



Location: City Hall – Council Chambers
Date: August 08, 2023
Time: 6:00 PM

City Council Meeting Agenda

Mayor Jason Beebe, Council Members Steve Uffelman, Janet Hutchison, Shane Howard, Gail Merritt, Scott Smith, Marv Sumner and City Manager Steve Forrester
ATTEND TELEPHONICALLY BY CALLING 346-248-7799 Meeting ID: 947 5839 2608 Passcode: 123456

Call to Order

Flag Salute

Additions to Agenda

Consent Agenda

- [1.](#) Regular Meeting Brief 7-25-2023
- [2.](#) Annual Liquor License Renewals

Visitors, Appearances and Requests

Council Presentations

3. ODOT Update & Cooperative Utility Agreement with ODOT Discussion - Casey Kaiser

Council Business

- [4.](#) Consideration of Council Contribution to NeighborImpact - Sponsor Councilor Hutchison
- [5.](#) Appointment of Bill Anderson to the Railroad Committee - Matt Wiederholt
- [6.](#) Consideration of a Proclamation - Constitution Week September 17-24 - Sponsor Mayor Beebe
- [7.](#) Consideration of a Proclamation - Vietnamese Heritage & Freedom Flag - Sponsors Mayor Beebe / Councilor Sumner

Staff Reports and Requests

- [8.](#) City Manager Report - Steve Forrester
9. Legislative Update - Caroline Ervin

Committee Reports

Ordinances

- [10.](#) Ordinance No 1287 - Zayo Franchise Extension - **(SECOND PRESENTATION)** - Jared Reid

Resolutions

- [11.](#) Resolution No 1573 - Authorizing Development Agreement Between City and Apple, Inc. - Jered Reid



Visitors, Appearances and Requests

- 12. Executive Session Pursuant to ORS 192.660 (2)(i) & 192.660 (8) - Evaluation Performance of an Officer, Employee or Staff Member**

Adjourn

Agenda items maybe added or removed as necessary after publication deadline



CITY OF PRINEVILLE
Regular Meeting Brief
387 NE Third Street – Prineville, OR 97754
541.447.5627 ph 541-447-5628 fax

Full Meeting Recordings Available at:
<http://cityofprineville.com/meetings/>

City Council Meeting Brief
July 25, 2023

Council Members Present:

Shane Howard
Gail Merritt
Scott Smith
Marv Sumner

Council Members Absent

Janet Hutchison
Jason Beebe
Steve Uffelman

1. Ceremonial Sear-In of Councilor Marv Sumner – Steve Forrester

Mr. Forrester administered the Oath of Office to Councilor Marv Sumner.

Councilor Sumner took his seat with the rest of the Council.

Additions to the Agenda

To make a motion to elect a chair to lead the Council meeting since the Mayor and Council President Uffelman are absent.

Councilor Smith made a motion to elect Councilor Merritt as the Council Chair for this meeting. Motion seconded. No discussion on motion. All in favor, motion carried.

Consent Agenda

2. Regular Meeting Brief 7-11-2023
3. PD Property Conversion

Councilor Smith made a motion to approve consent agenda as presented. Motion seconded. No discussion on motion. Motion carried.

Visitors, Appearances and Requests

No one came forward.

Council Presentations

None.

Council Business

4. Reading of a Proclamation – July Parks & Recreation Month

Council Chair Merritt read the proclamation into the record and presented it to Mr. Steve Waring, Crook County Parks & Recreation Executive Director.

Mr. Waring came forward and thanked the Council for passing the reading and spoke of the great collaboration Parks & Recreation has with the city and county.

Staff Reports and Requests:

5. City Manager's Report– Steve Forrester

Steve Forrester, City Manager presented his report highlighting recent activities in all departments.

Mr. Forrester asked Matt Wiederholt, Railroad Manager to come forward and provide a Railroad update.

Mr. Wiederholt provided a project update stating that there are some significant projects coming up. He is trying to find all the pieces needed for the projects and reaching as far as Illinois. Last time that the tamping and rail replacement or maintenance has been done was in 2009. They will be going out to bid now that the pieces are starting to come in. Mr. Wiederholt explained that he finally found the steel beams needed to replace old wooden beams in the McKay Creek bridge. They were able to find them in Seattle and cost about \$11,000 each not including shipping. Once completed, the bridge will have about a 75-80 year life span.

Council Chair Merritt commented on the nice article in the paper on the Wetland volunteers.

There were no questions.

Committee Reports

There were no reports.

Ordinances:

6. Ordinance No. 1287 – Zayo Franchise Extension– (FIRST PRESENTATION) – Jered Reid

Jered Reid, City Attorney provided the background information explaining that we are simply extending the ordinance we already have with them that is set to expire. Zayo is exercising their option to renew Ordinance No. 1244 and we have not had any problems with them. Since Zayo does not generate revenue, their franchise fee is based by the foot for fiber installed.

There were no questions.

Councilor Smith made a motion to approve Ordinance No. 1287 for its first presentation. Motion seconded. No discussion on motion. All in favor, motion carried.

There were no questions.

7. Executive Session Pursuant to ORS 192.660 (2)(f) – Jered Reid

Mr. Reid read the executive session script into the record and dismissed everyone from the room that was not named. There was a caller on the line who did not identify themselves after several requests to do so, so the line was disconnected.

Meeting adjourned to executive session at 6:25 P.M.

Meeting reconvened to regular session at 6:39 P.M. and the doors were opened.

Resolutions

8. Resolution No. 1572 – A Resolution Revoking Resolution No. 1571– Jered Reid

Mr. Reid explained that this resolution simply rescinds Resolution No. 1571.

Councilor Smith made a motion to approve Resolution No. 1572. Motion seconded. No discussion on motion. All in favor, motion carried.

Visitors, Appearances and Requests:

No one came forward.

Adjourn

Councilor Howard made a motion to adjourn the meeting. Motion seconded. No discussion on motion. All in favor, motion carried.

Meeting adjourned at 6:42 P.M.

Motions and Outcomes:

Motion:	Outcome	Beebe	Howard	Hutchison	Merritt	Smith	Sumner	Uffelman
Motion to elect Councilor Merritt as the Council Chair for this meeting	PASSED	-	Y	-	Y	Y	Y	-
Consent Agenda	PASSED	-	Y	-	Y	Y	Y	-
Ordinance No. 1287 – Zayo Franchise Extension– (FIRST PRESENTATION)	PASSED	-	Y	-	Y	Y	Y	-
Adjourn Meeting	PASSED	-	Y	-	Y	Y	Y	-

Public Records Disclosure

Under the Oregon public records law, all meeting information, agenda packets, ordinances, resolutions, audio and meeting briefs are available at the following URL:

<https://www.cityofprineville.com/meetings> .

Annual Liquor License Renewals

Angelina's Coffee Company

Corral Tap Room

The Sandwich Factory

Gee's Family Restaurant

Elks Lodge # 1814



Prineville City Council Contribution Request Form

The City of Prineville is proud to contribute to organizations that have interest that benefit the citizens of Prineville in line with Council Goals and Objectives. Pursuant to Resolution No. 1517, once the completed application is received it will be forwarded to City Council for sponsorship. Upon a City Council Member's sponsorship, the application shall be presented at the next Regular City Council meeting for City Council's consideration.

Date:07/25/2023	Name of Organization: Neighbor Impact	
Street Address: 2303 SW First St.		
Town: Redmond	State: Oregon	Zip: 97756
Phone:5414087024	Email: jeffr@neighborimpact.org	
Contact Name & Title: Jeff Rola Development Program Manager		
IRS Tax Status (Example 501(c) 3, 5, 6 or other:501(c) 3		
Give a brief description of your organization including the mission statement, type of service provided: Neighbor Impact's mission is to Support People and Strengthen Communities. We do this by providing services in six program areas: Head Start, Childcare, Housing, Lending, Energy Assistance and above all, Food. Our service area covers Crook, Deschutes, Jefferson Counties including Warm Springs.		
Purpose of funds request (attach brochures, pictures, purpose of organization, etc.) Be specific as to what area of your plan where the funds will be used. The funds requested will be used specifically to support Neighbor Impact's regional Food Program. Attached are general information listing projects undertaken in Central Oregon and recent Geo Data of food provided, people served, and the value of the service provided with numbers specific to Crook County. We are projecting a shortfall in our Food Program of \$300,000 to \$400,000 in the coming year.		
Will funds be used for operational expenses? (Please explain) These funds will go directly to the collection, storage and distribution of food. These funds will not be used for the general operation of Neighbor Impact.		
Will funds be leveraged with other resources/partnerships? Yes, We have received commitments totaling \$20,000 from Lapine, Sisters, and Madras. Requests to Redmond, Bend, Crook and Jefferson Counties are pending. Deschutes County has provided more than \$2 million toward the construction of a new food warehouse facility.		
Funding Amount Requested: \$ 5,000		
Describe how your organization sees this request for meeting the Council Goals & Objectives: See attached: Food Program Prineville		



Prineville City Council Contribution Request Form

Describe the purpose of the request, the services to be provided and how it relates to the City of Prineville & how this will benefit the citizens of Prineville:
See Attached: Food Program Prineville

Number of years in operation: Since 1984

Has your organization received funds from the city before? If yes, please provide amount and purpose of donation:

Not to my knowledge.

I hereby certify that I have read and understand the charitable donation request guidelines and that the information provided is true and correct. I understand that the approval and denial of all charitable donation requests is in the sole discretion of the City of Prineville Council and that if the request is approved, a W9 must be on file with the city before funds can be distributed.

Jeff Rola, Development Program Manager

Printed Name – Organization's Authorized Representative

Jeffrey P Rola

Signature – Organization's Authorized Representative

ADMINISTRATIVE SECTION:	
Date Received:	
Fiscal Year:	Fund balance at time of request:
Council Member to sponsor:	
Date Council to review:	Council: Approved / Denied
If approved, amount Council approved: \$	

Food Program

1. Geo CY	Report Period: January 1 to December 31, 2020	Crook	Deschutes	Jefferson	Warm Springs*	Not Warm Spring	Other
	†Households served (USDA Only)	3,314	24,983	3,471	1,336	390	0
	*Individuals served (all programs)	18,327	443,114	15,721	5,467	1,807	1,547
	Food collected (lbs.) (all programs)	78,027	1,379,619	41,273	0		0
	Food collected (lbs) (NI only)		3,198,290				
	\$Value of food distributed (NI only)	273,805	2,841,651	508,114	77,093		
	\$Value of food distributed (all programs)	371,339	4,566,175	559,705	77,093		0

* Please report Warm Springs numbers separately if possible. Do not duplicate counts. Column E should contain numbers for Jefferson County residents

	\$645,144	\$7,407,826	\$1,067,819	\$154,186
Volunteer Hours (Partner Agencies)	119,725			

2. Geo FFY	Report Period: October 1, 2020 to	Crook	Deschutes	Jefferson	Warm Springs*	Other	
	†Households served (USDA Only)	3,840	25,661	4,188	761	529	0
	*Individuals served (all programs)	19,837	395,637	17,674	4,286	2,180	1,694
	Food collected (lbs.) (all programs)	73,508	1,918,770	57,045	0		0
	Food collected (lbs) (NI only)		3,480,327				
	\$Value of food distributed (NI only)	\$317,364	\$2,155,368	\$558,404	\$66,446		
	\$Value of food distributed (all pro	\$409,249	\$4,553,831	\$629,710	\$66,446		\$0

* Please report Warm Springs numbers separately if possible. Do not duplicate counts. Column E should contain numbers for Jefferson County residents

	\$726,613	\$6,709,199	\$1,188,114	\$132,892
Volunteer Hours (Partner Agencies)	114,028			

3. CSBG	Report Period: October 1, 2020 to September 30, 2021	Crook	Deschutes	Jefferson	Warm Springs*	Total
	# served - Mobile Food Pantry	7814	11924	159	0	19897

# of mobile food pantry distribution sites	1	1	1	0	3
# of food distribution partnerships/locations	24	24	1	0	49

*Exclusive of mobile food pantry sites

4. CSBG Other		Report Period: October 1, 2020 to September 30, 2021
Description	Count	
Staff certifications (list)	8	
Food Handler's Cards	8	
Forklift Certification	8	
Civil Rights Training	8	
ServSafe for Managers	1	

5. CSBG Cares (only include based on COVID funding sources)

Report Period: October 1, 2020 to September 30, 2021		*Individuals served (COVID funded programs)	1,018	5,998	775	46	2,180	0
			Crook	Deschutes	Jefferson	Warm Springs*		Other

Dot report for 2020-2021

Neighbor Impact's Food Program – Prineville and Crook County.

Describe how your organization sees this request for meeting the Council Goals & Objectives:

- By providing an efficient and leveraged food collection and distribution to the people of Prineville Neighbor Impact demonstrates a high level of **fiscal responsibility**.
- By providing local food pantries with abundant and quality food as well as local food collection services Neighbor Impact delivers a **quality** and valuable **service and program** to the people of Prineville.
- By providing food during a time of economic hardship, Neighbor Impact helps maintain a stable housing and working environment for the people of Prineville, **positioning the community for a bright future**.

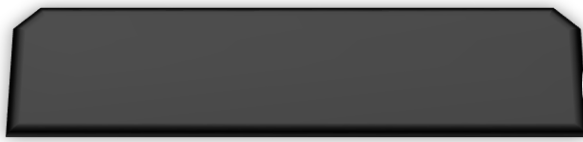
Describe the purpose of the request, the services to be provided and how it relates to the City of Prineville & how this will benefit the citizens of Prineville:

Essentially, demand is higher than ever and food supply isn't keeping up. We haven't had local food purchasing dollars since April and yet we've moved more food this year (4.4 million pounds) than we ever have (including when we had COVID emergency food in the form of more commodities and the Farmers Feeding Families Food Box Program). Crook County is again on the rise.

Here's the recap in Prineville I sent back in February as well for stats. Basically, Prineville gets nearly all their food from the NI warehouse.

There are four food pantries in Crook County and all receive food from NeighborImpact. The NeighborImpact Food Bank operates a mobile pantry in Prineville twice a month in partnership with Mosaic Medical. Here are some quick stats on Crook County:

- 1) NeighborImpact Food Bank partners serve approximately 21,200 individuals annually in Crook County.
- 2) Of the 394,370 lbs of food that is distributed to folks in Crook County, 328,370 lbs of it come from the NeighborImpact Food Bank and 20,000 lbs is picked up directly by partner agencies with grocery stores that donate to them because they are affiliated with us (this the Feeding America Fresh Alliance program).
- 3) 88% of food distributed in Crook County is through the NeighborImpact Food Bank located in Deschutes County. Only 12% of food distributed in Crook County comes from Crook County (including food drives and individual donations).
- 4) The NI Food Bank mobile pantry serves 9,000 Crook County residents a year.
- 5) Approximately 50% of Crook County residents receive SNAP benefits all of which are income eligible to receive food from our network of food partners and mobile pantries.



STAFF REPORT

MEETING DATE: 7/25/2023

PREPARED BY: Matt Wiederholt

SECTION: Council Business

DEPARTMENT: Railroad

CITY GOAL: Fiscal Responsibility, Provide Quality Municipal Service & Programs, Position the City for the Future, Transparency & Effective Communication

SUBJECT: Recommendation for Rail Committee Nomination

REASON FOR CONSIDERATION:

To fill a vacancy on the Rail Committee

BACKGROUND:

Summary Resolution No. 1251:

The purpose of the Rail Committee shall be to discuss and examine problems relative to the railroad operations and report findings to the City Council. The railroad Advisory Committee shall consist of not more than seven members; City Manager, one representative of the Railway, one city council member, one rail user, and up to three citizens of Crook County. Members of the Committee members shall be appointed by the Mayor and each member will serve a two-year term.

The committee members strongly recommend Bill Anderson to serve on the City of Prineville Railroad Committee. The members had the pleasure of meeting Bill and can attest to his exceptional qualifications and dedication to community service. His commitment to the betterment of Prineville and its residents was evident from the outset.

Bill's background in the Banking industry, coupled with his extensive experience in strategic planning and project management, makes him an ideal candidate for the City of Prineville Railroad Committee. His expertise and insights will undoubtedly prove invaluable in tackling the various challenges and opportunities related to the city's rail infrastructure. We have no doubt that he will bring this same level of commitment and passion to the City of Prineville Railroad Committee.

Moreover, Bill demonstrated he is a highly collaborative individual. His capacity to build consensus and work with the committee will be crucial in advancing the committee's objectives and ensuring the best outcomes for the railway.

FISCAL IMPACT:

None.

RECOMMENDATION:

Tonight, the rail committee request the mayor to consider and recommend Bill Anderson for the open position on the City of Prineville Railroad Committee. His exceptional qualifications, industry expertise, and strong commitment to the community make him the perfect candidate to contribute to the railways growth and development. We believe that he will excel in this role and make a significant positive impact on the committee.

On behalf of the Rail Committee:

Councilor Steve Uffelman – council rep.

Mike Ervin – Citizen 1

Larry Gerke- Citizen 2

Open Position- Citizen 3

Dustin Wilson- rail user (McCall Oil)

Matt Wiederholt – COPR Rep.

Steve Forrester- City Manager

PROCLAMATION

Whereas: It is the privilege and duty of the American people to commemorate the two hundred and thirty-sixth anniversary of the drafting of the Constitution of the United States of America with appropriate ceremonies and activities; and

Whereas: Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of American designating September 17 through 23 as Constitution Week,

Now therefore, I Jason R. Beebe by virtue of the authority vested in me as Mayor of the City of Prineville, Oregon

Do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

And urge all citizens to study the Constitution and reflect on the privilege of being an American with all the rights and responsibilities which that privilege involves.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Prineville, Oregon to be affixed this _____ day of August of the year of our Lord two thousand twenty three.

Jason R. Beebe, Mayor

PROCLAMATION

Whereas: Vietnamese refugees have proudly resided in the State of Oregon communities since the conclusion of the Vietnam War.

Whereas: Vietnamese Americans have put forth their full toiling energy building the cities of Oregon in a multitude of prominent areas including industry, economy, culture, education and military service.

Whereas: Vietnamese Americans have counted on the State of Oregon, USA as being their second heart, mind and family homeland.

Whereas: the Vietnamese American community continues to flourish and embrace the American spirit of freedom, and it is proper that the tangible symbol of that spirit, the “Vietnamese Heritage and Freedom Flag” be displayed in pride to recognize and honor the Vietnamese American community.

Whereas: A large number of Oregon’s Vietnamese Americans respectfully embraces the yellow and three red striped Heritage and Freedom flag as a symbol of Vietnamese American community.

Whereas: It is the will and desire from the Vietnamese Community of Oregon and its community members, that the Vietnamese American Heritage and Freedom Flag be recognized as the official flag of their organization in the City of Prineville.

Now,

Therefore, I Jason R. Beebe the Mayor of the City of Prineville, do hereby recognize the Vietnamese American Heritage and Freedom Flag as the official flag of Vietnamese Americans in the City of Prineville.

We invite all to join in the reverent recognition of this cultural Vietnamese Heritage and Freedom Flag.

Dated this _____ day of August, 2023

Jason R. Beebe, Mayor

City Manager Update to Council

August 8th, 2023

Public Safety / Dispatch

The Police Department has a new hire lateral starting on August 15th. PD was awarded a \$20,000 ODOT grant for traffic enforcement related activities.

Public Works

Please welcome Rich Evans to the team. Rich is the new Public Works Superintendent, with Jake Ziegler as the Assistant PW Superintendent.

The Water System Master Plan is in the final edits and the Wastewater Facility Master Plan Draft is finished and is in quality review.

We are working on potentially taking jurisdiction of Tom McCall Road from the County which will be brought up to city standards as required and may also have some additional pedestrian improvements.

The Lynn Boulevard chip seal project has been completed and will get striped next. Grinding will begin August 7th with paving to start on August 14th for the annual paving project in the northeast part of town in the neighborhood of 6th and Elm Streets.

The waterline replacement projects are in the final design phase with hopes of going out to bid in August.

There was some damage to the lower flights on the main influent bar screen. The new auger shaft has been ordered and should be here to repair in September. The wetland volunteers have ordered a shade structure and should be here late August to be installed in late August or September.

Rail Road

The railroad is busy maintaining business and has almost all of the parts ordered that are needed for their projects to move forward.

Meadow Lakes Golf

Meadow Lakes had another record breaking month in July as you saw. They have a championship tournament coming up as well as their 30th Anniversary tournament. Be sure to stop by Meadow Lakes and celebrate 30 years with them.

Airport

Things are super busy at the airport with construction of several new hangar buildouts happening. The RFP is still out for a fixed based operator (FBO) to take over some of the operations to free Kelly up for further development of the airport.

Planning

Planning has a new team member joining the department on September 1, 2023. More information to follow as that date nears. There is an annexation coming in for the Williamson area. The manufactured home park near Bi-Mart is

moving forward. The developer will be selecting and placing the manufactured homes for cohesiveness and there will be paved roads and sidewalks for an upper scale park.

Human Resources – Nothing to report.

Information Technology

The Noble 911 project is in full swing. IT interviewed two candidates for their vacancy and made an offer to one of them with hopes they are able to join the team soon.

Finance

Please congratulate Lori Hooper & Darrell Antram on their recent wedding on July 28th.

City Recorder/Risk Management –No Update

City Legal – No Update

EDCO

EDCO has been busy with a few new inquiries with a variety of industry. One is a semi-conductor company that would be a new start up out of California and an air compression company that is looking for a testing area. COIC is putting together potential funding for broadband infrastructure in areas that there are gaps.

Public Relations

ShanRae is putting together the summer newsletter. ShanRae also handles public relations for the irrigation districts and reports that Central Oregon Irrigation has already had to curtail irrigation water. A recent Railroad post to the city's Facebook page is doing really well and anything on the Railroad always gets a lot of engagement and shared pictures.

Mayor/Council – Nothing to report.

Other

The city has reached out to the School Board and presented to them last week on the potential for increased bonding capabilities with the expected increase in the tax base as the enterprise zone exemptions start to expire. They expressed an interest for the city to continue to help them through the upcoming opportunities.

ORDINANCE NO. 1287

AN ORDINANCE AMENDING ORDINANCE 1244 AND EXTENDING ZAYO GROUP, LLC'S FRANCHISE THROUGH AUGUST 30, 2028

RECITALS

- A. City Ordinance No. 1244 grants Zayo Group, LLC a nonexclusive franchise to provide and operate a telecommunications business within the City of Prineville, and to place, erect, lay, maintain and operate in, upon, over, and under the public streets, alleys, avenues, thoroughfares, highways, places, and grounds within the City of Prineville, poles, wires, optical fiber cable, and other appliances and conductors for all telecommunication purposes.
- B. Ordinance 1244 expires on August 30, 2023.
- C. The parties desire to extend the franchise through August 30, 2028.

BASED UPON the above Recitals, the people of the City of Prineville ordain as follows:

1. Ordinance 1244 granting to Zayo Group, LLC the right and franchise to provide an operate a telecommunications business within the City is hereby extended to August 30, 2028, subject to the terms and conditions contained in Ordinance 1244.
2. Zayo Group, LLC, must accept the terms and conditions of this Ordinance and deliver such acceptance to City on or before August 30, 2023.

Presented for the first time at a regular meeting of the City Council held on July 25, 2023, and the City Council finally enacted the foregoing ordinance this ____ day of August, 2023.

Rodney J. Beebe
Mayor

ATTEST:

Lisa Morgan, City Recorder

Acceptance

The forgoing Ordinance No. 1286, adopted by the City of Prineville on July _____, 2023 is approved, accepted, and agreed upon by Zayo Group, LLC.

Dated: _____, 2023

Zayo Group, LLC.
an Delaware limited liability company

By:

Its:

**RESOLUTION NO. 1573
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING DEVELOPMENT AGREEMENT BETWEEN CITY
OF PRINEVILLE AND APPLE, INC.**

Whereas, Apple, Inc. (“Apple”) owns and operates a data center within Prineville city limits that requires significant fire suppression requirements necessitating certain improvements to improve water flow capacity to the property.

Whereas, Apple desires to have City of Prineville (“City”) procure materials and constructions services to construct, install, and maintain 6,665 linear foot water pipe consisting of 30 inch pipe (“Project”).

Whereas, City is willing to contract, install, and maintain the Project pursuant to a development agreement.

Whereas, City and Apple have negotiated a Waterline Project Agreement (“Agreement”), which is attached to this Resolution and incorporated herein.

Whereas, based on contributions from Vitesse, LLC, Apple has agreed to contribute thirty percent (30%) towards the Project and an additional Administrative Fee of ten percent (10%).

Whereas, City staff believes it is in the best interest of the City to approve and execute the Agreement.

Now, Therefore, the City of Prineville resolves that the Agreement attached to this Resolution between the City and Apple is hereby approved and that the Mayor is authorized and instructed to sign such Agreement on behalf of the City.

Approved by the City Council this ____ day of August, 2023.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder

WATERLINE PROJECT AGREEMENT

**Between
City of Prineville and Apple, Inc.**

This Waterline Project Agreement (“Agreement”) is made and entered into as of the date last written below (the “Effective Date”), by and between the **City of Prineville**, an Oregon municipal corporation (“City”) and **Apple Inc.**, a California corporation (“User”); each of City and User are “Party” and together, the “Parties.”

RECITALS

A. Whereas, User owns and operates a data center on real property located within City and generally depicted on Exhibit A, attached hereto and incorporated herein.

B. Whereas, the property generally depicted in Exhibit A has significant fire suppression needs, and the Parties desire to make certain improvements to improve water flow capacity in the area.

C. Whereas, User desires to have City procure materials and construction services to construct, install, and maintain a 2,240 linear foot water pipe consisting of 30 inch polyvinyl chloride (“PVC”) or high-density polyethylene (“HDPE”) pipe, which will run from a point approximately 150 lineal feet west of City of Prineville Heliport Well, south across Highway 126 to County land, then east to tie in with the existing 16” water main at Millican Road and improve service to the User’s property by improving fire flow capabilities and system redundancy in the event of a fire (“Project 1B”). Project 1B and anticipated approximate water delivery pressures to the User’s property is identified in the attached Exhibit B.

D. Whereas, User also desires to have City procure materials and construction services to construct, install, and maintain a 4,425 linear foot water pipe consisting of 30 inch PVC or HDPE pipe, which will run from the City of Prineville’s Airport Reservoir site to tie into the existing 18” watermain in Airport Way located between City of Prineville Airport Wells 1&2 and Heliport Well and improve service to the User’s property by improving fire flow capabilities and system redundancy in the event of a fire (“Project 2B,” collectively with Project 1B, the “Projects”). Project 2B and anticipated approximate water delivery pressures to the User’s property is identified in the attached Exhibit B.

E. Whereas, the general location of the Projects is depicted on Exhibit B, attached hereto and incorporated herein.

F. Whereas, Parametrix (the “Engineer”) has been contracted with to provide design and engineering services for the Projects.

G. Whereas, City has estimated that the total cost of Projects is SEVEN MILLION FOUR-HUNDRED SIXTY-FIVE THOUSAND, TWO-HUNDRED NINETEEN AND 57/100 DOLLARS (\$7,465,219.57), as more specifically set forth on Exhibit C, attached hereto and incorporated herein (“Total Project Cost”).

H. Whereas, City is willing to construct, install, and maintain the Projects.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained herein, including the Recitals which are incorporated herein by reference, which are relied upon by the Parties and which constitute part and parcel of this Agreement; and other good and valuable consideration the receipt and sufficiency of which are expressly acknowledged by the Parties, City and User hereby agree as follows:

1. Procurement. City will solicit and procure all materials and construction services necessary to construct, install, and maintain the Projects. City's solicitation and procurement process will include the solicitation of bids for purchase and installation of PVC or HDPE piping and ancillary materials for the Projects with pipe sizes consistent with the Recitals, although only one material type will be used to construct the Projects. All procurement activities must be conducted in accordance with Oregon's Public Contracting Code (ORS 279A, ORS 279B and ORS 279C), all applicable state and local contracting rules, and all applicable laws, rules and regulations including those relating to anti-corruption and anti-bribery.

2. Performance. City hereby agrees to complete and be responsible for the construction, installation, and maintenance of the Projects. During the course of each Project, City will:

2.1 Monitor the budget and schedule of each Project and promptly notify User of any anticipated changes to the budget or schedule of either Project and manage project budgets to assure the cost of the Projects is limited to the greatest extent possible;

2.2 Submit to User all applications for payment and invoices submitted by contractors and material suppliers for each Project;

2.3 Coordinate all testing and inspections required by third parties;

2.4 Promptly conduct all inspections City is obligated to perform; and

2.5 Organize and conduct a final inspection with User, the Engineer, and each Project's contractor to confirm that each Project (i) is entirely complete in accordance with the Project's design, plans, and specifications, (ii) has received all applicable project completion certificates, and (iii) can be utilized by User for its intended purpose (collectively, "Final Completion").

3. Approval Authority. City will not execute any change order, request for substitution, construction contract amendment or other document authorizing changes to either Project's cost, schedule, or scope without User's prior written consent. User shall be deemed to consent, however, to change orders User does not object to within fourteen (14) days following User's receipt of the change order, including a request for approval from the City and a reasonably detailed explanation of the need for the change order and the impact such change order may have on the applicable Project's scope, schedule or cost.

4. Performance Bond. Unless exempted under ORS 279C.390, City will ensure that the contractor for each Project provides a performance bond in accordance with ORS 279C.380.

The performance bond provided by the contractor must list User as an additional obligee and be in a form approved in writing by User.

5. Project Timelines. The Projects shall be completed in accordance with the design prepared by the Engineer and with applicable all laws, ordinances and regulations. City will strive to achieve Final Completion for the Projects no later than 14 months after agreement is fully executed.

6. Consideration. In consideration of City's performance, User hereby agrees to pay City:

- 6.1 Up to thirty percent (30%) of the Total Project Cost which will not exceed TWO MILLION TWO-HUNDRED THIRTY-NINE THOUSAND, FIVE HUNDRED SIXTY-FIVE AND 87/100 DOLLARS (\$2,239,565.87) ("User Project Cost Cap"); and
- 6.2 An administrative fee equal to the lesser of (a) ten percent (10%) of User's payments towards the Total Project Costs; or (b) TWO HUNDRED TWENTY-THREE THOUSAND NINE-HUNDRED FIFTY-SIX AND 58/100 DOLLARS (\$223,956.58).

7. Payment Schedule. City may submit to User an invoice no more than once each month consisting of (1) costs incurred for work actually completed and approved by the City that have not been previously reimbursed, and (2) an administrative fee equal to 10 percent (10%) of the applicable cost included in the invoice. Payment shall be made, following review and approval of the invoice submitted by City, within thirty (30) days after User's receipt of the invoice together with evidence of City's payment of the same along with reasonable supporting documentation. If User objects to the invoice submitted, User shall advise City in writing, giving reason therefore, within fifteen (15) days after User's receipt of said invoice and supporting documentation. City shall be able to submit to User invoices electronically to the following address: invoice.us@apple.com. If any portion of the work for which the City is seeking reimbursement does not substantially conform to the approved plans and specifications applicable thereto, and such non-conformance was not approved by User in writing, the existence of such non-conformity shall be an excuse to User's obligation to make applicable payment until such non conformity has been corrected to User's reasonable satisfaction.

Notwithstanding Section 6, in the event that City believes that User's portion of the Total Project Costs will exceed the User Project Cost Cap, City shall provide notice to User of its belief at least sixty (60) days before the User Project Cost Cap is expected to be exceeded. City will coordinate meetings among User, the Engineer, and the Project contractors to conduct value engineering analysis and explore opportunities for cost savings. Upon receiving a notice, User may elect to (1) suspend or terminate one or both Projects; (2) limit or modify the Projects; or (3) agree to amend the Agreement to increase the User Project Cost Cap. User shall notify City of its election no later than thirty (30) days from receiving notice from City. Upon receiving User's election, the Parties hereby agree to endeavor, in good faith, to make any amendments required to the Agreement. User shall have no obligation to fund amounts in excess of the User Project Cost Cap unless User affirmatively agrees to do so in a mutually executed amendment to this Agreement.

8. Progress Reports. City shall submit a progress report along with each monthly invoice that includes percentage completion data and summaries of progress for each Project based on their respective schedules and required dates of Final Completion. If the progress report indicates that either Project is not projected to achieve Final Completion by the date established in Section 5, then City will submit an acceleration plan summarizing the additional actions City will take to ensure completion in accordance with the date established in Section 5. In addition, at User's request, the City will provide oral reports and presentations to User on the progress of the Projects.

9. Disclaimer of Warranties. The City shall be responsible for enforcing all applicable warranties associated with the materials and construction services necessary to construct, install, and maintain the Projects; provided, however, City shall not be responsible for any warranties relating to the performance of the Engineer.

10. Compliance. The Parties shall comply with all applicable anti-corruption and anti-bribery laws and regulations. Neither Party shall directly or indirectly, pay, offer, promise to pay, or give anything of value to any person or entity, including an employee or official of a government, government controlled enterprise or company, or political party, with the reasonable knowledge that it will be used to obtain any improper benefit or to improperly influence any act or decision by such person or entity. Neither Party shall offer or accept bribes or kickbacks in any form.

10.1 Accurate Books and Records. The City will keep and maintain complete and accurate books and records in connection with its performance under this Agreement, including all costs applicable to the Projects, and will retain these records for at least five (5) years after final payment under this Agreement. Upon request, City shall make these books and records available to User.

10.2. Notice and Cooperation. If City becomes aware of any violation or suspected violation of the laws set forth in Section 10 (Compliance) in connection with the performance of this Agreement, it shall provide prompt written notice to User setting forth the relevant facts and circumstances. City and User shall cooperate in good faith to review any violations or suspected violations, including by providing reasonable access to all relevant information, including documentation. The City's failure to cooperate with User shall be deemed a material breach of this Agreement.

11. Term. Unless terminated by the Parties, the term of this Agreement shall expire on the later of (1) one (1) year after the date that Project 1B achieves Final Completion or (2) one (1) year after the date that Project 2B achieves Final Completion. All terms and provisions of this Agreement, which by their nature are intended to survive any termination or expiration of this Agreement, shall so survive.

12. Assignability of Agreement. Neither Party shall have the right to assign or transfer any of its rights or responsibilities hereunder to any person or entity without the other Party's prior written consent which may be given or withheld in such other Party's reasonable discretion.

13. Confidentiality. Subject to the requirements of Oregon's Public Records Law (ORS 192), City shall not disclose at any time to any persons or entities any information that User identifies as confidential business information. If required by law to disclose confidential information, City shall redact or delete from the records it discloses, or makes available for inspection, all information designated by User as confidential. Promptly following City's receipt of a request to inspect or disclose copies of public records relating to this Agreement or the Projects, City shall give written notice and a copy of the request to User. City shall not allow inspection or disclose copies of any records until User has had at least twenty-one (21) calendar days to determine whether to contest the right of the requestor to inspect or receive copies of the records.

14. Default; Remedy.

14.1 Default/Cure. The following shall constitute defaults on the part of a Party:

14.1.1 A breach of a material provision of this Agreement, whether by action or inaction of a Party which continues and is not remedied within ten (10) days after the other Party has given notice specifying the breach; provided that if such breach cannot with due diligence be cured within a period of ten (10) days, the cure period may be extended up to a total of thirty (30) days so long as the breaching Party diligently proceeds to affect a cure and the cure is accomplished within such longer period; or

14.1.2 Any assignment by a Party for the benefit of creditors, or adjudication as a bankruptcy, or appointment of a receiver, trustee, or creditor's committee over a Party.

14.2 Remedies. Each Party shall have all available remedies at law or in equity to recover damages and compel the performance of the other Party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach of the other Party, including, without limitation, the right to compel specific performance.

15. Hold Harmless. The City agrees to indemnify and hold User harmless from any and all claims arising from the design, construction, maintenance and operation of the Projects.

16. Amendment or Termination of Agreement. This Agreement may be amended or terminated by the mutual consent of the Parties and their successors in interest.

17. Miscellaneous Provisions.

17.1.1 Notices. All notices, requests and demands to be made hereunder to the Parties hereto shall be made in writing to the addresses set forth below and shall be given by any of the following means: (a) by certified mail, return receipt requested, postage prepaid in the U.S. mail, (b) by personal delivery, or (c) by a nationally recognized overnight courier. If a notice is sent in the manner required by this Section above, it shall be deemed given upon receipt, refusal of

delivery by the intended recipient or failure of delivery due to incorrect delivery information provided by the intended recipient.

17.2 In the case of a notice or communication to User, address as follows:

Apple Inc.
One Apple Park Way, MS: 47-2 REF
Cupertino, CA 95014
Attn: Real Estate & Development

And a copy of any notices of breach or default to:

Apple Inc.
One Apple Park Way, MS 4-D LAW
Cupertino, CA 95014
Attn: Real Estate Counsel

In the case of a notice or communication to City, addressed as follows:

City of Prineville
387 NE Third Street
Prineville, OR 97754
Attn: City Engineer

With a copy to:

Jered Reid
35 SE C Street, Suite D
Madras, Oregon 97741

or addressed in such other way in respect to a Party as that Party may, from time to time, designate in writing dispatched as provided in this section.

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

17.4 Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by City or User of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

17.5 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any

dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceeding in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

17.6 Time of the Essence. Time is of the essence of this Agreement.

17.7 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.

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

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

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

17.11 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Crook County, or the United States District Court for the District of Oregon.

17.12 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

17.13 Condition of City Obligations. All City obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by City as part of the local budget process. Nothing in this Agreement implies an obligation on City to appropriate any such monies. This condition may not, however, limit any remedies available to City or User under this Agreement.

17.14 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties agree to cooperate in defending such action.

17.15 Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar basis for excused performance which is not within reasonable control of the Party to be excused.

17.16 No Third-Party Beneficiaries. City and User and their successors and assigns are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

17.17 Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of rights and privileges hereunder.

17.18 Entire Agreement. This Agreement represents the entire agreement between the Parties relating to the subject matter hereof. This Agreement alone fully and completely expresses the agreement of the Parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations, or warranties, written or oral, except as set forth herein.

[SIGNATURE PAGE TO FOLLOW]

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

USER:

Apple Inc.,
a California corporation

By: Apple RE&D

Name: Danny Marconi

Its:

Date: 6/19/23

CITY:

City of Prineville, Oregon,
an Oregon municipal corporation

By:

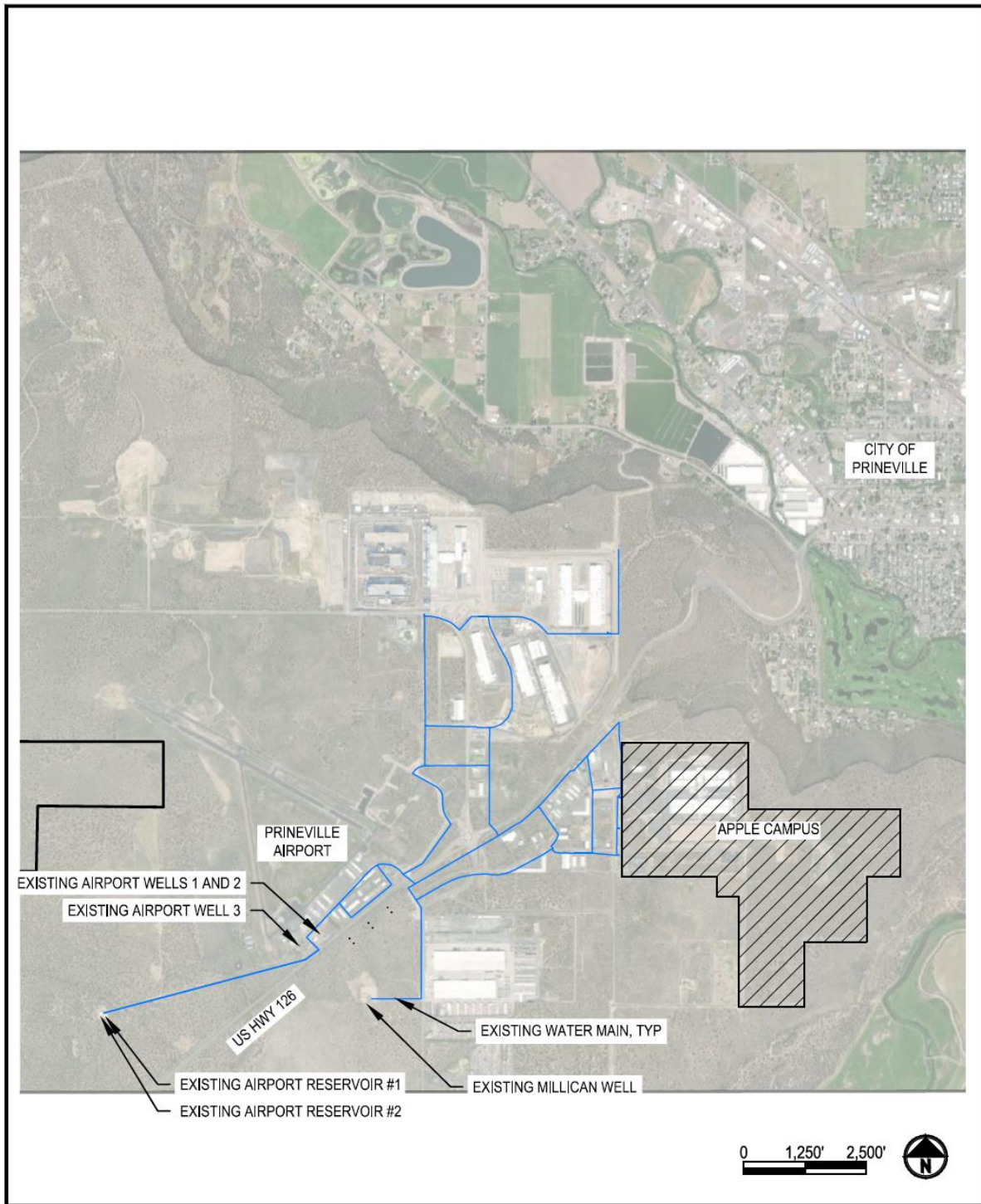
Name:

Its:

Date:

Exhibit A

Map of Apple Property



Parametrix

ENGINEERING · PLANNING · ENVIRONMENTAL SCIENCES

150 NW PACIFIC PARK LANE, SUITE 110 | BEND, OR 97701
P 541.508.7710
WWW.PARAMETRIX.COM

Exhibit A - System Vicinity Map

DATE: April 5, 2023

FILE: 2977875015-EXHIBITA&D

Exhibit B Location of the Projects

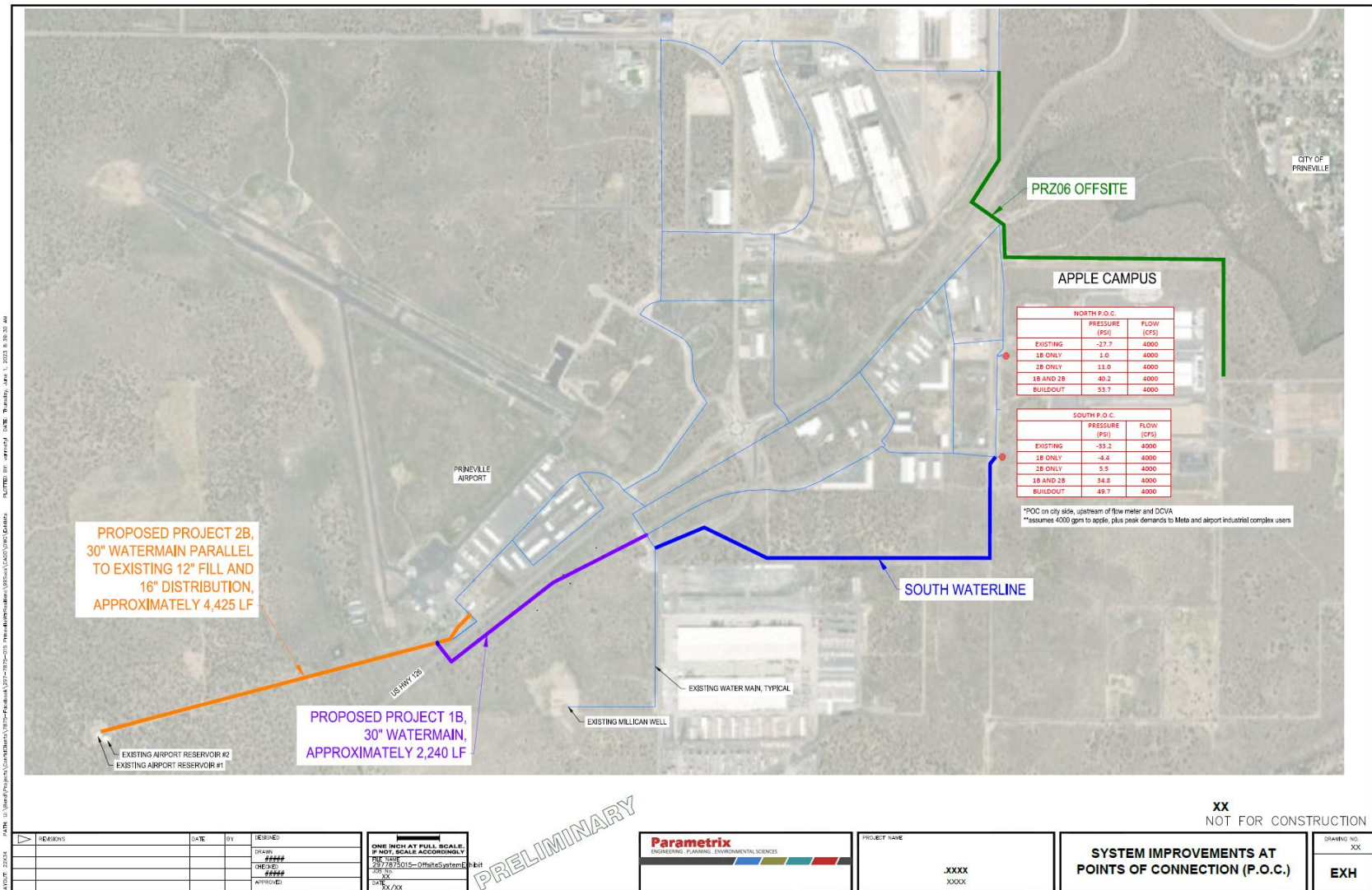


Exhibit B – Waterline Project Agreement Between
City of Prineville, Oregon and Apple Inc.

Exhibit C **Cost of the Projects**

Project Name: Estimate Class: Estimate #:

Resiliency Project, City of Prineville

Contact:

Niall Boggs

E-Mail: NBoggs@parametrix.com

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	MOBILIZATION	1.00	LS	\$312,000.00	\$312,000.00
20	TEMPORARY WORK ZONE TRAFFIC CONTROL	1.00	LS	\$16,500.00	\$16,500.00
30	TRAFFIC CONTROL PLAN	1.00	LS	\$285.00	\$285.00
40	EROSION CONTROL	1.00	LS	\$34,500.00	\$34,500.00
50	CLEARING AND GRUBBING	1.00	LS	\$25,500.00	\$25,500.00
60	GENERAL EXCAVATION	1,000.00	CY	\$19.25	\$19,250.00
70	POLLUTION CONTROL PLAN	1.00	LS	\$285.00	\$285.00
80	CONSTRUCTION SURVEY WORK	1.00	LS	\$47,300.00	\$47,300.00
90	30" C900 DR 18 PIPE	6,631.00	LF	\$551.20	\$3,655,007.20
110	24" C900 DR 18 PIPE	151.00	LF	\$485.00	\$73,235.00
120	30" DUCTILE IRON PIPE	697.00	LF	\$454.50	\$316,786.50
130	12" DUCTILE IRON PIPE	34.00	LF	\$235.00	\$7,990.00
140	8" DUCTILE IRON	120.00	LF	\$190.00	\$22,800.00
150	6" DUCTILE IRON	38.00	LF	\$400.00	\$15,200.00
160	CONNECTION TO EXISTING WATER MAIN (MILLICAN)	1.00	EACH	\$135,000.00	\$135,000.00
170	CONNECTION TO EXISTING WATER MAIN (AIRPORT WAY)	1.00	EACH	\$56,500.00	\$56,500.00
180	TAPS AT RESERVOIR	1.00	LS	\$23,750.00	\$23,750.00
190	30" BUTTERFLY VALVE	6.00	EACH	\$29,250.00	\$175,500.00
191	24" BUTTERFLY VALVE	2.00	EA	\$24,500.00	\$49,000.00
210	12" BUTTERFLY VALVE	3.00	EACH	\$4,225.00	\$12,675.00
220	8" GATE VALVE	2.00	EACH	\$2,980.00	\$5,960.00
230	6" GATE VALVE	9.00	EACH	\$2,120.00	\$19,080.00
240	12" X 6" REDUCER	5.00	EACH	\$1,060.00	\$5,300.00
ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
250	12" X 8" REDUCER	1.00	EACH	\$1,200.00	\$1,200.00
260	30" X 16" REDUCER	1.00	EACH	\$14,500.00	\$14,500.00
270	HYDRANT	7.00	EACH	\$5,390.00	\$37,730.00
280	30" 22.5 DEGREE BEND	6.00	EACH	\$14,150.00	\$84,900.00
290	30" 11.25 DEGREE BEND	2.00	EACH	\$14,150.00	\$28,300.00
300	30" 90 DEGREE BEND	2.00	EACH	\$14,150.00	\$28,300.00
310	8" 90 DEGREE BEND	3.00	EACH	\$850.00	\$2,550.00
311	24" 90 DEGREE BEND	1.00	EA	\$9,500.00	\$9,500.00
315	16" 90 DEGREE BEND	2.00	EA	\$4,900.00	\$9,800.00
320	30" TEE	3.00	EACH	\$19,880.00	\$59,640.00
321	30" X 24" TEE	1.00	EA	\$19,880.00	\$19,880.00
322	30" X 8" TEE	1.00	EA	\$19,880.00	\$19,880.00

323	30" X 6" TEE	11.00	EA	\$19,880.00	\$218,680.00
325	30" X 12" REDUCER	2.00	EA	\$14,485.00	\$28,970.00
330	30" X 12" REDUCING TEE	3.00	EACH	\$19,880.00	\$59,640.00
331	24" X 12" REDUCER	3.00	EA	\$10,700.00	\$32,100.00
340	30" END CAP	2.00	EACH	\$6,800.00	\$13,600.00
341	30" X 4" TAP CAP	2.00	EA	\$6,800.00	\$13,600.00
342	24" TEE	2.00	EA	\$13,000.00	\$26,000.00
351	12" END CAP	2.00	EACH	\$835.00	\$1,670.00
352	8" END CAP	2.00	EACH	\$585.00	\$1,170.00
380	AIR RELEASE VALVE	3.00	EACH	\$3,975.00	\$11,925.00
390	4" BLOW OFF VALVE ASSEMBLY	2.00	EACH	\$5,840.00	\$11,680.00
391	6" LOW POINT BLOW OFF ASSEMBLY	3.00	EA	\$11,180.00	\$33,540.00
392	6" BLOW OFF ASSEMBLY (DEAD END)	3.00	EA	\$8,750.00	\$26,250.00
393	2" DEAD END BLOW OFF W/ YARD HYDRANT ASSY	3.00	EA	\$3,750.00	\$11,250.00
400	GRAVEL ACCESS ROAD	3,050.00	TON	\$21.50	\$65,575.00
410	48" BORE AND CASING	90.00	LF	\$2,275.00	\$204,750.00
430	PUSH PIT PIT	500.00	CY	\$78.75	\$39,375.00
440	RECEIVING PIT	250.00	CY	\$139.00	\$34,750.00

Subtotal	\$6,180,108.70
10% Construction Contingency	\$618,010.87
Construction total \$	6,798,119.57

450	EASEMENTS	1.00	LS	\$667,100.00	\$667,100.00
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Grand Total	\$	7,465,219.57
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Apple 30%	\$	2,239,565.87
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