

AGENDA

REGULAR CITY COUNCIL MEETING

September 12, 2016

5:30 p.m.

CITY HALL COUNCIL CHAMBER

313 COURT STREET

THE DALLES, OREGON

1. CALL TO ORDER
2. ROLL CALL OF COUNCIL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. PRESENTATIONS/PROCLAMATIONS
 - A. Police Officer Commendations
 - B. Google STEM Education in Wasco County – Lynette Black and Darcy Nothnagle
 - C. Home At Last Update
6. AUDIENCE PARTICIPATION

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

CITY OF THE DALLES

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

10. CONSENT AGENDA

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

- A. Approval of July 25, 2016 Regular City Council Meeting Minutes
- B. Approval of Resolution No. 16-025 Accepting Dedication of Property for Street Purposes

11. PUBLIC HEARING

- A. Adoption of General Ordinance No. 16-1346 Restructuring of the Urban Renewal Agency Board

12. CONTRACT REVIEW BOARD ACTIONS

- A. Authorization of Second Amendment to Progressive Design-Build Agreement for The Dalles Wastewater Treatment Plant Upgrade, Contract No. 2015-004

13. ACTION ITEMS

- A. Adoption of General Ordinance No. 16-1343 Regulating the Time, Place and Manner of Sales of Marijuana in the City of The Dalles (2nd reading)
- B. Approval of Special Ordinance No. 16-573 Granting a Non-Exclusive Gas Utility Franchise to Northwest Natural Gas Company

14. ADJOURNMENT

This meeting conducted in a handicap accessible room.

Prepared by/
Izetta Grossman
City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Item #10 A-B

MEETING DATE: September 12, 2016

TO: Honorable Mayor and City Council

FROM: Izetta Grossman, City Clerk

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

- A. **ITEM:** Approval of the July 26, 2016 Regular City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the July 26, 2016 Regular City Council meeting have been prepared and are submitted for review and approval.

RECOMMENDATION: That City Council review and approve the minutes of the July 26, 2016 City Council meeting.

- B. **ITEM:** Approval of Resolution 16-025 A Resolution Accepting a Dedication of Property Located on the Property at 2434 East 10th Street for Public Street Purposes from Kelly Kramer

BUDGET IMPLICATIONS: Mr. Kramer will be paying the fee to record the deed of dedication which will be \$76. Pursuant to negotiations with the City, the City agreed to pay the mapping fee imposed by Wasco County of \$540.

SYNOPSIS: Mr. Kramer submitted an application to construct a new residential structure upon the property located at 2434 East 10th Street. The City Planning Department advised Mr. Kramer that the City wanted to include, as a condition of approval of the building permit, that Mr. Kramer agree to dedicate a portion of the

property located at the southern boundary of the property. City staff believed the dedication was necessary to facilitate the possible extension of East 11th Street. Due to the large size of property which was requested to be dedicated, which measures 25 feet by 75 feet, City staff offered to pay the mapping fee of \$540, which Mr. Kramer agreed was appropriate.

RECOMMENDATION: That the City Council adopt Resolution No. 16-025 accepting a dedication of property located on property at 2434 East 10th Street for public street purposes from Kelly Kramer as part of the Consent Agenda.

MINUTES

REGULAR COUNCIL MEETING
OF
July 25, 2016
5:30 p.m.

THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Stephen Lawrence

COUNCIL PRESENT: Russ Brown, Tim McGlothlin, Taner Elliott, Linda Miller, Dan Spatz

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Julie Krueger, City Clerk Izetta Grossman, Planning Director Richard Gassman, Finance Director Kate Mast, Public Works Director Dave Anderson, Interim Police Chief Steve Baska

CALL TO ORDER

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

ROLL CALL

Roll call was conducted by City Clerk Grossman, all Councilors present.

PLEDGE OF ALLEGIANCE

Mayor Lawrence invited the audience to join in the Pledge of Allegiance.

APPROVAL OF AGENDA

Mayor Lawrence noted the addition of Action Item 11-C to the agenda. It was moved by Spatz and seconded by McGlothlin to approve the agenda as amended. The motion carried unanimously.

MINUTES
Regular City Council Meeting
July 25, 2016
Page 2

PRESENTATIONS/PROCLAMATIONS

Randy Haines and Nolan Hare: Report on July 3 Concert

Haines presented the Council with event t-shirts.

Hare played a short video of the event and reviewed the report provided. Hare said the event was a success with 942 ticketed guests, and presented the City with three checks. He said the checks were for ticket sales (\$17,135.00); surplus from the drawdown (\$1,704.90); and a contribution from the promoters (\$4,500).

Brown asked if perhaps they should keep the \$4,500 for the next event. Haines said they had discussed that, but felt it was best to have funds available for next year.

Hare said the community support of the event, in sponsorships and volunteer hours was great. He said there were over 900 hours of work done with most of it done by volunteers.

Mayor Lawrence asked if they had learned anything that would help make the next event more successful. Hare said starting sooner, with more lead time would be the biggest thing.

In response to a question Haines said the event was about 300 tickets short of paying for itself.

Haines thanked Tiffany Hardin from the Chamber for all of her help, saying she and Lisa Farquharson were great to work with.

Mayor Lawrence asked if the funds would go into a special line item. Finance Director Mast said the funds would be received into Miscellaneous Revenue and could be allocated at a later time.

Elliott asked how comp tickets were handled. Hare said he personally purchased 100 tickets for sponsors. He said not all tickets were used.

Haines said he was excited about the August 13 event. He said he estimated that it would take about 1300 tickets sold to pay for the event.

Haines said tickets were being sold exclusively at the Chamber office.

Haines reported that the September event would be an all-day event with family and kids activities during the day and a Blues show in the evening. He said the event was being branded "Back to School Blues".

MINUTES
Regular City Council Meeting
July 25, 2016
Page 3

Council thanked Hare and Haines for their work on the successful event.

Michelle Harmon, Chamber of Commerce Tourism Report

Harmon reviewed the report and asked for questions.

Harmon said the historic interest brochure was being updated, adding and updating website addresses.

She said she was working with the City on signage for the Fire Museum to help identify the entrance.

Harmon reported that the kiosk at the Lewis & Clark Festival Park was working.

Spatz thanked Harmon and said she was going a great job.

CITY MANAGER REPORT

City Manager Krueger introduced Interim Police Chief Steve Baska.

Baska reported on the results of the traffic survey done by the Police Department on Ninth Street.

Baska said the average speed was 23.4 miles per hour; the lowest recorded speed was 15 miles per hour and the highest was 35 miles per hour.

CITY ATTORNEY REPORT

City Attorney Gene Parker reported that he was working with Codes Enforcement on processes that may need to be updated.

He said dead raccoons were found on the Kelly Avenue property. He said they were working on removal options.

CITY COUNCIL REPORTS

Councilor Spatz reported that the Sister City Delegation had a great time. He said the Sister City Facebook page had many photos of the trip posted. He said the delegation would be doing a presentation for City Council in September.

Spatz reported that the High School was developing a process for the upcoming student visit,

MINUTES

Regular City Council Meeting

July 25, 2016

Page 4

where three students would be staying in The Dalles for 30 days. He said they would arrive on October 27.

Councilor McGlothlin reported the local National Guard was helping clean up Pioneer Cemetery. He said the Lions had donated \$700 to the Dallesport Fire Department. He said he had a great time last weekend representing the City riding in antique cars from Rowena Crest to the downtown and then to the Discovery Center as part of the Friends of the Historic Columbia River Highway Antique Car Tour.

Mayor Lawrence reported on the Oregon Mayor Conference saying the major topics of interest were:

- Taxes
- Transportation
- PERS Reform
- Recreational Immunity

He also reported that Councilor Miller, Councilor McGlothlin and City Manager Krueger would be attending the League of Oregon Cities Conference in September. He said the City had participated in the Leagues Legislative Priorities survey that assists the League in determining what major issues they should concentrate on.

Mayor Lawrence reported that Mid Columbia Council of Governments Board had passed the Strategic Plan and approved the contract for the executive director.

He read a letter of support the Board members had been asked to send to Google in support of Google working with the StRUT program by donating their shredded hard drives. He said the program was important to the schools.

Miller said that e-waste could be taken to The Dalles Disposal. She said there was no cost to drop e-waste off.

McGlothlin said the StRUT program saved the schools money by rebuilding or reusing older computers that might not fit the needs of businesses, but worked great for school use.

Mayor Lawrence said he and the Mayor of Dufur had their picture taken with the Babe Ruth 14U Girls teams that were on their way to Florida for the World Series. He said it was the first team to go to the World Series from our area.

City Manager Krueger reported that the Community Outreach Team would be sending a small delegation to Washington DC in September and asked who would volunteer to go on behalf of

MINUTES
Regular City Council Meeting
July 25, 2016
Page 5

the City. Councilor Spatz said he would be willing to represent the City.

CONSENT AGENDA

It was moved by Spatz and seconded by Brown to approve the Consent Agenda as presented. The motion carried unanimously.

Items approved by Consent Agenda were: 1) Approval of the July 11, 2016 Regular City Council Minutes; 2) Approval of Police Contract for Fiscal Year 2016-17 through Fiscal Year 2018-19; 3) Approval of Setting Minimum Wage to \$9.75 per hour as per State Law, effective July 1, 2016.

ACTION ITEMS

Request from Harvest Foursquare Church for Wastewater SDC Credit

Public Works Director Dave Anderson reviewed the staff report.

It was moved by Elliott and seconded by Miller to authorize a 50% credit toward the Sewer System Development Charge to be assessed to Harvest Foursquare Church. The motion carried unanimously.

Adoption of General Ordinance No. 16-1343 Regulating the Time, Place and Manner of Sales of Marijuana in the City of The Dalles

City Attorney Gene Parker reviewed the staff report.

Mayor Lawrence said the ordinance could only be passed with reading of title only if the vote was unanimous. Councilor Spatz said he was opposed.

City Clerk Izetta Grossman, Councilor Spatz and McGlothlin read General Ordinance No. 16-1343 Regulating the Time, Place and Manner of Sales of Marijuana in the City of The Dalles in its entirety.

It was moved by Elliott and seconded by Brown to approve the first reading of General Ordinance No. 16-1343 Regulating the Time, Place and Manner of Sales of Marijuana in the City of The Dalles.

Mayor Lawrence asked for vote by roll call. The motion carried. Councilors Elliott, Brown, Miller and McGlothlin voting yes; Spatz voting no.

MINUTES
Regular City Council Meeting
July 25, 2016
Page 6

Mayor Lawrence said the second reading of the ordinance would be at the September 12, 2016 Regular City Council Meeting.

Exclusive Negotiating Agreement with Tokola Properties

City Manager Julie Krueger reviewed the staff report.

It was moved by Brown and seconded by Miller to approve the Exclusive Negotiating Agreement with Tokola Properties for a mixed-use development at the old Tony's Town & Country site. The motion carried unanimously.

DISCUSSION ITEMS

Special Ordinance No. 16-573 Granting a Non-Exclusive Gas Utility Franchise to Northwest Natural Gas Company

City Attorney Parker reviewed the staff report.

In response to a question City Manager Krueger suggested an annual review of agreements might be beneficial.

It was the consensus of the Council to direct Parker to bring the ordinance back to Council at the September 12, 2016 meeting for adoption.

ADJOURNMENT

Being no further business, the meeting adjourned at 7:21 p.m.

Submitted by/
Izetta Grossman
City Clerk

SIGNED:

Stephen E. Lawrence, Mayor

ATTEST:

Izetta Grossman, City Clerk

RESOLUTION NO. 16-025

**A RESOLUTION ACCEPTING A DEDICATION OF PROPERTY
LOCATED ON THE PROPERTY AT 2434 EAST 10TH STREET
FOR PUBLIC STREET PURPOSES FROM KELLY KRAMER**

WHEREAS, as part of the process for approval of an application submitted by Kelly Kramer to construct a new residential structure on the property located at 2434 East 10th Street, it was determined there was a need for the applicant to dedicate a portion of property located at the southern boundary of the property, which dedicated property measures 25 feet by 75 feet; and

WHEREAS, Kelly Kramer has agreed to dedicate the requested property for public street purposes; and

WHEREAS, the City Council concurs that dedication of the property for public street purposed is in the public interest;

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

Section 1. Dedication Accepted. The dedication for public street purposes set forth in the attached deed is hereby accepted. The City Manager and City Clerk are authorized to execute the acceptance of the dedication and to take other necessary action to record the Deed of Dedication.

PASSED AND ADOPTED THIS 12TH DAY OF SEPTEMBER, 2016.

Voting Yes, Councilor: _____

Voting No, Councilor: _____

Absent, Councilor: _____

Abstaining, Councilor: _____

AND APPROVED BY THE MAYOR THIS 12TH DAY OF SEPTEMBER, 2016.

Stephen E. Lawrence, Mayor

Attest:

Izetta Grossman, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Public Hearing Item #11-A

MEETING DATE: September 12, 2016

TO: Mayor and City Council

FROM: Gene Parker, City Attorney

ISSUE: Approval of General Ordinance No. 16-1346 revising the structure of the Urban Renewal Agency Board

BACKGROUND: On December 14, 1998, the City Council adopted General Ordinance No. 98-1228 which created a change in the structure of the board exercising the powers of the Columbia Gateway Urban Renewal Agency, by establishing the City Council as the Agency's governing body, and creating a citizen's advisory committee consisting of representatives of local taxing districts and the public at large. Following a joint work session of the Agency Board and the Urban Renewal Advisory Committee, it was the consensus of the Agency Board members and the Advisory Committee that the structure of the Board exercising the Agency's powers be revised to establish one board, and to dissolve the Urban Renewal Advisory Committee.

The ordinance proposes to vest the powers of the Urban Renewal Agency in a nine-person board. The board would include three City Councilors, two members of the general public representing businesses located within the boundaries of the Urban Renewal District, and representatives of Wasco County, the Mid-Columbia Fire and Rescue District, the Northern Wasco County Parks and Recreation District, and the Port of The Dalles.

Section 3 sets the process for appointment of the members of the proposed board. The Mayor would appoint the three Council members and two public members, subject to the Council's approval. The four listed governing bodies would appoint a representative to serve on the agency board.

Section 6 contains the provisions for the terms of the public members, City Councilors, and representatives of the designated government bodies. The initial term of the public members would be staggered so that one member would be initially appointed to a one

year term, and the other member would be appointed to a two year term. After the expiration of the initial term for a public member, they could be appointed for a three year term or a new public member could be appointed. The terms of a council member, or a representative of a public body who is a member of the public body would be concurrent with the term of office which the Council member or public official holds at the time of appointment. For a representative of one of the four designated government bodies who is not a member of the public body, they would be appointed for a three year term.

Section 7 sets forth provisions concerning the membership of the Budget Committee. The nine members of the new board would serve on the Budget Committee. Oregon budget law would require that an equal number of citizen electors would need to be appointed to the Budget Committee. If the Agency could not find nine citizens who would be willing to serve on the Agency Budget Committee, then the Budget Committee would consist of the members of the Agency board, and those citizens willing to serve on the Budget Committee. If no citizens are willing to serve on the Budget Committee for the Agency, the Agency Board members would serve as the Budget Committee for the Agency.

Section 8 provides that the administration, management, and direction of the Agency would be the responsibility of the proposed new Agency Board.

BUDGET IMPLICATIONS: None.

BOARD ALTERNATIVES:

1. Staff recommendation: *Move to adopt General Ordinance No. 16-1346 as proposed by title.*
2. Identify any provisions which the Council believes should be revised, and move to recommend to the Urban Renewal Agency that it approve those changes.
3. Decline to adopt General Ordinance No. 16-1346.

GENERAL ORDINANCE NO. 16-1346

AN ORDINANCE AMENDING CERTAIN PROVISIONS OF GENERAL ORDINANCE NO. 90-1106, CHANGING THE STRUCTURE OF THE BOARD EXERCISING THE URBAN RENEWAL AGENCY'S POWERS

WHEREAS, on December 14, 1998, the City Council adopted General Ordinance No. 98-1228 which created a change in the structure of the board exercising the powers of the Columbia Gateway Urban Renewal Agency, by establishing the City Council as the Agency's governing body, and creating a citizen's advisory committee consisting of representatives of local taxing districts and the public at large; and

WHEREAS, following a joint work session of the Columbia Gateway Urban Renewal Agency Board and the Urban Renewal Advisory Committee, it was the consensus of the members of the Agency Board and the Urban Renewal Advisory Committee that the structure of the Board exercising the Urban Renewal Agency's powers should be revised to establish one board, and to dissolve the Urban Renewal Advisory Committee; and

WHEREAS, the City Council desires to proceed with implementing the change in the structure of the Agency's Board, as recommended during the joint work session of the Urban Renewal Agency Board and the Urban Renewal Advisory Committee;

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

Section 1. Section 3 of General Ordinance No. 90-1106 shall be amended to read as follows:

Section 3. The City Council further declares, pursuant to ORS 457.045(2), that all of the rights, powers, duties, privileges and immunities granted to, and vested in, an Urban Renewal Agency by the laws of the State of Oregon shall be exercised by and vested in the Urban Renewal Agency of the City of The Dalles, Oregon, which Agency Board shall be composed of three City Councilors, two members of the general public representing businesses located within the boundaries of the Urban Renewal District, and representatives of Wasco County, the Mid-Columbia Fire and Rescue District, the Northern Wasco County Parks and Recreation District, and the Port of The Dalles.

Section 2. Sections 5, 6, 7, 8, 9, and 10 of General Ordinance No. 90-1106 shall be deleted, and replaced with new Sections 5 and 6, which shall read as follows:

Section 5. Membership and appointment. The Urban Renewal Agency Board shall consist of nine members. Three of the members shall be City Councilors, who shall be appointed by the Mayor, subject to City Council approval. Two of the members shall

be members of the general public representing businesses located within the Urban Renewal District, appointed by the Mayor, subject to City Council approval. The other four members shall represent Wasco County, the Mid-Columbia Fire and Rescue District, the Northern Wasco County Parks and Recreation District, and the Port of The Dalles. Each of these four governmental agencies shall appoint a representative to serve upon the Agency Board.

Section 6. Terms.

- A. Public members. The terms of office of a public member shall be three years (except for the terms of initial appointment) commencing upon the date of appointment occurring during the year of appointment, or until a successor is appointed and qualified. For the initial appointments, the terms of office shall be staggered so that the terms of the two public members do not expire in the same year; i.e., one member shall be appointed to a one year term, and another member shall be appointed to a two-year term. At the expiration of the term of any public member of the Agency Board, the Mayor shall appoint a new member, or reappoint a member for a term of three years. A vacancy in a position of a public member of the Agency Board shall be filled by appointment by the Mayor to serve the unexpired term. No person shall hold appointment as a public member of the Agency Board for more than two full consecutive terms, but any person may be appointed again after an interval of one year.
- B. City Councilors. The term of office of each member of the Urban Renewal Agency Board that is a member of the City Council shall be concurrent with that member's individual term of office, commencing with the date of appointment to the Urban Renewal Agency Board.
- C. Representatives of Designated Government Bodies. For the members representing one of the four designated governing bodies, the term of appointment shall be as follows: in the case of a representative who is not a member of the appointing governing body, the term of appointment shall be three years from the date of appointment, and shall continue until the term expires, or until a successor is qualified and appointed to take their place; in the case of a representative who is a member of the appointing governing body, the term of appointment shall be concurrent with the member's individual term of office which the member holds at the time of appointment, and shall continue until that term of office expires, or a successor is qualified and appointed to take their place.

Section 3. Section 11, Budget Committee Membership, of General Ordinance No. 90-1106 shall be renumbered Section 7, and be amended to read as follows:

Section 7. Budget Committee Membership. The members of the Urban Renewal Agency Board shall also serve on the Budget Committee for the Urban Renewal Agency.

Citizens who are electors and willing to serve on the Budget Committee shall be appointed by the Mayor, subject to confirmation by the City Council, to serve three year terms in accordance with the provisions of Oregon local budget law, with the terms to be staggered so that, as near as practicable, one-third of the terms of the appointive members end each year; provided further that in the case of an appointment of a citizen which was necessitated by the increase in the membership of the governing body of the Urban Renewal Agency, those additional appointive members of the Budget Committee shall be appointed for such terms so that they, together with members previously appointed to the Budget Committee, will be divided into three equal or approximately equal groups as to the length of the terms.

Section 4. Section 12, Administration of Agency, of General Ordinance No. 90-1106 shall be renumbered Section 8, and be amended to read as follows:

Section 8. Administration of Agency. The actual administration, management, and direction of the Columbia Gateway Urban Renewal Agency shall be the responsibility of the Urban Renewal Agency Board.

PASSED AND ADOPTED THIS 12TH DAY OF SEPTEMBER, 2016

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

AND APPROVED BY THE MAYOR THIS 12TH DAY OF SEPTEMBER, 2016.

Stephen E. Lawrence, Mayor

Attest:

Izetta Grossman, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Contract Review Board #12-A

MEETING DATE: September 12, 2016

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

ISSUE: Authorization of Second Amendment to Progressive Design-Build Agreement for The Dalles Wastewater Treatment Plant Upgrade, Contract No. 2015-004

BACKGROUND: A progressive design-build contract was awarded to the team of Mortenson Construction/Kennedy Jenks Consultants on February 9, 2015 for the Wastewater Treatment Plant Upgrade – 2015 project. The original project was to consist of constructing improvements to increase influent pumping capacity, improve reliability of the headworks facility, convert an existing bio-solids storage tank into an anaerobic digester to provide digester redundancy, and provide aesthetic improvements to enhance the appearance of the plant from key viewing areas.

The work for the project has been divided into three phases. During Phase 1A, the Design-Builder was to “undertake an extensive discover and explore process” with City staff to “evaluate options and develop a design concept that fulfills the project objectives and provides the best long-term value” to the City. Phase 1A has been completed and the results and recommendations from that process were reviewed with Council in a Work Session held on August 31, 2015. Council expressed its general support for the recommended project scenario, called Combined Alternative 3C, with an option of expanding to Combined Alternative 3D which includes a larger digester and carbon diversion for electrical power generation if the results of pilot testing prove it to be feasible. Alternative 3D also opens up potentially-significant opportunities for outside funding for the project.

The carbon diversion pilot testing has been completed and the results were presented to Council in a work session on March 7, 2016. The pilot test results were favorable, indicating that with implementation of primary carbon diversion technology, the generation of electrical power from methane gas production, Co-Gen, was feasible. The

estimated cost to add Co-Gen to the project was about \$2.2 million. The estimated base cost of the project was \$6.5 million; this estimate was increased to \$8.7 million with the addition of Co-Gen.

As often occurs when more detailed investigations and analyses are undertaken in a project on an older facility, a new issue was discovered during the design work. It has been determined that a portion of the existing pipeline from the Influent Pump Station to the Plant Headworks, referred to as a “force main”, is too small to handle the flows that will result from the new influent pumps. This pipe is currently 18-inch diameter for a section about 100 feet long before it transitions to 30-inch diameter for another 200 feet. It has been determined that the most cost effective option to correct this deficiency is to replace the existing pipe in a new location along a shorter route, requiring the design and construction of about 200 feet of new 24-inch diameter pipe.

As a result of the increased scope of work to include Co-Gen in the project and replace the force main, the Design-Builder has submitted a request for a contract amendment to fund the additional work. The amount of the requested contract amendment is \$327,503. The requested amendment amount is split just about evenly between the Co-Gen and force main issues. The Co-Gen portion is part of the \$2.2 million increase that was discussed with Council in March.

The project team, the Design-Builder and City staff, are working hard to address design and construction of planned improvements without tripping building code requirements to upgrade a lot of other existing systems, which would cost a lot. The design-build method has been working very well as a forum to collaboratively find ways to address these challenges and select the best-value alternatives within the funding that can be accessed for the project. It is currently proposed that a small addition to one of the existing buildings be constructed to house the new Headworks (screening and grit removal systems) along with the electrical systems to power them rather than try to make any improvements inside of the existing electrical room located under treatment basins.

The project is currently 50% designed with a plan to complete the 80% design and negotiate the Guaranteed Maximum Price to bring to Council later this fall. Construction is scheduled to start in the early spring 2017 and continue for 10 months. The team is also finalizing reports necessary to apply for outside funding to help pay for the planned Co-Gen systems.

BUDGET IMPLICATIONS: About half of the requested amendment amount was already anticipated when the decision was made to construct Co-Gen systems as part of the project. There are sufficient monies budgeted for the project in Fund 57, the Sewer Plant Construction/Debt Service Fund, to fund the amendment.

COUNCIL ALTERNATIVES

- A. Staff Recommendation: *Move to authorize the Second Amendment to the Progressive Design-Build Agreement for The Dalles Wastewater Treatment Plant Upgrade, Contract No. 2015-004 in an amount not to exceed \$327,503.*
- B. Deny authorization for the amendment at this time and direct staff to schedule a City Council work session involving the Design-Builder to provide more detailed information summarizing the project status and needs.
- C. Deny authorization for the amendment and direct staff on how to proceed.

**SECOND AMENDMENT TO PROGRESSIVE DESIGN-BUILD AGREEMENT
FOR THE DALLES WASTEWATER TREATMENT PLANT UPGRADE
CONTRACT NO. 2015-004**

WHEREAS, the City of The Dalles, hereinafter referred to as “**OWNER**”, and Mortenson Construction, hereinafter referred to as “**DESIGN BUILDER**”, entered into a Progressive Design-Build Agreement (“**Agreement**”) dated March 9, 2015 for a project including the construction of improvements to increase influent pumping capacity, improve the reliability of the headworks facility, convert an existing bio-solids storage tank into an anaerobic digester to provide digester redundancy, and provide aesthetic improvements to enhance the appearance of the treatment plant from key viewing areas; and

WHEREAS, Article 1.2 of the **Agreement** described the Phase 1 Services to be provided by **DESIGN BUILDER**, which were separated into Phase 1A and Phase 1B; and

WHEREAS, **DESIGN BUILDER** completed performance of the services described in Phase 1A, and pursuant to the **Agreement**, submitted a proposal to **OWNER** for the services to be provided in Phase 1B; and

WHEREAS, on October 12, 2015, the City Council for **OWNER** reviewed the proposal for the services to be provided in Phase 1B by **DESIGN BUILDER**, and voted to authorize the City Manager Pro Tem to execute a contract with **DESIGN BUILDER** for Phase 1B of Contract No. 2015-004, the Wastewater Treatment Plant Upgrade 2015 Project, in an amount not to exceed the sum of \$567,497.00, which includes pilot testing for carbon diversion technologies in the project scope; and

WHEREAS, on March 7, 2016, the City Council received a presentation from **DESIGN BUILDER** wherein the favorable results of the carbon diversion pilot testing were presented as well as projected costs estimated for the design and construction of Co-Generation of heat and power systems (Co-Gen) using methane gas produced by wastewater treatment plant processes; and

WHEREAS, on March 7, 2016, the City Council directed City staff and **DESIGN BUILDER** to proceed with the design and construction of Co-Gen systems as part of the scope of work for Contract No. 2015-004; and

WHEREAS, engineering analyses and design work completed to date under Contract No. 2015-004 have identified that an existing force main (pump line) at the wastewater treatment plant is too small to accommodate the flows that will result from the planned improvements to the Influent Pump Station and must be replaced as part of the project, this being work that was not previously anticipated in the original scope of work;

NOW, THEREFORE, in consideration of the provisions set forth herein, it is mutually agreed as follows:

1. **DESIGN BUILDER** agrees to perform the services under the terms and conditions described in the letter dated August 30, 2016 from Ronald Sales, Construction Executive, with Mortenson Construction, including Attachments A and B-1, copies of which are attached hereto and incorporated herein by this reference.

2. **OWNER** agrees to pay **DESIGN BUILDER** the sum not to exceed \$327,503.00 for the services to be provided by **DESIGN BUILDER**, as outlined in paragraph 1 above.
3. Except as provided for in this Second Amendment, the terms and conditions of the Progressive Design-Build Agreement dated March 9, 2015 shall remain in full force and effect.

OWNER

DESIGN BUILDER

Signature _____

Signature _____

Name (printed) _____

Name (printed) _____

Title _____

Title _____

Date _____

Date _____

JD
August 11, 2016



The Dalles WWTP
Mortenson Project #15050005

Dave Anderson
Public Works Director
1215 West 1st Street
The Dalles, OR 97058

Dave,

Attached is the cost break down for the Phase 1B Preconstruction Amendment as requested. The cost for the Amendment is \$327,503.00 (Three Hundred and Twenty Seven Thousand Five Hundred and Three dollars) this will bring the total value of Preconstruction to \$895,000.00 (Eight Hundred and Ninety Five Thousand dollars).

The attached narrative and spread sheet explains the scope of work and how the additional dollars will be allocated. If acceptable please issue the Mortenson/Kennedy Jenks team a formal Amendment.

If you have any questions please don't hesitate to contact me.

Thank you

A handwritten signature in black ink, appearing to read "Ronald Salas", written over the "Thank you" text.

Ronald Salas
Construction Executive
Mortenson Construction: Building what's next.
phone 425.497.6638
cell 623.340.5337
www.mortenson.com

Attachment A Scope of Work

Task 4. Additional Detailed Design

The City has decided to proceed with implementation of Primary Filtration for Carbon Diversion as part of the WWTP upgrades, based on the successful pilot testing of three primary filtration systems (Blue Water, Trojan Salsnes and Aqua Aerobics). Additionally, gas conditioning and cogeneration will also be included in the project. Primary filtration will be provided at the WWTP in the location of the existing plant headworks, while skid-mounted gas condition and microturbine(s) for cogeneration will be located near the new Primary Digester along with the New Primary Digester Solids Building that will be enclosed in a portion of the existing carport. Additional drawings related to the additional design tasks are included in Attachment D Updated Phase 1B 80% Design Drawing Index.

- Task 4.1 Solicit Additional Vendor Proposals and Negotiate Equipment Purchase.** Obtain detailed proposals from primary filter, gas conditioning and cogeneration system vendors, negotiate final scope and pricing and secure initial engineering submittals to facilitate 80% design.
- Task 4.2 Existing Utility Potholing.** Call in utility locates and conduct potholing of utilities for the new IPS force main that needs to be replaced. Utility locating plans will be provided to the City and WWTP staff a minimum of two weeks prior to onsite utility locating operations.
- Task 4.3 Additional Topographic Surveying.** Collect additional topographic survey data related to the replacement of the IPS force main, which needs to be upsized in the area of the existing 18" force main for approximately half of the length of the pipeline. Potholing locations and depths will be captured as part of the additional topographic surveying.
- Task 4.4 Digester Gas Sampling and Testing.** Coordinate with a testing laboratory the sampling and testing of gas samples from the existing digesters to facilitate design of the gas conditioning and cogeneration systems. Gas testing will include methane content in gas, H₂S concentration, siloxane concentration, moisture content and key design parameters that will be used to help inform design of the new systems.
- Task 4.5 Code Review.** Prepare a Code Review Technical Memorandum summarizing existing code interpretations for areas being remodeled as well as new buildings and structures. The code review will include a summary of applicable codes and associated review of architectural, mechanical (HVAC and plumbing), structural and electrical requirements to be used as a baseline for the 80% Design.
- Task 4.6 Additional Detailed Design.** Provide detailed design for the primary filter installation, including the filter, and appurtenant equipment (blowers, potable water supply, solids pumping, etc.). This task is broken out by Additional 50% Design and Additional 80% Design based on a total of 30 additional design drawings and additional specifications is estimated for the addition of primary filtration, gas conditioning, cogeneration and other project elements are included in Attachment D and highlighted by discipline as follows:
- **Civil:** 1 additional drawing
 - **Architectural:** 4 additional drawings
 - **Mechanical:** 9 additional drawings
 - **Structural:** 7 additional drawings
 - **Electrical:** 5 additional drawings
 - **Instrumentation:** 4 additional drawings

Task 4.7 Outside Funding Support and Applications. Complete applications and additional evaluations related securing outside funding from the Oregon Department of Energy (tax credits), Energy Smart Industrial (energy efficiency Incentives) and other agencies identified as potential outside funding sources (e.g. Bonneville Environmental Foundation).

Task 5. Additional Site Visits and Meetings

Additional site visits in addition to regular project workshops are needed to finalize the detailed design for elements of the plant that will be remodeled or retrofitted. Additional meetings will include discussions with the local building official as well as outside funding agencies.

Task 5.1 Additional WWTP Design Site Visits. Additional site visits are budgeted as follows:

- **Task 5.1.1 Process-Mechanical Team Site Visits.** 2 additional site visits by K/J (2 staff)
- **Task 5.1.2 Structural Team Site Visits:** 2 additional site visits by K/J (2 staff)
- **Task 5.1.3 Electrical and Instrumentation Team Site Visits.** 3 additional site visits by K/J (2 staff) and one additional site visit by Mortenson (1 staff)

Task 5.2 Funding Agency Meetings. Following completion of the energy efficiency evaluation report commissioned, in part, through funding support from Energy Smart Industrial conduct meetings with the Oregon Department of Energy, Energy Smart Industrial, Bonneville Environmental Foundation and other Collect gas samples and send to lab for testing to determine current methane content, siloxane concentrations and other key data to facilitate design of the gas conditioning and cogeneration systems. Four (4) half-day meetings are assumed to be attended by 2 staff from Kennedy/Jenks.

Task 5.3 Building Official Meetings. Meet with the local building official to review the Code Review and specific construction requirements and determine design requirements related to level of detail to be included in permit submittals. Two (2) half-day meetings are assumed to be attended by 1 staff from Mortenson and 2 staff from Kennedy/Jenks.

Deliverables:

- Four (4) hard copies and one (1) electronic (PDF) copy of the Code Review Technical Memorandum;
- One electronic (PDF) copy of the digester gas testing analysis results;
- Four (4) hard copies and one (1) electronic (PDF) copy of the 80% Design Submittal and GMP.

Assumptions related to Scope of Work:

- The new primary digester solids building will be constructed in the existing carport at The Dalles WWTP. It is assumed this use will not trigger seismic retrofit provisions of chapter 16 or 34 of the Oregon Structural Specialty Code (OSSC).
- No additional geotechnical investigations required.
- Mortenson Construction to prepare safety plan for entrance into wet well for inspection.
- Scope and budget may be modified to include outside feedstock receiving station depending on results of the regional feedstock study currently being completed by a third party consultant.
- Modifications to existing grt/thickening facility for new screenings will not trigger any upgrades/code changes to the existing building.
- Power for new equipment will not require new electrical gear or service.



AGENDA STAFF REPORT

AGENDA LOCATION: Action Items #13-A

MEETING DATE: September 12, 2016

TO: Honorable Mayor and City Council

FROM: Richard Gassman, Planning Director

ISSUE: Approval of General Ordinance No. 16-1343, Amendments to the Land Use and Development Ordinance (Marijuana)

BACKGROUND: On Monday, June 13, 2016, the City Council held a public hearing to take testimony on proposed amendments to the Land Use and Development Ordinance (LUDO), regarding time, place and manner restrictions on the retail sale of recreational marijuana, and also to provide regulations for the production, processing and wholesaling of recreational marijuana. The Council took public testimony and at the end of the testimony closed the public hearing. After deliberating, the Council requested additional information from staff. After getting the additional information for its meeting on June 27, 2016, Council again deliberated the issues, modified the proposed amendments, and requested staff to prepare an Ordinance.

At its meeting on July 26, 2016, Council asked for the Ordinance to be read, which was done. A second reading was scheduled for September 12. This is the time set for the second reading.

CORRECTION: In preparing for the second reading we discovered a typo in Section 6 relating to the renumbering of the existing sections after inserting the new provision for prohibited uses. The second reading will have the correct numbering system, but it will differ slightly from the first reading.

BUDGET IMPLICATIONS: None directly, but these regulations will enable the City to share in the marijuana tax at the State level, and also to request the citizens of The Dalles impose a local sales tax.

COUNCIL ALTERNATIVES:

1. *Staff recommendation: Move to Adopt General Ordinance 16-1343 Amending General Ordinance No. 98-1222, Establishing Time, Place and Manner Regulations of Facilities for Processing, Production, Retailing, and Wholesaling of Recreational Marijuana.*
2. Amend and adopt General Ordinance 16-1343.
3. Deny the proposed LUDO amendments.
4. Refer the amendments back to staff with guidance on requested changes and bring the agenda item back at a later meeting.

GENERAL ORDINANCE NO. 16-1343

**AN ORDINANCE AMENDING GENERAL ORDINANCE NO. 98-1222,
ESTABLISHING TIME, PLACE, AND MANNER REGULATIONS OF
FACILITIES FOR PROCESSING, PRODUCTION, RETAILING,
AND WHOLESALING OF RECREATIONAL MARIJUANA**

WHEREAS, in November, 2014, Oregon voters approved Ballot Measure 91, which decriminalized the personal growing and use of certain amounts of recreational marijuana by persons 21 years of age or older; and

WHEREAS, ORS 475B.340 provides that local governments may impose reasonable regulations on the time, place, and manner of operation of marijuana facilities; and

WHEREAS, on May 5 and May 25, 2016, the City Planning Commission conducted public hearings upon proposed amendments to the City's Land Use and Development Ordinance to establish time, place, and manner regulations for facilities for the production, processing, retailing, and wholesaling of marijuana, and voted to adopt Resolution No. P.C. 551-16 for Zoning Ordinance Amendment #92-16; and

WHEREAS, the City Council conducted a public hearing on June 13, 2016 to consider the Planning Commission's recommendations, and following the close of the public hearing, the City Council conducted deliberations on June 13th and June 27th, and the Council members voted 4 to 0 to modify the Planning Commission's recommendations by eliminating licensed day care facilities and established churches from proposed buffer zones around recreational marijuana facilities; allowing marijuana production, processing, storage, and wholesaling in the Commercial/Light Industrial zoning district as a conditional use with a 500 foot buffer from schools; and extending the hours of operation for recreational marijuana facilities from 10:00 AM to 8:00 PM;

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

Section 1. Findings. In support of the adoption of General Ordinance No. 16-1343, the City Council makes the following findings:

- A. State law authorizes the operation of recreational marijuana businesses and provides these businesses with immunity from state criminal prosecution.
- B. Although the State of Oregon has passed legislation authorizing marijuana businesses and providing criminal immunity under state law, the operation of those businesses remains illegal under federal law.
- C. The City Council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the City and subject to the general and police powers of the City, except when local action has been clearly and unambiguously preempted by state statute.

- D. Whether a certain business should operate within a local jurisdiction is a local government decision, and local governments may enforce that decision through the general and police powers of that jurisdiction.
- E. The City Council wants to regulate the operation of marijuana businesses in the City in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the City.
- F. This ordinance is intended to impose restrictions, not provide authorizations.
- G. This ordinance is intended to apply only to recreational marijuana businesses, and not to medical marijuana businesses or to personal possession, growing or use of marijuana as authorized by the state in ORS 475B.245 to ORS 475B.255.
- H. Upon approval of City voters, the City shall impose a local sales tax of three percent (3%) on the sales of recreational marijuana by marijuana retailers.
- I. The operation of a marijuana business without proper authority from either the Oregon Liquor Control Commission or the Oregon Health Authority is prohibited within the City.

Section 2. Criteria for Amendment Satisfied. Section 3.110.030 of the City's Land Use and Development Ordinance provides that text amendments to the Ordinance shall be consistent with the City's Comprehensive Plan, and State laws and administrative rules. Concerning the Comprehensive Plan, Goal #9, Economic Development is stated as follows: "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens". The proposed amendments provide specific locations where the commercial activity associated with the operation of retail marijuana dispensaries can occur. Requiring the retail marijuana facilities to comply with the same area restrictions which are intended to prevent such businesses from being located adjacent to residential zoning districts, public or private schools attended primarily by minors, public libraries, public parks, and recreational facilities, will protect the safety and welfare of the community. In addition to the commercial activities associated with the operation of the retail facilities, the proposed amendment also provides opportunities, under restricted conditions, for economic activity associated with recreational marijuana production, processing, storage, and wholesaling, within the commercial light industrial and industrial zoning district. The Council finds and concludes that the proposed text amendments are consistent with the City's Comprehensive Plan.

Regarding the criteria of compliance with State laws and administrative rules, ORS 475B.340 provides that local governments may impose reasonable regulations on the time, place, and manner of operation of recreational marijuana facilities. Consistent with state law, this ordinance includes provisions regulating the hours of operation for retail marijuana facilities. State law permits the City to include additional restrictions upon the location of marijuana producers, processors, wholesalers, and retailers. The additional location restrictions proposed in this ordinance do not reduce the size of the location restrictions provided by state law. State law and administrative rules adopted by the Oregon Liquor Control Commission and the Oregon Health Authority include a significant volume of provisions which regulate the manner of operation of recreational producers, processors, wholesalers, and retailers. The additional restrictions on the operation of these types of businesses imposed by this ordinance do not lessen the provisions or

regulations adopted by State law and administrative rules. The Council finds and concludes that the proposed text amendments comply with State laws and administrative rules.

Section 3. New Definitions. Section 2.030 shall be amended to add the following new definitions for Marijuana, Marijuana Items, Recreational Marijuana Processing, Recreational Marijuana Production, Recreational Marijuana Retailing, and Recreational Marijuana Wholesaling

Marijuana - Means all parts of the plant cannabis family moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

Marijuana Items – Means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

Recreational Marijuana Processing – The processing, compounding, or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts, provided that the marijuana processor is licensed by the Oregon Liquor Control Commission.

Recreational Marijuana Production – The manufacture, planting, cultivation, growing, trimming, harvesting, or drying of marijuana, provided that the marijuana producer is licensed by the Oregon Liquor Control Commission.

Recreational Marijuana Retailing - The sale of marijuana items to a consumer, provided the marijuana retailer is licensed by the Oregon Liquor Control Commission or registered with the Oregon Health Authority.

Recreational Marijuana Wholesaling - The purchase of marijuana items for resale to a person other than a consumer, provided the marijuana wholesaler is licensed by the Oregon Liquor Control Commission.

Section 4. RL – Residential Low Density District. The provisions in this district shall be amended as follows:

RL – Residential Low Density District

Section 5.010.040 would be renamed Prohibited Uses and would read as follows:

Section 5.010.040 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all RL – Residential Low Density districts.

Section 5.010.040 through 5.010.070 would be renumbered 5.010.050 through 5.010.080, with 5.010.050 being renamed Neighborhood Compatibility, 5.010.060 Development Standards, 5.010.070 Design Standards, and 5.010.080 being renamed Exceptions to Standards.

Section 5. RH – Residential High Density District. The provisions in this district shall be amended as follows:

RH – Residential High Density District

Section 5.020.040 would be renamed Prohibited Uses and would read as follows:

Section 5.020.040 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all RH – Residential High Density districts.

Section 5.020.040 through 5.020.080 would be renumbered 5.020.050 through 5.010.090, with 5.020.050 being renamed Neighborhood Compatibility, 5.020.060 Development Standards, 5.020.070, Design Standards, 5.020.080, Open Spaces, and 5.020.090 being renamed Exceptions to Standards.

Section 6. RM – Residential Medium Density District. The provisions in this district shall be amended as follows:

Section 5.030.040 would be renamed Prohibited Uses and would read as follows:

Section 5.030.040 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all RM – Residential Medium Density districts.

Section 5.030.040 through 5.030.080 would be renumbered 5.030.050 through 5.030.090, with 5.030.050 being renamed Neighborhood Compatibility, 5.030.060 Development Standards, 5.030.070 Design Standards, 5.030.080 Open Area, and 5.030.090 being renamed Exceptions to Standards.

Section 7. NC – Neighborhood Center Overlay District. The provisions in this district shall be amended as follows:

Section 5.040.040 would be renamed Prohibited Uses and would read as follows:

Section 5.040.040 Prohibited Uses

The production, processing, wholesaling, and retailing of medical marijuana are prohibited uses in all NC Neighborhood Center overlay zones.

Section 5.040.040 through 5.040.070 would be renumbered 5.040.050 through 5.040.080, with 5.040.050 being renamed Development Standards, 5.040.060 Design Standards, 5.040.070, Neighborhood Compatibility, and 5.040.080 being renamed Exceptions to Standards.

Section 8. CBC – Central Business Commercial District. The provisions in this district shall be amended as follows:

Section 5.050.030(A)(23) would be revised for a new permitted use concerning retail marijuana facilities, which would read as follows:

23. Recreational Marijuana Facilities. An application for a retail marijuana facility shall also comply with the following criteria:
- a) The retail facility must be located more than 500 feet from any RL, RH, or RM Residential District, measured in a straight line from the closest edge of the property line on which the retail facility is located to the closest edge of the property in the RL, RH, or RM Residential District.
 - b) The retail facility must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property on which the other facility is located:
 1. A public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).
 2. A public library.
 3. A public park.
 4. A recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.
 5. Any other recreational marijuana retailer registered with the Oregon Liquor Control Commission.
 - c) The retail facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the retail facility is prohibited.
 - d) The retail facility shall not have a drive-up use.
 - e) The retail facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the retail facility's exterior refuse containers.
 - f) The retail facility's license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission, and the retail facility must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
 - g) The hours of operation for the retail facility shall be no earlier than 10:00 AM and no later than 8:00 P.M.

- h) The retail facility must use an air filtration and ventilation system which, to the greatest extent feasible, contains all marijuana-related odors within the facility rather than allowing such odors to escape outside. Sufficient measures and means of preventing odors, debris, fluids and other substances from exiting the facility must be in effect at all times.
- i) No one under the age of 21 shall be permitted to be present in the building space occupied by a marijuana retailer, except as allowed by state law.
- j) Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by a marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.
- k) A licensed retail facility may register with the Oregon Liquor Control Commission (OLCC) to engage in the same retail license activity for specified medical marijuana purposes, as allowed by the OLCC.

Section 5.050.030(A)(23) would be renumbered (A)(24).

Section 5.050.050 would be renamed Prohibited Uses and would read as follows:

Section 5.050.050 Prohibited Uses

The production, processing, and wholesaling of recreational marijuana are prohibited uses in all CBC – Central Business Commercial districts.

Section 5.050.050 through 5.050.080 would be renumbered 5.050.060 through 5.050.090, with 5.050.060 being renamed Development Standards, 5.050.070 Design Standards-All Development, 5.050.080 Design Standards-Sub-Districts and 5.050.090 being renamed Exceptions to Standards.

Section 9. CG – General Commercial District. The provisions in this district shall be amended as follows:

CG – General Commercial District

Section 5.060.020(A)(26) would be revised for a new permitted use concerning retail marijuana facilities, which would read as follows:

- 26. **Recreational Marijuana Facilities.** An application for a retail marijuana facility shall also comply with the following criteria:
 - a) The retail facility must be located more than 500 feet from any RL, RH, or RM Residential District, measured in a straight line from the closest edge of the property line on which the retail facility is located to the closest edge of the property in the RL, RH, or RM Residential District.
 - b) The retail facility must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property on which the other facility is located:

1. A public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).
 2. A public library.
 3. A public park.
 4. A recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.
 5. Any other recreational marijuana retailer registered with the Oregon Liquor Control Commission.
- c) The retail facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the retail facility is prohibited.
 - d) The retail facility shall not have a drive-up use.
 - e) The retail facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the retail facility's exterior refuse containers.
 - f) The retail facility's license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission, and the retail facility must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
 - g) The hours of operation for the retail facility shall be no earlier than 10:00 AM and no later than 8:00 P.M.
 - h) The retail facility must use an air filtration and ventilation system which, to the greatest extent feasible, contains all marijuana-related odors within the facility rather than allowing such odors to escape outside. Sufficient measures and means of preventing odors, debris, fluids and other substances from exiting the facility must be in effect at all times.
 - i) No one under the age of 21 shall be permitted to be present in the building space occupied by a marijuana retailer, except as allowed by state law.
 - j) Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by a marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.

- k) A licensed retail facility may register with the Oregon Liquor Control Commission (OLCC) to engage in the same retail license activity for specified medical marijuana purposes, as allowed by the OLCC.

Section 5.060.020(A)(26) would be renumbered (A)(27)

Section 5.060.040 would be renamed Prohibited Uses and would read as follows:

Section 5.060.040 Prohibited Uses

The production, processing, and wholesaling of recreational marijuana are prohibited uses in all CG – General Commercial districts.

Section 5.060.050 through 5.060.060 would be renumbered 5.060.060 through 5.060.070, with 5.060.050 being renamed Development Standards, 5.060.060 Design Standards, and 5.060.070 being renamed Exceptions to Standards.

Section 10. CLI – Commercial/Light Industrial District. The provisions in this district shall be amended as follows:

Section 5.070.020(A)(27) would be revised for a new permitted use concerning retail marijuana facilities, which would read as follows:

- 27. Recreational Marijuana Facilities. An application for a retail marijuana facility shall also comply with the following criteria:
 - a) The retail facility must be located more than 500 feet from any RL, RH, or RM Residential District, measured in a straight line from the closest edge of the property line on which the retail facility is located to the closest edge of the property in the RL, RH, or RM Residential District.
 - b) The retail facility must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property on which the other facility is located:
 - 1. A public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).
 - 2. A public library.
 - 3. A public park.
 - 4. A recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.
 - 5. Any other recreational marijuana retailer registered with the Oregon Liquor Control Commission.

- c) The retail facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the retail facility is prohibited.
- d) The retail facility shall not have a drive-up use.
- e) The retail facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the retail facility's exterior refuse containers.
- f) The retail facility's license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission, and the retail facility must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
- g) The hours of operation for the retail facility shall be no earlier than 10:00 AM and no later than 8:00 P.M.
- h) The retail facility must use an air filtration and ventilation system which, to the greatest extent feasible, contains all marijuana-related odors within the facility rather than allowing such odors to escape outside. Sufficient measures and means of preventing odors, debris, fluids and other substances from exiting the facility must be in effect at all times.
- i) No one under the age of 21 shall be permitted to be present in the building space occupied by a marijuana retailer, except as allowed by state law.
- j) Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by a marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.
- k) A licensed retail facility may register with the Oregon Liquor Control Commission (OLCC) to engage in the same retail license activity for specified medical marijuana purposes, as allowed by the OLCC.

Section 5.070.020(A)(27) would be renumbered (A)(28).

Section 5.070.030 would be revised by adding a new section B and would read as follows:

- B. The production, processing, storage, and wholesaling of recreational marijuana, subject to the following additional provisions:
 - 1. Activity shall occur only in a completely enclosed building. Greenhouses are not allowed.
 - 2. A building used for marijuana production, processing, storage, or wholesaling shall be equipped with a carbon filtration system for odor control.

- a. The system shall consist of one or more fans and filters.
 - b. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square feet of building floor space).
 - c. The filter(s) shall be rated for the required CFM.
 - d. The filtration system shall be maintained in working order and shall be in use.
 - e. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.
3. The marijuana production, processing, storage, or wholesaling business's state licensing or authority must be in good standing with the Oregon Health Authority or the Oregon Liquor Control Commission, and the business must comply with all applicable rules and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
 4. The recreational marijuana production, processing, storage, or wholesaling business must be located more than 500 feet from a public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).

Sections 5.070.030 B through F would be renumbered C through G.

Section 11. CR – Recreational Commercial District. The provisions in this district shall be amended as follows:

Section 5.080.040 Development Standards would be renamed Prohibited Uses and would read as follows:

Section 5.080.040 Prohibited Uses

The production, processing, wholesaling and retailing of recreational marijuana are prohibited uses in all CR – Recreational Commercial districts.

Section 5.080.040 through 5.080.060 would be renumbered 5.080.050 through 5.080.070, with 5.080.050 being renamed Development Standards, 5.080.060 Design Standards, and 5.080.070 being renamed Exceptions to Standards.

Section 12. I – Industrial District. The provisions in this district shall be amended as follows:

Section 5.090.030 would be revised for a new conditional use concerning marijuana facilities, which would read as follows:

J. The production, processing, storage, and wholesaling of recreational marijuana. An application for a marijuana production, processing, storage, or wholesaling facility shall also comply with the following criteria:

- 1) The facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the production, processing, storage, or wholesaling facility is prohibited.
- 2) The facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the facility's exterior refuse containers.
- 3) The production, processing, storage, or wholesaling facility shall be licensed by the Oregon Liquor Control Commission and comply with the requirements of any applicable administrative rule adopted by the Oregon Liquor Control Commission.
- 4) A building used for marijuana production, processing, storage, or wholesaling shall be equipped with a carbon filtration system for odor control.
 - a. The system shall consist of one or more fans and filters.
 - b. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square feet of building floor space).
 - c. The filter(s) shall be rated for the required CFM.
 - d. The filtration system shall be maintained in working order and shall be in use.
 - e. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.
- 5) The recreational marijuana production, processing, storage, or wholesaling business's state licensing or authority must be in good standing with the Oregon Health Authority or the Oregon Liquor Control Commission, and the business must comply with all applicable rules and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.

Section 13. CFO - Community Facilities Overlay District. The provisions in this district shall be amended as follows:

Section 5.100.030 Review Procedures would be renamed Prohibited Uses and would read as follows:

Section 5.100.030 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all CFO - Community Facilities Overlay zones.

Section 5.100.030 through 5.100.050 would be renumbered 5.100.040 through 5.100.060, with 5.100.040 being renamed Review Procedures, 5.100.050 Development Standards, and 5.100.060 being renamed Master Plans.

Section 14. P/OS Parks and Open Space District. The provisions in this district shall be amended as follows:

Section 5.110.040 Review Procedures would be renamed Prohibited Uses and would read as follows:

Section 5.110.040 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana, are prohibited uses in all P/OS - Parks and Open Space zones.

Section 5.110.040 through 5.110.050 would be renumbered 5.110.050 through 5.110.060, with 5.110.050 being renamed Review Procedures, and 5.110.060 being renamed Development Standards.

Section 15. Section 6.020.020(D) – Prohibited Uses shall be amended to read as follows:

D. Prohibited Uses. Vehicle sales, vehicle repair, and any use where the vehicle is the focus of the work, or is a significant part of the home business, is prohibited unless the owner obtains a conditional use permit. The production, processing, wholesaling, and retailing of recreational marijuana, are prohibited as a home occupation in any zoning district.

PASSED AND ADOPTED THIS 12th DAY OF SEPTEMBER, 2016.

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

AND APPROVED BY THE MAYOR THIS 12th DAY OF SEPTEMBER, 2016.

Stephen E. Lawrence, Mayor

Attest:

Izetta Grossman, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #13-B

MEETING DATE: September 12, 2016

TO: Honorable Mayor and City Council

FROM: Gene Parker, City Attorney

ISSUE: Special Ordinance No. 16-573, granting a non-exclusive gas utility franchise to Northwest Natural Gas Company, and fixing terms, conditions and compensation of such franchise

BACKGROUND: The City granted a gas utility franchise to Northwest Natural Gas Company in 1996 by adoption of Special Ordinance No. 96-442. The franchise was initially scheduled to expire on April 1, 2016, and the term of the franchise was extended by adoption of Special Ordinance No. 16-572 to October 1, 2016, or until a new franchise agreement was negotiated, whichever came first. City staff engaged in negotiations with representatives from Northwest Natural Gas, and the terms of a proposed new franchise agreement are set forth in Special Ordinance No. 16-573.

During the course of the negotiations, there were multiple drafts of the proposed franchise agreement which were exchanged between City staff and representatives of NW Natural Gas. The parties did not create a single document which showed every word which had been deleted by a strikethrough, or every new word that was proposed as an amendment. Trying to create this type of document would be difficult at this point, and could result in a document which could be very difficult to read. To assist the City Council, I have enclosed a copy of Special Ordinance No. 96-442 which contains the provisions of the current franchise agreement. In this staff report, I will discuss the provisions of General Ordinance No. 16-573, and highlight the significant changes that have been made to the language which was included in General Ordinance No. 96-442.

1. Section 1. Definitions and Explanations. The proposed franchise agreement includes many of the existing definitions and explanation of terms. There are two primary changes to the terms in this section under General Ordinance No. 16-573. This first change is to the term “public place”, which includes a new reference to

trails and walkways. The second change is a new definition for the term “Gross Revenue”. The new definition is based upon a definition from an administrative rule used by the Oregon Public Utilities Commission, which regulates rates charged by NW Natural Gas Company, and many cities have agreed that this definition is appropriate to include in a franchise agreement for NW Natural. The previous definition for “Gross Revenue” can be found in Section 4(1) of Special Ordinance No. 96-442.

2. Section 4. Franchise Fee. The franchise fee of 3.25% set forth in Special Ordinance No. 96-442 has been amended to reflect the current rate of 4.25%. Special Ordinance No. 16-573 deletes the requirement for a sworn statement of the Gross Revenue earned by NW Natural, due to the fact that the statements are produced by the Customer Account billing department of NW Natural, and are not prepared in the form of a sworn statement. The proposed franchise includes a provision that written statement will be provided to the City showing the basis for the computation in accordance with the definition of Gross Revenue contained in the franchise ordinance. The proposed provision is one that NW Natural uses in agreements with many other cities.

If the City has concerns as to the accuracy of these statements, the City has the right to inspect the books of account maintained by NW Natural at any time during business hours, and may audit the books from time to time under Section 13 of Special Ordinance No. 16-573. NW Natural also has internal controls related to the payments of Gross Revenue to ensure accuracy, including a SOX (Sarbanes Oxley) based controls which relate to their required financial reporting to make sure it is accurate with no material mistakes or discrepancies. SOX critical or key controls are ones that directly relate to the ability of NW Natural’s financial reporting to make sure matters such as their revenue reporting are accurate.

3. Section 6. Public Works and Improvements Not Affected by Franchise. Subsection 4 of the proposed new franchise agreement includes a provision whereby the City would provide 90 days advance written notice to NW Natural of any proposed excavation or work which may disturb the company’s gas mains, pipes or appurtenances.
4. Section 9. Control of Construction. The proposed new franchise agreement included a reference to alleys, bridges, or public places that would be filed with maps showing the location of any construction, extension or relocation of NW Natural’s gas mains. The proposed new franchise agreement also removes the requirement for a permit prior to construction, extension or relocation of gas mains for work performed under emergency conditions.
5. Section 10. Street Excavation and Restorations. Subsection 1 of Special Ordinance No. 16-573 includes new language allowing the City to consider a request for permission to cut a street prior to the expiration of the ten year moratorium, in the event that moling, boring, or shoulder work are not feasible to repair a system failure or construct system improvements.

6. Section 12. Term and Review of Franchise Fee and Expiration of the Franchise Term. The proposed 20 year term for the new franchise is equivalent to the term of the franchise granted by Special Ordinance No. 96-442. Special Ordinance No. 16-573 provides for periodic review of the franchise fee of 4.25%. The provision in Special Ordinance No. 96-442, which allowed for retroactive collection of any increase in the franchise fee, has been deleted as NW Natural cannot bill their customers on a retroactive basis for any increase in the franchise fee. The proposed new franchise agreement includes a provision that at the end of the twenty year term, if the City and NW Natural are still negotiating the terms of another new franchise, the parties will effectively have a period of six (6) months to complete the negotiations for a new franchise agreement.
7. Section 13. Books of Accounts and Records. Special Ordinance No. 16-573 provides that any audit or financial review of NW Natural's books will cover a period of three years prior to the date that the City notifies NW Natural of its intent to perform an audit or financial review, as NW Natural only maintains three years of customer records concerning payments in their system. The new franchise agreement includes a provision which is common in many other franchise agreements which NW Natural has with other cities concerning the non-disclosure of customer information which identifies, or can be attributed to, specific customers, under state public records law. The requirement in the existing franchise agreement that NW Natural provide the City with a copy of its annual financial statement has been deleted, since a copy of the annual report can be obtained from the company's website.
8. The existing franchise agreement included a provision in Section 14 of Special Ordinance No. 96-442 which required NW Natural maintain facilities in the City where customers could pay their bills. This provision has been deleted since NW Natural no longer maintains such a facility in the City, and most customers pay their bills by mail, or online or other electronic bill pay system.
9. Section 16. Assignment of Franchise. Section 16 of Special Ordinance No. 16-573 contains provisions which replace the provisions concerning assignment in Section 17 of Special Ordinance No. 96-422. The language in Special Ordinance No. 16-573 is consistent with the language used by other cities in their franchise agreements with NW Natural. The Oregon Public Utilities Commission (PUC) has to review any proposed assignment by NW Natural to an entity which does not control, or is not controlled by, or is not under the common control of NW Natural. If the PUC approves this type of proposed assignment, the proposed language would provide that the City would accept the PUC's approval of the assignment as conclusive evidence of the technical, legal and financial qualifications of the prospective party regarding the operation of gas facilities for the purposes of the City's approval of any transfer of the franchise. The City would not be required to give its consent for any sale, lease, mortgage, assignment, merger, or other transfer to entities that are control, are controlled by, or are under the common control of NW Natural.

BUDGET IMPLICATIONS: The proposed franchise agreement provides for a franchise fee of 4.25% of gross revenue received by NW Natural, with provisions for periodic review of the franchise fee.

COUNCIL ALTERNATIVES:

1. *Staff recommendation: Move to adopt Special Ordinance No. 16-573, granting a non-exclusive gas utility franchise to Northwest Natural Gas Company, and fixing terms, conditions and compensation of such franchise*
2. Make changes and direct staff to negotiate those changes with Northwest Natural Gas Company.

SPECIAL ORDINANCE NO. 16-573

AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE, AND DECLARING AN EMERGENCY.

THE COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:

Section 1: Definitions and Explanations.

- (1) As used in this ordinance.
 - (a) “Bridge” includes a structure erected within the City to facilitate the crossing of river, stream, ditch, ravine or other place, but does not include a culvert.
 - (b) “City” means the City of The Dalles and the area within its boundaries, including its boundaries as extended in the future.
 - (c) “Council” means the City Council of The Dalles.
 - (d) “Gas Mains” includes all gas transmission and distribution facilities located on or under any Street, alley, Bridge or Public Place within the City.
 - (e) “Grantee” means the corporation referred to in Section 2 of this ordinance.
 - (f) “Gross Revenue” means revenue received from the use of the gas utility system within the City limits less related net uncollectibles. Gross Revenues shall include revenues from the use, rental or lease of the gas utility system, except when those revenues have been paid to Grantee by another franchisee of the City and the paid revenues are used in the calculation of the franchise fee for the operation of the other franchisee within the City limits. Gross Revenues shall not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities, or stocks, or sales at wholesale by Grantee to any public utility or public agency when the public utility or public agency purchasing the gas is not the ultimate customer. Gross Revenues also shall not include public purpose charges, provided that such charges or surcharges are required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC and raised revenue is used solely for the public purpose and not to compensate Grantee for the sale or use of natural gas or for the use, rental, or

lease of Grantee's utility system within the City. Public purpose activities include, but are not limited to, energy efficiency programs, market transformation programs, low-income energy efficiency programs, and carbon offset programs designed to benefit residential and commercial customers within Grantee's service territory in Oregon. Gross Revenues also shall not include revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule or revenues paid directly by the United States of America or any of its agencies.

- (g) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
 - (h) "Public Place" includes any city-owned property, right-of-way, trail, walkway, place or grounds within the City that is open to the public but does not include a Street or Bridge.
 - (i) "Street" includes a street, alley, avenue, road, boulevard, thoroughfare or public highway within the City, but does not include a Bridge.
- (2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.
 - (3) Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the Council.

Section 2: Rights Granted.

Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right, privilege and franchise to:

- (1) Construct, maintain and operate a gas utility system within the City.
- (2) Install, maintain and operate on and under the Streets and Bridges and Public Places of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas.

Section 3: Use of Street, Bridges and Public Places by Grantee.

- (1) Before the Grantee may use or occupy any Street, Bridge or Public Place, the Grantee shall first obtain a permit from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
- (2) The compensation paid by the Grantee for this franchise includes compensation for the use of Streets, Bridges and Public Places located within the City as authorized.

Section 4: Franchise Fee.

- (1) In consideration of the rights, privileges and franchise hereby granted, the Grantee shall pay the City, from and after the effective date of this franchise and until its expiration, on a quarterly basis, an amount equal to four and a quarter percent (4.25%) of the Gross Revenue collected by the Grantee from its customers for gas consumed within the City.
- (2) The Grantee shall furnish to the City Finance Director with each payment of compensation required by this section a written statement showing the amount of Gross Revenue of the Grantee within the City for the period covered by the payment on or before the 25th day of the month following each calendar quarter, and payment of the franchise fee shall be made on or before the 25th day of the month following each calendar quarter. This written statement will show the basis for the computation in accordance with the definition of Gross Revenues contained in this Franchise. Within sixty (60) days after the termination of this franchise, the franchise fee shall be paid for the period elapsing since the close of the last calendar quarter for which the franchise fee has been paid.
- (3) The compensation for the period covered by the statement shall be computed on the basis of the Gross Revenue so reported. If the Grantee fails to pay the entire amount of the franchise fee due the City through error or otherwise, the difference due the City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from the Grantee.
- (4) The payments made by the Grantee will be accepted by the City in payment of any license, privilege or occupation tax or fee for revenue or regulation, or for any other purpose now or hereafter imposed by the City upon the Grantee during the term of this franchise, except permit fees for excavation and similar work as required by City ordinance. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto,

nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

Section 5: Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6: Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility;
- (2) Do any work that the City may find desirable on, over or under any Street, Bridge or Public Place.
- (3) Vacate, alter or close any Street, Bridge or Public Place.
- (4) Whenever the City shall excavate or perform any work in any of the present and future Streets, alleys, Bridges and Public Places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's Gas Mains, pipes and appurtenances, the City shall, in writing, notify the Grantee ninety (90) days in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such Gas Mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (5) Whenever the City shall vacate any Street or Public Place for the convenience or benefit of any Person or governmental agency and instrumentality other than the City, Grantee's rights shall be preserved as to any of its facilities then existing in such Street or Public Place.

Section 7: Continuous Service.

The Grantee shall maintain and operate an adequate system for the distribution of natural gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24 hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

Section 8: Safety Standards and Work Specifications.

- (1) The facilities of the Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9: Control of Construction.

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its Gas Mains in the Streets, alleys, Bridges or Public Places of the City within 90 days of approval of this franchise agreement, and shall obtain from the City approval of the location and plans prior to commencement of the work. The City shall require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its Gas Mains, except for work performed under emergency conditions as provided for in this franchise.

Section 10: Street Excavation and Restorations.

- (1) Subject to the provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, in the performance of routine service connections and ordinary maintenance, and when on private property, prior to making an excavation in the right-of-way of any Street, Bridge or Public Place and when required by the City, in any untraveled portion of any Street, Bridge, or any Public Place, the Grantee shall obtain a permit from the City for the proposed excavation and approval of its location. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work, no later than seven

days before the work begins, and as soon as is practicable after the commencement of work performed under emergency conditions. Grantee shall not be allowed to cut any newly installed pavement for a period of ten years. In the event that moling, boring, or shoulder work are not feasible to repair a system failure or construct system improvements, at Grantee's request the City will consider approval of a street cut prior to the ten (10) year moratorium described in this section.

- (2) Excavations shall result in the placement of distribution pipelines within a minimum depth of 30 inches. When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the Street, Bridge or Public Place to the same condition in which it was prior to the excavation. Upon notification from the City that a Street cut performed by the Grantee is in need of additional repair or maintenance, Grantee agrees to perform such repair or maintenance work on the Street cut at its own cost. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portion of a Street, Bridge or Public Place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

Section 11: Location and Relocation of Facilities.

- (1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the Streets, Bridges and Public Places and in accordance with any specifications adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the Streets of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. The cost of such removal or relocation of its facilities shall be paid by the Grantee, but when such removal or relocation is required for the convenience or benefit of any Person, governmental agency or instrumentality other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from such Person, agency or instrumentality.
- (3) Upon notification from the City, Grantee shall place in any new project area, appropriate utility services to accommodate future growth, at the time of construction.

Section 12: Term and Review of Franchise Fee and Expiration of the Franchise Term.

The rights, privileges, and franchise granted herein shall continue and be in force for a period of twenty (20) years from and after October 1, 2016; provided, however, that the franchise rate of four and a quarter percent (4.25%) shall be reviewed as of October 1, 2021, October 1, 2026 and October 1, 2031. Any increase in the franchise fee negotiated between the parties shall be effective as of the next calendar quarter following approval by the parties of the new franchise fee. If, at the end of the term of this franchise, the City and Grantee are negotiating another franchise and have not yet concluded their negotiations, Grantee's rights and responsibilities shall be controlled by this franchise until the City grants a new franchise and Grantee accepts it, or for a period of not less than 6 months, whichever comes first.

Section 13: Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 12 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time, provided that only payments that occurred or should have occurred during a period of thirty-six (36) months prior to the date the City notifies the Grantee of its intent to perform an audit or financial review will be included. The Grantee will not provide the City with records containing customer information that identifies or can be attributed to a specific customer, without a written legal opinion by the City to the Grantee's reasonable satisfaction that such records will not be subject to public disclosure under state law, and that the City will inform NW Natural and oppose their disclosure should a public disclosure request be made. The Council may require periodic reports from the Grantee relating to its operations and revenues within the City.

Section 14: Supplying Maps Upon Request

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. The Grantee shall furnish to the City, within 90 days of the approval of this franchise agreement, without charge and on a current basis, maps showing the location of the Gas Mains of the Grantee in the City.

Section 15: Indemnification.

The Grantee shall indemnify, defend and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury

to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 16: Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee; but no transfer of this franchise or any rights thereunder by merger, consolidation, sale, assignment or otherwise shall be made unless the Council first consents by resolution, which consent shall not be unreasonably withheld. If a sale, lease, mortgage, assignment, merger, or transfer to an entity or entities which do not control, or are not controlled by, or are not under common control with Grantee, of Grantee's Gas Facilities located within the Rights-of-way by authority of this franchise is subject to review and approval by the Oregon Public Utilities Commission, the City shall accept final approval by the OPUC of the sale, lease, mortgage, assignment, merger, or transfer as conclusive evidence of the technical, legal, and financial qualifications of the prospective party regarding operation of the Gas Facilities for the purposes of City approval of the transfer. Nothing in this franchise requires the City's consent for any sale, lease, mortgage, assignment, merger, or other transfer to entities that control, are controlled by, or are under common control with Grantee. Nothing contained in this franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Gas Facilities for the purposes of financing the acquisition of equipment for or the construction or operation of Grantee's Gas Facilities, within or outside the City, without the City's consent, but any such mortgage, pledge, or assignment with respect to Grantee's Gas Facilities shall be subject to the City's other rights contained in this franchise. Whenever Northwest Natural Gas Company shall be mentioned in this ordinance, it shall be understood to include such successors or assigns in interest of Northwest Natural Gas Company as shall have been so consented to by the City Council.

Section 17: Termination of Franchise for Cause.

Upon the willful failure of the Grantee, after sixty (60) days' notice and demand in writing, to perform promptly and completely each and every term, condition or obligation imposed upon it under or pursuant to this ordinance, the City may terminate this franchise, subject to Grantee's right to a court review of the reasonableness of such action,

Section 18: Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce

the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 19: Acceptance and Effective Date.

The Grantee shall, within thirty (30) days from the date the City Council passes an ordinance approving this franchise, file with the City its written unconditional acceptance of this franchise. This franchise shall be effective upon Grantee's written unconditional acceptance, and if the Grantee fails to do so, this ordinance shall be void.

Section 20. Emergency. Whereas, on March 28, 2016, the City Council adopted Special Ordinance No. 16-572 temporarily extending the term of the non-exclusive gas utility franchise granted to Northwest Natural Gas by Special Ordinance No. 96-442 until October 1, 2016 or until a new Franchise Agreement is negotiated, and it is in the interest of public health and safety that the ordinance approving a new Franchise Agreement take effect immediately to allow for Northwest Natural Gas to continue providing service to its customers, NOW, THEREFORE, an emergency is declared to exist and this ordinance shall go into full force and effect immediately upon its passage and approval.

PASSED AND ADOPTED THIS 12th DAY OF SEPTEMBER 2016.

Voting Yes, council members _____

Voting No, council members _____

Absent, council members _____

Abstaining, council members _____

AND APPROVED BY THE MAYOR THIS 12th DAY OF SEPTEMBER, 2016.

Stephen E. Lawrence, Mayor

ATTEST:

Izetta Grossman, City Clerk

ACCEPTANCE

City of The Dalles
City Clerk
313 Court Street
The Dalles, OR 97058

This is to advise the City of The Dalles, Oregon (the "City") that Northwest Natural Gas Company (the "Grantee") hereby accepts the terms and provisions of Ordinance No. _____ passed by The Dalles City Council on _____, 2016 (the "Franchise") granting a Franchise for twenty (20) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise, and shall become effective upon acceptance of said agreement by NW Natural Gas Company (the "Grantee").

(Name)

BY _____

TITLE Senior Vice President & General Counsel

DATE _____

This Acceptance was received by the City of _____ on _____, 2016.

City Clerk