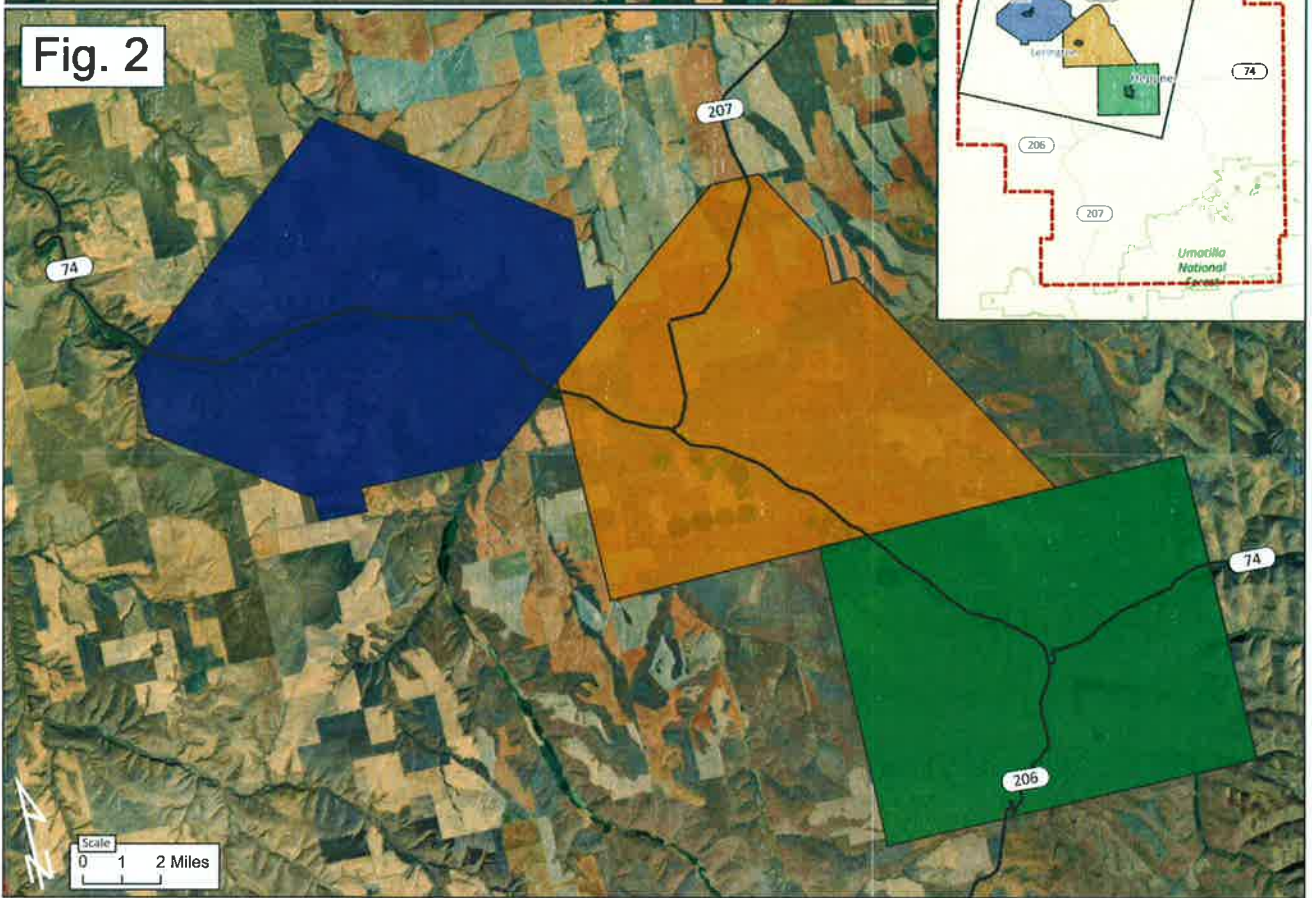



Fig. 2




Proposed CREZ
Boundaries
Exhibit B

Legend	
Boardman = 32,244 ac ²	Ione = 32,051 ac ²
Heppner = 32,058 ac ²	Irrigon = 32,761 ac ²
	Lexington = 32,273 ac ²



Cartography By: Stephen Wrecsics
Morrow County Planning Department
Coordinate System: NAD83 Oregon GIC Lambert I
Datum: North American 1983
Project on: Lambert Conformal Conic

Date Saved: 5/17/2020 10:27 AM

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**Special Commission Meeting Minutes Excerpt
Wednesday, June 24th – 3:00 pm
2 Marine Drive, Boardman, Oregon 97818**

PRESENT:

Commissioners: Rick Stokoe, Joe Taylor, and Marv Padberg

By Zoom Meeting: Jerry Healy, John Murray, Torrie Griggs, Justin Nelson, Sheryll Bates and unidentified call in user

Staff: Ryan Neal, Mark Patton, Lisa Mittelsdorf, Eileen Hendricks, Kalie Davis, Erika Lasater, Morgan Orem (intern) and Brandy Warburton

Visitors present: Karen Pettigrew

I. CALL TO ORDER AND INTRODUCTIONS

The meeting was called to order by Rick Stokoe at 3:00 pm

II. OLD BUSINESS

A. CREZ

B. Resolution 2020-17

Ryan reported that we have had on-going discussions with both the county and the city for the last several months regarding a CREZ III application to the state, since CREZ II will expire on June 30, 2020. Ryan presented the group with Resolution 2020-17 and a map marked Exhibit B as reference of impact zones for a CREZ III application. A map of the Enterprise Zone boundaries was attached as Exhibit A. This application, once approved, would be in lieu of an application with the City of Boardman for a CREZ III. Morrow County Commission would still need to pass this resolution.

Joe moved to approve Resolution 2020-17, authorizing an application to jointly sponsor CREZ III with Morrow County and proceed with Special District Informational meeting. Marv seconded the motion. No further discussion was had, and the motion passed unanimously.

RESOLUTION NO. R-2020-17

**A RESOLUTION TO JOINTLY SPONSOR BETWEEN THE PORT OF MORROW
AND MORROW COUNTY AN APPLICATION FOR DESIGNATION OF AN
ENTERPRISE ZONE**

WHEREAS, the Port of Morrow and Morrow County are jointly sponsoring an application for designation of an enterprise zone; and

WHEREAS, the Port of Morrow and Morrow County are interested in an enterprise zone to encourage new business investment, job creation, higher incomes for local residents, and greater diversity of economic activity; and

WHEREAS, the proposed enterprise zone has a current total area of approx. 13 square miles and it meets other statutory limitations on size and configuration; it is depicted on the drawn-to-scale map (Exhibit A) and described in (Exhibit A); and

WHEREAS, the proposed enterprise zone contains significant land that is reserved for industrial use, as indicated by land use zoning map(s) with the application, consistent with Comprehensive Plan(s) acknowledged by the State of Oregon Land Conservation and Development Commission (LCDC), such industrial sites are accessible, serviced or serviceable, and otherwise ready for use and further development; and

WHEREAS, the designation of an enterprise zone does not grant or imply permission to develop land within the zone without complying with prevailing zoning, regulatory and permitting processes and restrictions for applicable jurisdictions; nor does it indicate any intent to modify those processes or restrictions, except as otherwise in accordance with Comprehensive Plans; and

WHEREAS, the Port of Morrow and Morrow County appreciate the impacts that a designated enterprise zone would have and the property tax exemptions that eligible business firms might receive therein, as governed by Oregon Revised Statutes (ORS) Chapter 285C and other provisions of Oregon Law; and

WHEREAS, all of the other municipal corporations, school districts, special service districts and so forth, other than the sponsoring governments, that receive operating revenue through the levying of *ad valorem* taxes on real and personal property in any area of the proposed enterprise zone were sent notice and invited to a public meeting regarding this proposal, in order for these sponsoring governments to effectively consult with these other local taxing districts of the proposed enterprise zone's designation; and

WHEREAS, the Port of Morrow and Morrow County appreciate the impacts that the designated enterprise zone would have and the property tax exemptions that eligible business firms might receive therein.

NOW THEREFORE BE IT RESOLVED that the Port of Morrow, and Morrow County proposes and applies as joint sponsors and will include Port of Morrow with 3 voting members, Morrow County with 3 voting members, for an Oregon enterprise zone to be named: The Columbia River Enterprise Zone III, and request that the director of the Oregon Business Development Department (OBDD) order the designation of this enterprise zone. Each agency to determine their voting members. Approval to enter into a written agreement with a business firm will be based on majority rule (4 of 6 members must vote affirmative).

BE IT FURTHER RESOLVED that if a Columbia River Enterprise Zone 3 project being considered is located in a city or community's area of influence as defined in the map attached as Exhibit B, then the voting members for approval shall be as follows: Port of Morrow (2 voting members), Morrow County (2 voting members), and city (2 voting members).

BE IT FURTHER RESOLVED that the current Enterprise Zone Manager is authorized to submit the enterprise zone application to OBDD on behalf of the Port of Morrow and Morrow County for purposes of a positive determination in favor under ORS 285C.074.

BE IT FURTHER RESOLVED, the Port of Morrow and Morrow County commits, upon designation, to jointly appoint a local enterprise zone manager within 90 days.

BE IT FURTHER RESOLVED, Port of Morrow, and Morrow County will jointly comply with the requirements and provisions of ORS 285C.105 and otherwise fulfill its duties under ORS 285C.050 to 285C.250.

BE IT FURTHER RESOLVED, the Port of Morrow, and Morrow County jointly commits to implement and to confirm for the department its fulfillment of such duties, as specified in OAR 123-065-0210, including but not limited to preparation of a list or map of local lands and buildings owned by the state or by municipal corporations within the enterprise zone that are not being used or designated for a public purpose and that have appropriate land use zoning, and to efforts for making such real property available for lease or purchase by authorized business firms under ORS 285C.110.

BE IT FURTHER RESOLVED, the Port of Morrow and Morrow County jointly requests that the Director of OBDD waive the distance maximum of 25 miles overall and/or of 15 miles between separate areas within the proposed enterprise zone pursuant to this application for designation.

BE IT FURTHER RESOLVED, the Port of Morrow and Morrow County as a sponsor of the proposed Columbia River Enterprise Zone exercises its option herewith under ORS 285C.070 that qualified property of and operated by a qualified business firm as a hotel, motel or destination resort may receive a property tax exemption in the Zone, and that such business firms are eligible for purposes of authorization upon the effective designation of the Zone.

BE IT FURTHER RESOLVED, that said boundaries for determining any specific and local municipality involvement or voting authority will be determined by designated area of influence around each city in Morrow County, of which all entities are in Morrow County described in Exhibit B.

BE IT FURTHER RESOLVED, that if and when a business or project to be cited/developed in an area of influence described in Exhibit B, that local municipality will be seated at the negotiating table to determine and agree to such impact, support and distribution of funds.

BE IT FURTHER RESOLVED, that the Columbia Enterprise Zone III designate the following as key priorities for any disbursement of funds received, of which are not prioritized; Infrastructure, Education, Public Safety, Housing, and Community Enhancement. These may be modified in the future to benefit economic and community development.

BE IT FURTHER RESOLVED, that more specific Intergovernmental Agreements and mapping will be developed between the sponsors and local municipalities (area of influence as defined in the map attached as Exhibit B) on the siting of a potential project(s), the disbursement of potential funds, and the process to ensure full community support and inclusiveness.


BE IT FURTHER RESOLVED, that any disbursement of funds will be developed and agreed to through the Intergovernmental Agreements, using the Portland State University (PSU) population numbers as means for disbursement of any specific funds to jurisdictions for taxing organizations.

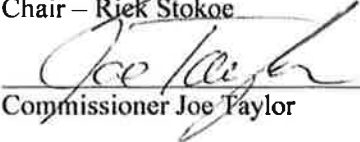
BE IT FURTHER RESOLVED, nothing in this resolution is intended to supersede or go counter to any applicable Oregon Revised Statutes or Oregon Administrative Rules. It is the intent of sponsor entities to comply with all applicable Oregon Revised Statutes or Oregon Administrative Rules.

Port of Morrow

DATED this 24TH day of June, 2020.

PORT OF MORROW


Chair – Riek Stokoe


Commissioner Joe Taylor

Commissioner Jerry Healy


Commissioner Marv Padberg

Commissioner John Murray

Fig. 1

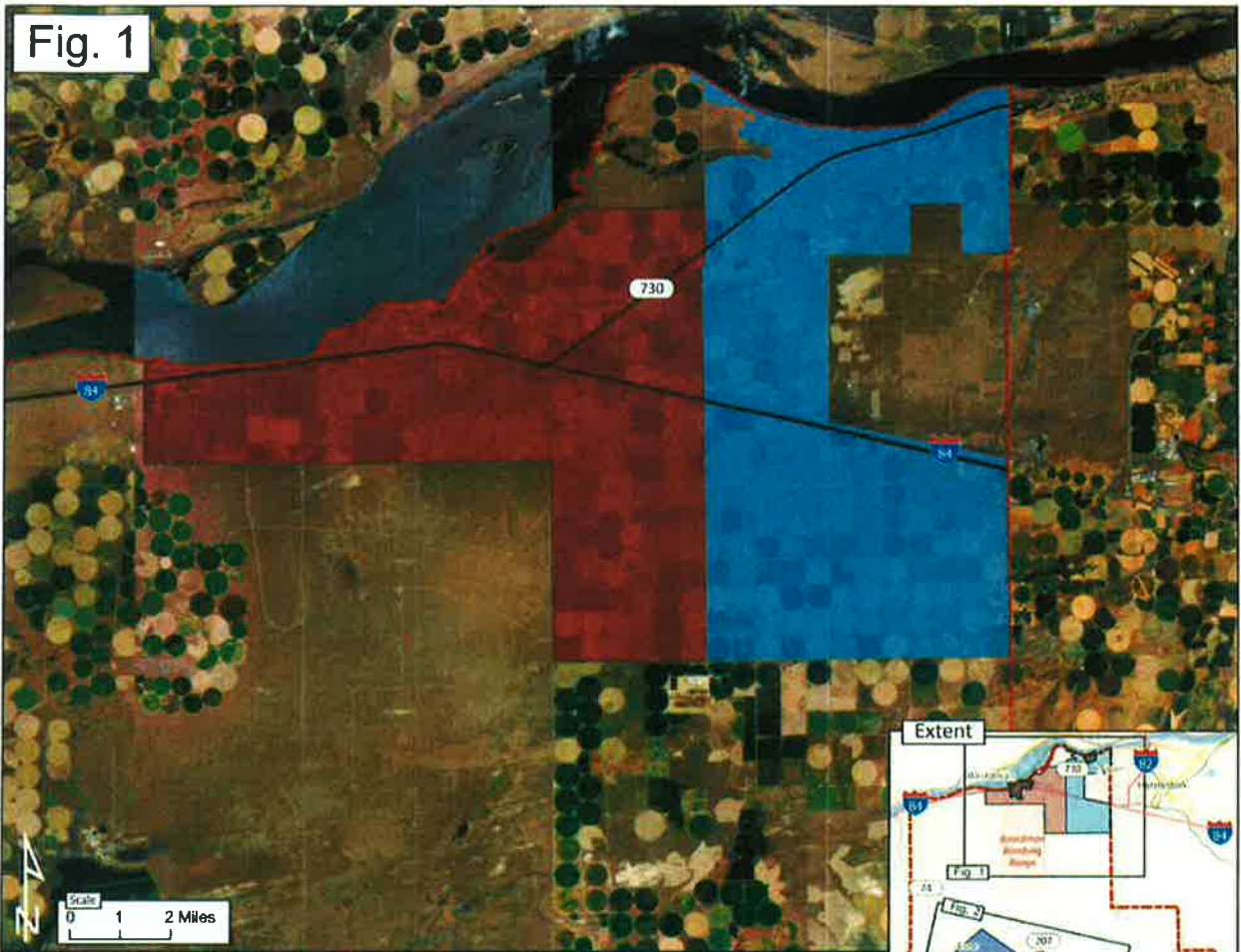
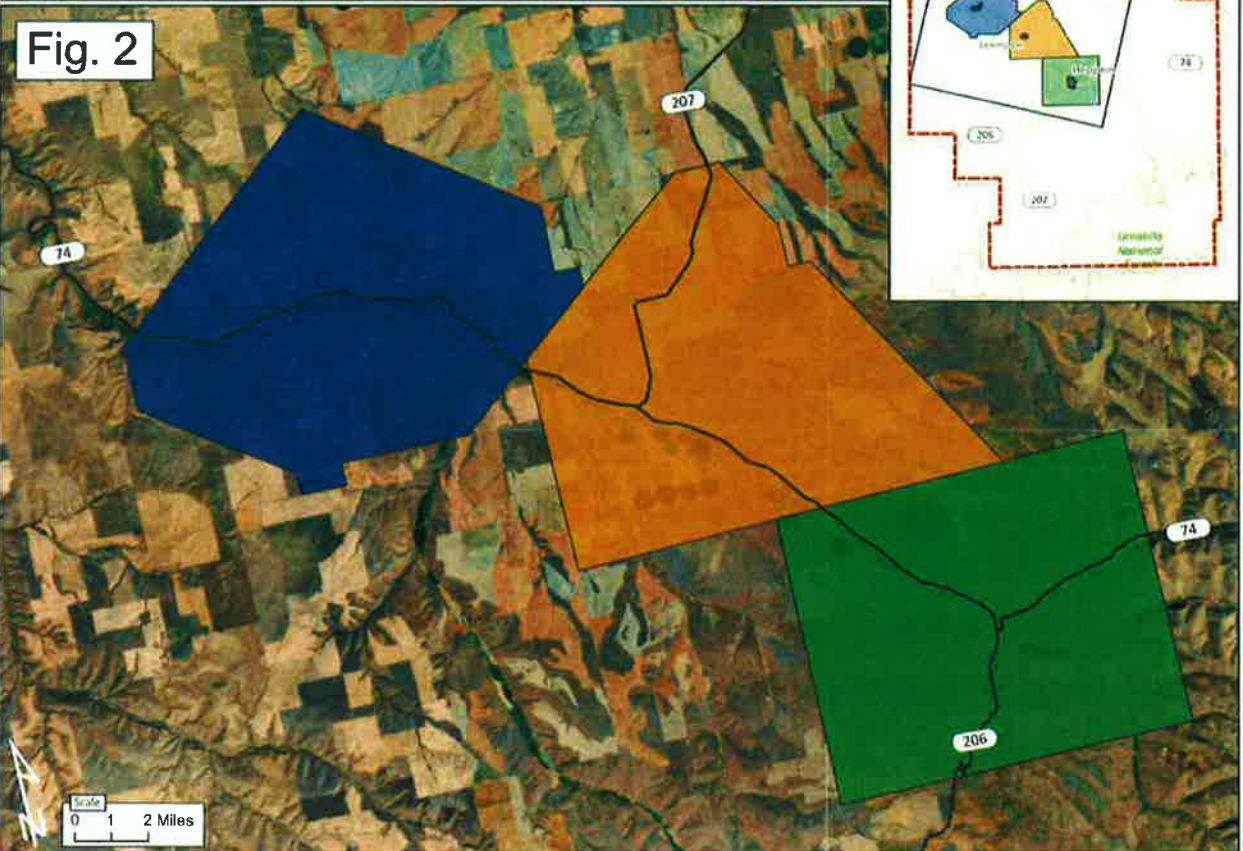

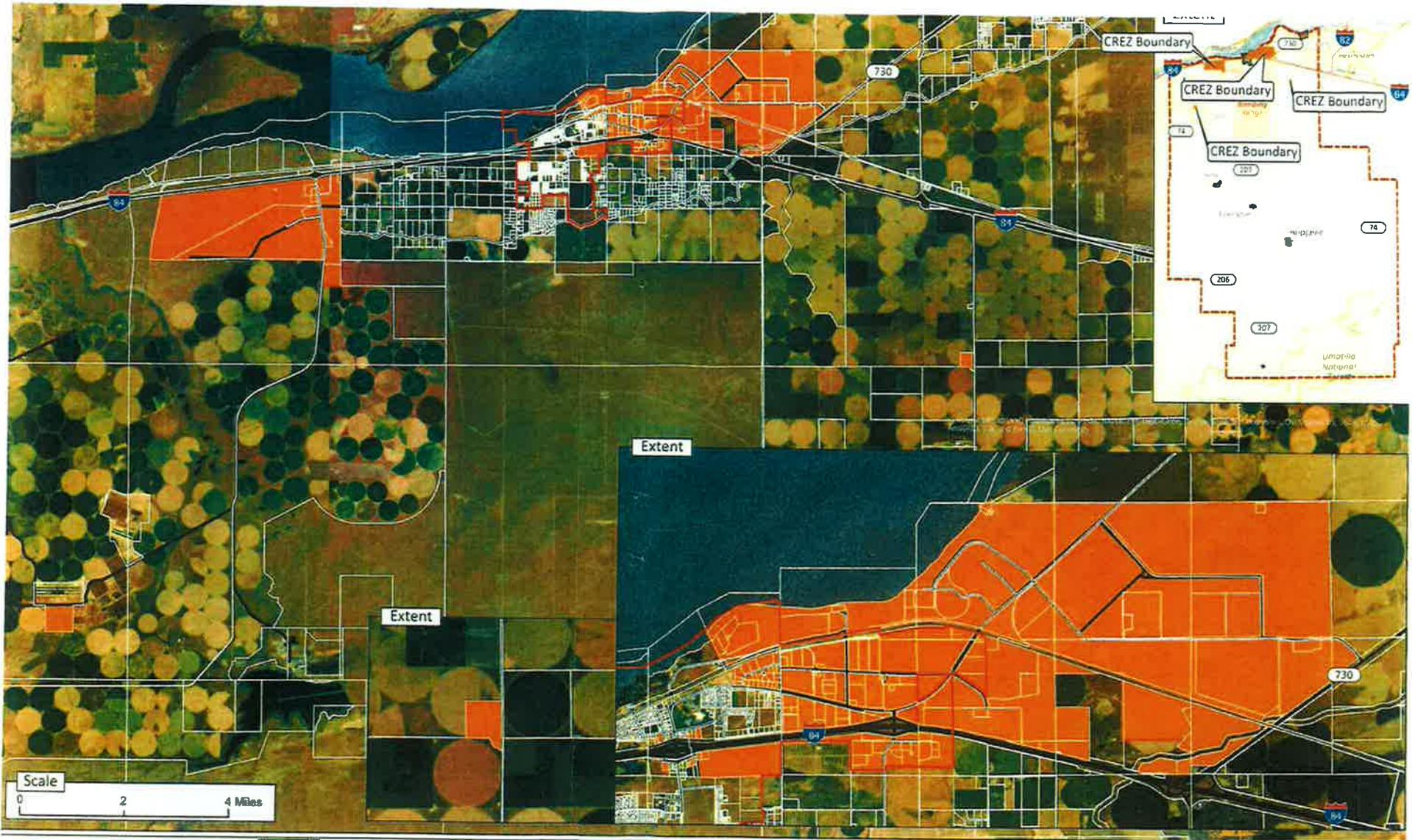


Fig. 2



	<p>Proposed CREZ Boundaries</p>	<p>Legend</p>	<p>Ione = 32,051 ac² Irrigon = 32,761 ac² Lexington = 32,273 ac²</p>	<p>Cartography By: Stephen Wrecics Morrow County Planning Department Coordinate System: NAD83 Oregon GIC Lambert I STATNOM: Seattle, Alaska, 48183 Project on: Lambert Conformal Conic</p>
	<p>Exhibit B</p>	<p>Boardman = 32,244 ac² Heppner = 32,058 ac²</p>	<p>© 2020 Swed 5/12/2020 10:22 AM</p>	



Legend

City Limits

Tax Lots

2020 CREZ Boundary



Cartography By: Stephen Wirecsics
 Morrow County Planning Department
 Coordinate System: NAD83 Oregon GIC Lambert 4
 Datum: North American 1983
 Projection: Lambert Conformal Conic



CREZ Boundaries

MORROW COUNTY
PROFESSIONAL SERVICES CONTRACT
"CREZ Manager- Short Term"

This Contract is between Morrow County, hereafter called **County**, and Greg Sweek, hereafter called **Contractor**.

1. Effective Date and Duration. This contract shall become effective on July 1, 2020 and shall expire on September 1, 2020.

2. Statement of Work. Contractor agrees to provide services as CREZ Manager at the direction of the County.

3. Consideration. County agrees to pay Contractor the following compensation for work performed under this contract:

- a. Hourly rate of \$50.00 for administering the State of Oregon application process for the creation of the CREZ 3, meetings with CREZ 3 sponsors, affected Taxing District governing bodies, attendance at required trainings as directed by County, and any additional duties as requested by County or CREZ 3 Board.
- b. Mileage reimbursement. Contractor will submit a monthly detailed accounting of miles used with Contractor's personal vehicle for CREZ 3 Board formation Manager duties. County will review the miles and reimburse Contractor for approved miles at IRS mileage rates.

4. Equipment and Materials

- a. County shall provide use of copy machine and scanner for Contractor.
- b. County will provide occasional space as needed by Contractor to allow Contractor to prepare for CREZ 3 Board or County meetings and to meet with CREZ applications.

5. Independent Contractor; Responsibility for Taxes and Withholding

- a. Contractor shall perform required Work as an independent contractor. Although the County reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, the County cannot and will not control the means or manner of the Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- b. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any Social Security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

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6. Subcontracts and Assignment; Successors and Assigns.

- a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, without County’s prior written consent.
- b. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

7. Ownership of Work Product. All Work products of the Contractor that result from this contract ("the Work Products") are the exclusive property of the County. County and Contractor intend that such Work Products be deemed “works made for hire” of which County shall be deemed the author. If for any reason the Work Products are not deemed “works made for hire”, Contractor hereby irrevocably assigns all of its right, title, and interest in and to any and all of the Work Product. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such right in County.

8. Termination

a. Parties Right to Terminate For Convenience.

- i) This Contract may be terminated at any time by mutual written consent of the parties.
- ii) This Contract may be terminated by either party with 30-day written notice.

b. Remedies

i) In the event of termination pursuant to Sections 8, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to County upon demand.

c. Contractor’s Tender upon Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed.

9. Severability. The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

10. Governing Law, Venue, Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Morrow County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

11. Merger. This contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for

101 the specific purpose given. The failure of County to enforce any provision of this Contract shall not constitute
102 a waiver by County of that or any other provision.

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104 **CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT**
105 **CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND**
106 **BY ITS TERMS AND CONDITIONS.**

107 **CONTRACTOR DATA**

108 **Name:**

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110 **Address:**

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113 **CONTRACTOR**

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115 Date: _____

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117 _____

118 Greg Sweek

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120 **County**

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122 Date: _____

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127 Melissa Lindsay, Chair

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131 Don Russell, Commissioner

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135 Jim Doherty, Commissioner

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141 **Approved as to Form:**

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144 **Morrow County Counsel**

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AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

Mr. Pat Suter is partitioning his property located Southwest of Boardman on Toms Camp Road. During review of the plat, it was found that Toms Camp Road does not actually go South, completely to the West Extension Main Irrigation Canal. Because of this, Mr. Suter and several land owners in the area have no public access to their property. It has been assumed, for many years, that Toms Camp Road did go South, all the way to the WEID Canal. Morrow County has maintained the South Portion of Toms Camp Road for many years thinking it was an actual County road. After several conversations with the surveyor performing the plat, The County Surveyor, County Commissioners and Public Works, it was decided if the owner would give a road right of way, the County would accept it and make that portion of Toms Camp Road a County road.

2. FISCAL IMPACT:

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3. SUGGESTED ACTION(S)/MOTION(S):

Sign and Accept Road Right of Way on Plat.

Attach additional background documentation as needed.