

AGENDA ITEM FOR ADMINISTRATIVE MEETING () Discussion only
(X) Action

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: Enterprise Zone Agreement

<p>Background:</p> <p>An application has been submitted for development within the Greater Umatilla Enterprise Zone. The request is for a long-term rural abatement for approximately 60 acres. The development would be for a new campus for Sabey Data Center. The terms for the abatement are before the Board for review and approval. As a co-sponsor of the zone, the County must agree to the terms of the agreement. The agreement with the City on the distribution of the payments is also before the Board for approval. The Umatilla City Council is considering the proposal at its August 15, 2023 meeting.</p>	<p>Requested Action:</p> <p>Adopt Order No. BCC2023-035</p>
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ATTACHMENTS: Proposed Order

*****For Internal Use Only*****

Checkoffs:

- () Dept. Heard (copy)
- () Human Resources (copy)
- () Fiscal
- (X) Legal (copy)
- () (Other - List:)

To be notified of Meeting:
Robert Pahl

Needed at Meeting:

Scheduled for meeting on: August 16, 2023

Action taken:

Follow-up:

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Approving)
Long-Term Rural Enterprise Zone) Order No. BCC2023-035
Agreement with Sabey Data Center)
Properties LLC)

WHEREAS Umatilla County and the City of Umatilla are equal co-sponsors of the Greater Umatilla Enterprise Zone;

WHEREAS Sabey Data Center Properties LLC has proposed to develop a data center facility in Umatilla County within the Greater Umatilla Enterprise Zone;

WHEREAS Sabey Data Center Properties LLC has requested a Long-Term Rural Enterprise Zone Abatement pursuant to ORS 285C.409(1);

WHEREAS Sabey Data Center Properties LLC agrees to adhere to all requirements of an agreement for Long-Term Rural Enterprise Zone Abatement with Umatilla County and the City of Umatilla, as well as any applicable laws of the State of Oregon relating to Long-Term Rural Enterprise Zone Abatement;

WHEREAS the Agreement for Long-Term Rural Enterprise Zone Abatement requires Sabey Data Center Properties LLC, for the term of the agreement, to invest at least to \$200 million, hire at least 10 new full-time employees, pay average annual compensation, including benefits equal to 130 percent of the Umatilla County average wage, and pay the required fees to the zone over the term of the agreement;

WHEREAS the proposed facility site is located on Lots 2, 3 and 4, The Long Subdivision, City of Umatilla (Umatilla County tax lots 5N28-1500, -1600 and -1700) (consisting of approximately 61.24 acres).

NOW THEREFORE, the Board of Commissioners finds and orders that:

1. The form, terms and provisions of the Agreement for Long-Term Rural Enterprise Zone Abatement with Sabey Data Center Properties LLC, which includes terms providing for, among other things, establishing Sabey Data Center Properties LLC's investment in a new data center facility and related employment, and the Long-Term Rural Enterprise Zone Abatement pursuant to Oregon Revised Statute, are approved.

2. The Board of Commissioners are authorized to sign the Agreement for Long-Term Rural Enterprise Zone Abatement, and any other documents necessary in connection with the enterprise zone project, including agreement with the City of Umatilla for distribution of payments.

DATED this 16th day of August, 2023.

UMATILLA COUNTY BOARD OF COMMISSIONERS

Daniel N. Dorran, Chair

John M. Shafer, Commissioner

Celinda A. Timmons, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS

Records Officer

AGREEMENT FOR LONG-TERM RURAL ENTERPRISE ZONE TAX ABATEMENT

This agreement for Long-Term Rural Enterprise Zone Tax Abatement ("Agreement") is executed by GREATER UMATILLA ENTERPRISE ZONE BOARD, representing the sponsor entities UMATILLA COUNTY, OREGON ("Umatilla County"), the CITY OF UMATILLA, OREGON ("City of Umatilla"), and SABEY DATA CENTER PROPERTIES LLC (the "Company"). Umatilla County and City of Umatilla are referenced collectively in this Agreement as "Sponsors." In this Agreement, each of the Sponsors and the Company are sometimes individually referenced as a "Party" and collectively referenced as the "Parties."

RECITALS

The Sponsors have established the Greater Umatilla Enterprise Zone (the "Zone") pursuant to Oregon Revised Statute (ORS) 285C.045, *et seq.*

With the aid of tax incentives from the Sponsors, the Company, either directly or through an affiliate, intends to make investments in the Zone by building and operating one or more new data centers located in the Zone.

The Company will make long-term investment and create long-term employment in the Zone as required through the Long-Term Rural Enterprise Zone program rules.

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

The Company has timely and properly filed the Oregon Form OR-AP-CERT, Oregon Enterprise Zone Certificate Application – Long-Term Rural Tax Incentive, 150-310-073 ("Application") with respect to the Facility (as defined below).

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

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

AGREEMENT

- I. **The Facility:** The "Facility" will consist of investments in data centers to be developed by the Company or its affiliates and located in the Zone, which will include the land, real property improvements, machinery and equipment, related personal property, and related support facilities and buildings, which may be installed, constructed, added, or placed in service in the Zone during the term of this Agreement. The Facility site is located on the real property described as Lots 2, 3 and 4, THE LONG SUBDIVISION, located in the City of Umatilla, Umatilla County, Oregon. No addresses are currently attached to this location. Additional addresses may be attached to the Partition Plat for data centers developed in the Zone during the term of this Agreement.

- II. Exemption for the Facility:** The Sponsors jointly acknowledge and agree that, upon approval of the Company's Application, and upon certification by the Sponsors and the Umatilla County Assessor, and conditioned upon the satisfaction of other requirements under ORS 285C.400 through 285C.420 and this Agreement, the Facility will be exempt from ad valorem property tax on the Facility as provided in ORS 285C.409(1). The property tax exemption granted by this Agreement will to the maximum extent permitted by law exempt from all ad valorem property taxation the real property improvements, personal property improvements, and tangible and intangible personal property (excluding land, as set forth in ORS 285C.409(5)(a)) comprising or installed, constructed, added or otherwise placed at the Facility site, all as set forth in ORS 285C.409 and Oregon Administrative Rule (OAR) 123-690-0100(2) and 123-690-6200.
- III. Term of Exemption:** Pursuant to ORS 285C.409(1), and conditioned upon the satisfaction of other requirements under ORS 285C.400 through 285C.420 and this Agreement, the Facility will be exempt from *ad valorem* property tax as follows:
- A.** For the first tax year following the calendar year in which the Company is certified or after which construction of the Facility commences, whichever event occurs later;
 - B.** For each subsequent tax year in which the Facility is not yet in service as of the assessment date; and
 - C.** For a period of 15 consecutive property tax years commencing as of the first tax year in which the Facility is in service as of the assessment date (the "Exemption Period"). As used in this Agreement, "in service" has the same meaning as "in service" as defined in OAR 123-690-0100(3).
 - 1.** The Company shall notify the Umatilla County Assessor upon the Facility's receipt of the permit to occupy and use the Facility for its intended purpose within 90 days of such receipt.
- IV. Scope of Exemption:** Pursuant to ORS 285C.409(1) and subject to Section II, the Company and its affiliates are entitled to exemption from ad valorem property tax with respect to all qualified property, whether leased or owned and whether tangible or intangible, of the Company and its affiliates used in connection with the development, construction, and operation of the Facility, including without limitation all subsequent Facility investments as described in OAR 123-690-6200.
- V. Obligations of the Company:** The Company will comply with the following conditions as authorized under ORS 285C.403(3)(c):
- A. Statutory and Administrative Requirements:** The Company agrees to comply with the requirements of ORS 285C.409 and 285C.412(3) as well as those provided in OAR Chapter 123, Division 690.
 - B. Additional Obligations:** As established solely under this Agreement, the Parties agree to the additional obligations set forth below:
 - 1. Execution Payment ("EP"):** Within 90 days of receipt of Sponsors receiving acknowledgement from Business Oregon confirming the fulfillment of their duty as described in OAR 123-690-2000(4) as to the

eligibility and conformity of this Agreement, the Company shall pay to Sponsors a one-time payment in the amount of \$250,000

2. **Initiatory Payment ("IP"):** The Company shall pay to Sponsors a one-time payment in the amount of \$950,000 no later than six (6) months after the first data center is issued a permit to occupy and use such data center.
3. **Performance Payment ("PP"):** The Company shall pay to Sponsors a one-time payment in the amount of \$1,200,000. This payment is due no later than two years after the Initiatory Payment is received by Sponsors.
4. **Community Investment Payment ("CIP"):** The Company shall pay to Sponsors a CIP in the amount of \$2,000,000. This payment will be made through three installment payments as follows: First Payment of \$500,000 due no later than six (6) months after the first data center is issued a permit to occupy and use such data center, Second Payment of \$750,000 due no later than the same date the AIP (as defined below) is due, and \$750,000 due no later than November 15th of the subsequent year of the Second Payment. These funds shall be specifically dedicated, in equal appropriations, to the Umatilla Hospital District's new clinic facility and Umatilla County's Umatilla River Trail Project as these projects are commonly known and understood in the region.
5. **Annual Improvement Payment ("AIP"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an AIP for each data center and supporting buildings located within the Facility that is issued, and maintains, a permit to occupy. The AIP is equal to \$5 per square foot thereof; provided, however, that the minimum AIP is equal to \$1 million regardless of the total square footage. The first payment will be due the November following the year after the first certificate of occupancy is received for the first data center. The references to data center square footage in this paragraph refer to the gross square footage within the exterior walls of each data center building and all other support buildings located within the Facility.
6. **Regional Annual Fee ("RAF"):** For each year of the Exemption Period, the Company shall pay to the Sponsors a RAF equivalent to a \$25,000,000.00 assessed value and will be due on the same date the AIP is due, subject to an annual increase of 3% each year thereafter.
7. **Public Safety Impact Fee ("PSIF"):** For each year of the Exemption Period, the Company shall pay to the Sponsors a PSIF in the amount of \$58,000 per year due on the same date the AIP is due, subject to an annual increase of 3% each year thereafter.
8. **Student Success Fee ("SSF"):** For each year of the Exemption Period, the Company shall pay to the Sponsors an SSF in the amount of \$85,000 per year due on the same date the AIP is due, subject to an annual increase of 3% each year thereafter.
9. **Fee Payment Instructions:** The Company shall make the EP, IP, PP, CIP, AIP, RAF, PSIF, and SSF, payable to the "Umatilla County Assessor." The

Company shall deposit the AIP, AAF, PSIF and SSF to the Umatilla County Assessor on or before November 15 of each year of the Exemption Period.

a. The mailing address for all payments is: Umatilla County Assessor, 216 SE 4th St., Pendleton, OR 97801.

10. Payment Reduction for Charitable Payment: The Company may make payments to or for the benefit of charities or non-profit entities that benefit the City of Umatilla, or residents of the City of Umatilla, and that are reasonably approved by the Sponsors (a "Charitable Payment"). If the Company makes a Charitable Payment, the Company may reduce its payments due under this Section V.B on a dollar-for-dollar basis in an amount equal to the Charitable Payment made during each year, up to a total reduction each year in the amount of \$150,000; provided, however, the first \$50,000 of Charitable Payment made each year will not result in any reduction in the payments due by the Company under this Section V.B.

11. Permit Fees: The Company will pay all standard building permit and other permit fees related to the Facility. The Company further agrees that if it has a choice between obtaining an equivalent permit, license, or similar approval for the Facility from either a local governmental entity or a state entity, the Company will obtain the permit, license, or similar approval from the local governmental entity.

12. Payments Generally: With respect to the Facility, and to the fullest extent permitted by applicable law, the Company will not be required to pay sums to any local taxing authority in which the Facility is located other than the EP, IP, PP, CIP, AIP, RAF, PSIF, and SSF, due under this Section V.

13. Future Bonding.

a. During each year of the Exemption Period, the Company will contribute an amount to the Sponsors (the "Bond Contribution") to be used solely for the payment or prepayment of debt service on newly-issued general obligation bond indebtedness incurred to finance public parks, public utilities, public educational services, fire services, public health services, or public safety services, and issued pursuant to voter approval of a measure passed on or after September 23, 2023 by any taxing district included in the consolidated tax area in which the Facility is located (a "Qualifying Bond"). The annual Bond Contribution will be equal to 100% of the aggregate amount the Company would have been assessed with respect to such Qualifying Bonds for the Facility as described in Section I of this Agreement but for the exemption pursuant to this Agreement and any other future exemption for property owned by the Company on the Plat. The Company will not unreasonably object to any local measures for Qualifying Bonds.

b. Following voter approval of a Qualifying Bond and prior to the issuance date of any such Qualifying Bond, the Company, the Sponsors, and the Umatilla County Assessor will collaborate to ensure that (a) Bond Contributions are expended solely to prepay or to make debt service payments on Qualifying Bonds, (b) tax levy

rates imposed on taxpayers are adjusted to take into account any Bond Contributions, and (c) Bond Contributions do not violate any tax-exemption requirements for Qualifying Bonds. The Parties will enter into additional agreements to implement these provisions.

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

- A. Resolutions:** Within 30 days of the Effective Date (as defined below), the governing body of each of Umatilla County and City of Umatilla will adopt resolutions approving and authorizing the execution of this Agreement. Such resolutions will serve to approve the Facility for a property tax exemption under ORS 285C.409 and constitute the resolutions described in ORS 285C.403(3)(a).
- B. Certification:** Within 5 days of satisfaction of the criteria set forth under ORS 285C.403(3), Sponsors and the Umatilla County Assessor will request confirmation from the Oregon Business Development Department of administrative sufficiency and confirmation of the County's conformity with ORS 285C.400(3) and the County's status as a "qualified rural county" within the meaning of ORS 285C.400 and 285C.412. Within 30 days of receipt of confirmation from the Oregon Business Development Department, Sponsors and the Umatilla County Assessor will approve and countersign the Application submitted by the Company, thereby certifying the Company as eligible for the property tax exemption contemplated by this Agreement.
- C. Tax Exemption:** Sponsors hereby set the period of the property tax exemption for the Facility for purposes of ORS 285C.409(1)(c) to be 15 consecutive tax years, beginning with the first tax year in which the Facility is in service as of the assessment date.
- D. Allocation of Payments:** Sponsors are solely responsible for the allocation, budgeting, division, and disposition of any payment due under this Agreement, including any portions that may be due or payable to any other jurisdiction. In no event shall the Company have any liability in connection with any disagreement, error, or conflict related to the division, allocation, or distribution of such amounts. In no event will the Company have any liability or obligation to any other person with respect to any payment due under this Agreement after the Company has discharged its duty to pay as set forth in Section V above, and Sponsors shall hold the Company harmless with respect to any claims to the contrary.
- E. Sponsors' Support:** Sponsors will support the Company in the Company's efforts to qualify for and obtain other tax incentives in connection with the Facility, including by promptly executing such letters or other documentation of support as may be reasonably requested by the Company, but Sponsors make no warranty with respect to its ability to affect any outcome in such regards.

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

- A. The Company's Termination Right:** The Company may elect to terminate this Agreement for any reason or no reason by delivery of written notice thereof to Sponsors. Upon delivery of any such notice, this Agreement will be of no further force or effect and no party will have any further rights or obligations hereunder, except for obligations owing and unpaid on the date of termination.

- B. Sponsors' Termination Right:** If the Company fails to make any payment required under this Agreement within 30 days of the due date of such payment, or fails to fulfill any other obligation of this Agreement within 30 days of written notice specifying the obligation which is in default, Sponsors may terminate the Agreement upon written notice to the Company. Such notice must provide an additional 60 days in which the Company may cure any such payment deficiency or default. Notwithstanding the foregoing, Sponsors may not terminate the Agreement if the Company's failure to pay is due to the error of any Sponsor.
- C. Mutual Termination Right:** The Parties may terminate this Agreement at any time upon mutual written agreement of termination.

VIII. Confidentiality:

- A.** The Parties acknowledge that this Agreement is a public record subject to Oregon's public records laws. The Sponsors agree that their staff, representatives and agents will exercise the utmost discretion in oral and written communications regarding the Facility and will provide information internally only to those individuals who need the information to facilitate the Parties' performance under this Agreement. If any person or entity requests any data, documents, or notes about the Company or its business practices (other than this Agreement) that are related to this Agreement or its tax exemption ("Confidential Information"), whether by court order, subpoena, Oregon Public Records Request, or other reason, the Sponsors shall not release any such information except as consistent with the following provisions:
1. The Sponsors shall notify the Company within 3 business days of the receipt of such request;
 2. if the Company elects to challenge or appeal the release of such information, the Company shall notify the Sponsors within 9 business days of receipt of the request, and the Company shall assume all responsibilities, costs, and expenses for such defense; and
 3. if the Company does not notify the Sponsors within 9 business days of receipt of such request, the Sponsors shall be authorized to release the requested information to the requester to the extent required by law, and the Sponsors shall have no liability to the Company for such release of such Confidential Information.

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

respectively.

IX. Miscellaneous Provisions:

- A. Effective Date:** This Agreement becomes effective on the date at which this Agreement has been signed by all of the Parties.
- B. Assignment:** None of the Parties may assign this Agreement without the prior written consent of the other Parties, except that the Company may assign this Agreement to any of its affiliates, or to a new entity without the prior written consent of the other Parties. This Agreement will run with the land, be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns. Nothing in this Agreement shall be deemed to constitute a restriction or condition on the ability of the Facility owner to freely sell, transfer or assign ownership of the improvements or the underlying land or any portion thereof or any ownership interest in the Facility owner at any time.
- C. Amendment:** This Agreement may be amended only by a written document signed by the Party against whom enforcement is sought. Notwithstanding the foregoing, in the event the Zone and/or the exemption provided under this Agreement expires, terminates or is unavailable for any reason during the term of such exemption, the Company and the Zone Manager, or its equivalent, will work in good faith to mutually amend this Agreement as necessary to ensure the same benefit intended to be granted hereunder continues as originally prescribed.
- D. Waiver:** No waiver will be binding on a Party unless it is in writing and signed by the Party making the waiver. A Party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- E. Notices:** All notices and communications relating to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or delivered by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered, 3 business days after mailing if sent by mail, and 1 business day after dispatch if sent by express courier, to the following addresses:

<p><u>If to the Company:</u></p> <p>Sabey Data Center Properties LLC C/O Sabey Corporation 12201 Tukwila Int'l Blvd, Fourth Floor Seattle, WA 98168 Attn: Chief Operating Officer</p> <p><u>With copies to:</u> Sabey Corporation Attn: General Counsel 12201 Tukwila Int'l Blvd, Fourth Floor Seattle, WA 98168</p>	<p><u>If to Sponsors:</u></p> <p>Umatilla County Assessor 216 SE 4th St. Pendleton, OR 97801</p> <p><u>With copies to:</u> City of Umatilla Attn: Greater Umatilla Enterprise Zone Manager PO Box 130 Umatilla, OR 97882</p>
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A copy of all notices and communications relating to this Agreement shall also be sent, on or before the date in which they become effective, by email to:

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

- J. Venue:** Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Umatilla County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Umatilla County, Oregon.
- K. Attorney's Fees:** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. Notwithstanding the foregoing, each Party's maximum liability under this Section IX(K) is \$75,000 and in no event will any Party be obligated by this Section IX(K) to pay an amount in excess of \$75,000.
- L. Entire Agreement:** This Agreement contains the entire understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.
- M. Signatures:** This Agreement may be signed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the Parties. A signature page delivered by fax or electronic mail will be considered an original signature page. At the request of a Party, the other Parties will confirm delivery of a signature page (whether by fax or electronic mail) by delivering an original signature page to the requesting Party.
- N. Waiver of Jury Trial:** WITH RESPECT TO ANY PROCEEDING OR ACTION ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE), THE PARTIES KNOWINGLY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RIGHT TO TRIAL BY JURY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND IT HAS DECIDED TO ENTER INTO THIS AGREEMENT IN CONSIDERATION OF, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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

Umatilla County

Dated this ___ day of August , 2023

Daniel N. Dorran
Chair, Umatilla County Commissioner

John M. Shafer
Umatilla County Commissioner

Celinda A. Timmons
Umatilla County Commissioner

City of Umatilla

Dated this ___ day of _____, 2023

David Stockdale
City Manager & Greater Umatilla Enterprise Zone Manager

Attest:

Name:
Title: Greater Umatilla Enterprise Zone Manager

SABEY DATA CENTER PROPERTIES LLC
By Sabey Properties LLC, its Managing Member
By Sabey Corporation, its Manager

Dated this ___ day of _____, 2023

Name: Patricia A. Sewell
Title: CFO

LTREZ DISTRIBUTION AGREEMENT
Long-Term Rural Enterprise Zone Tax Abatement
Distribution of the Additional Obligations Payment
Sabey Data Center Properties, LLC

Umatilla County, a political subdivision of the State of Oregon (the “County”) and, the City of Umatilla, a municipal corporation (the “City”), enter into this agreement (“Agreement”) for allocation and distribution of the Additional Obligations under Long-Term Rural Enterprise Zone Tax Abatement Agreement (the “LTREZ Agreement”) this 16th day of August 2023 (the “Execution Date”) and shall be effective as of August 16, 2023 (the “Effective Date”). Each of the County and the City is referred to as a “Party” and collectively as the “Parties.”

W I T N E S S E T H :

WHEREAS, the County, and the City have entered into a Long-Term Rural Enterprise Zone Tax Abatement Agreement dated August 16, 2023 with Sabey Data Center Properties, LLC, (“SABEY”) for projects within the Greater Umatilla Enterprise Zone for data center facilities to be developed on approximately 60 acres on the real property described as Lots 2, 3, and 4, THE LONG SUBDIVISION, located in Umatilla County and described as TLID #5N28000001500 and TLID #5N28000001600 and TLID #5N28000001700; and

WHEREAS, the LTREZ Agreement provides that SABEY would, among other payments, remit to the City and County Additional Obligations Payments which include the Execution Payment (“EP”), Initiatory Payment (“IP”), Performance Payment (“PP”), and Annual Improvement Payment (“AIP”), and

WHEREAS the purpose of this Agreement is to allocate the EP, IP, PP, CIP, and AIP and between the County and the City and method for the distribution of the proceeds of said payments.

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

1. The EP, IP, PP, and AIP made under paragraph V.B.1, V.B.2, V.B.3, and V.B.5 of the LTREZ Agreement by SABEY will be divided between the Parties evenly, with each receiving 50% of the payment annually. In the event there is a payment reduction for Charitable Payment, as described in V.B.10 of the LTREZ Agreement by SABEY, the amount of the reduction will be split equally between the Parties.

2. The Regional Annual Fee made under paragraph V.B.6 of the LTREZ Agreement will be paid to the County for distribution among agreed-upon taxing entities. In the event the Parties cannot agree, the distribution will be made based upon relevant permanent rates by all taxing entities within the tax code of the Facilities, as if the Facilities were on the tax roll.

3. The Public Safety Impact Fee made under paragraph V.B.7 of the LTREZ Agreement will be paid to the County for distribution to the Umatilla Rural Fire Protection District for use at its sole discretion.

4. The Student Success Fee made under paragraph V.B.8 of the LTREZ Agreement will be paid to the County for distribution to the Umatilla School District, or to its educational foundation

if such exists, for use at its sole discretion.

5. This agreement is for the sole benefit of the Parties and nothing in this agreement, express or implied, is intended to or shall confer upon any other entity or person any legal or equitable right, benefit, remedy or expectation of payment of any nature, under or by reason of this agreement.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, hereto have executed this agreement as of the Effective Date.

UMATILLA COUNTY

CITY OF UMATILLA

Daniel N. Dorran, Chair

Dave Stockdale, City Manager

John M. Shafer, Commissioner

Celinda A. Timmons, Commissioner

Attest:

Nanci Sandoval, Umatilla City Recorder