

LA PINE CITY COUNCIL AGENDA

Wednesday, October 22, 2014

Public Hearing – 6:00 pm

16345 6th Street, Suite 102

La Pine, Oregon 97739

A. Regular Session & Public Hearing– 6:00 pm

1. Call to Order
2. Establish Quorum
3. Pledge of Allegiance
4. Added Agenda Items
Any matters added to the Agenda at this time will be discussed during the “Other Matters” portion of this Agenda or such other time selected by the City Council.
5. Ordinance No. 2014-07 An Ordinance of the City of La Pine Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products
 - i. Open Public Hearing
 - ii. Staff Report
 - iii. Public Comment
 - iv. Close Public Hearing
 - v. Council Deliberations
6. Resolution No. 2014-12 A Resolution of the La Pine City Council Establishing Tax Rates for the Sale of Marijuana and Marijuana-Infused Products in the City of La Pine.
7. Approval of City-County Industrial Land Conveyance Intergovernmental Agreement (IGA)
8. Public Comments
9. Other Matters: This item concerns any matters that were added to the Agenda under the Added Agenda Items portion of this Agenda.
10. Public Comments
11. Staff Comments
12. Council Comments
13. Mayor’s Comments
14. Adjourn

Pursuant to ORS 192.640, this notice includes a list of the principal subjects anticipated to be considered or discussed at the above-referenced meeting. This notice does not limit the ability of the City Council to consider or discuss additional subjects. This meeting is subject to cancellation without notice. The regular meeting is open to the public and interested citizens are invited to attend. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Patti Morgan (541-536-1432). For deaf, hearing impaired, or speech disabled dial 541-536-1432.

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ORDINANCE NO. 2014-07

AN ORDINANCE OF THE CITY OF LA PINE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS.

WHEREAS, the City of La Pine ("City") has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, City desires to adopt an ordinance to tax the sale and/or transfer of marijuana and marijuana-infused products within City's incorporated limits.

NOW, THEREFORE, the City of La Pine ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Short Title; Purpose. This Ordinance No. 2014-07 (this "Ordinance") will be referred to as the "La Pine Marijuana Tax Ordinance" and may be cited as such. The purpose of this Ordinance is to impose a tax upon the retail sale of marijuana and marijuana-infused products.
3. Definitions. For purposes of this Ordinance, the following terms and phrases have the meanings assigned to them below:

"City council" means the La Pine City Council.

"Gross taxable sale(s)" means the total amount received in money, credits, property, and/or other consideration from sales of marijuana and marijuana-infused products that are subject to the tax imposed by this Ordinance.

"Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, and/or preparation of the plant or its resin, as may be defined under the Oregon Revised Statutes, currently and as amended. The term "marijuana" 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, and/or preparation of the mature stalks (except the resin extracted therefrom); fiber, oil, and/or cake; or the sterilized seed of the plant that is incapable of germination.

"Oregon Medical Marijuana Program" means the program established and administered under ORS 475.300 through ORS 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

"Person" means any natural person, joint venture, partnership, association, club, company, limited liability company, limited liability partnership, corporation, business, trust, organization, any other entity, and/or any group or combination acting as a unit, including, without limitation, the United States of America, the State of Oregon, and any political subdivision thereof.

“Purchase(s) or sale(s)” means the retail acquisition and/or furnishing for consideration by any person of marijuana within City’s incorporated limits, excluding the acquisition or furnishing of marijuana by a grower or processor to a seller.

“Registry identification cardholder” means a person who (a) has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person’s debilitating medical condition, and (b) has been issued a registry identification card by the Oregon Health Authority.

“Retail sale(s)” means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

“Seller” means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property, and/or other consideration.

“Tax” means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this Ordinance.

“Tax Administrator” means City’s then appointed City Administrator or City Manager or his or her designee.

4. Tax Imposed. There is hereby levied and will be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined under this Ordinance. The amount of tax will be based on the seller’s gross taxable sales and will be established from time to time by resolution of the city council.

5. Deductions. The following deductions will be allowed against sales received by the seller providing marijuana: (a) refunds of sales actually returned to any purchaser; and (b) any adjustments in sales that amount to a refund to a purchaser, provided such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

6. Payment of Tax.

6.1 Tax Returns. Every seller will, on or before the last day of the month immediately following the end of each calendar quarter (April, July, October, and January), complete and file a marijuana tax return with the tax administrator on forms provided by City. The forms will specify, among other things requested by City, the total gross taxable sales and the amount of tax collected under this Ordinance. The tax administrator may establish shorter reporting periods for any seller if the tax administrator deems it necessary in order to ensure timely and proper collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. The tax administrator may require that the seller provide additional information in the subject tax return relevant to payment of the tax.

6.2 Filing of Tax Returns. A tax return will not be considered filed until it is actually received by the tax administrator. The person required to file the return will deliver the applicable tax

to the tax administrator at the office of the tax administrator, either by personal delivery or by mail. If the return is mailed, the postmark will be considered the date of delivery for determining delinquencies.

6.3 Payment of Tax. At the time the tax return is filed, the full amount of the tax collected will be remitted to the tax administrator. Payments received by the tax administrator for application against existing liabilities will be credited toward the period designated by the seller under conditions that are not prejudicial to City's interest. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods. Non-designated payments will be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the tax administrator determines that an alternative order of payment application would be in City's best interest in a particular tax or factual situation, the tax administrator may order such a change. All taxes collected by sellers pursuant to this Ordinance will be held in trust for the account of City until payment is made to the tax administrator. A separate trust bank account is not required in order to comply with this provision.

6.4 Administrative Fee. Every seller required to remit the tax imposed under this Ordinance is permitted to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

6.5 Record Retention. Every seller must keep and preserve in an accounting format established by the tax administrator records of all sales made by the dispensary and such other books or accounts as may be required by the tax administrator. Every seller must keep and preserve for a period of three years all such books, invoices, and other records. The tax administrator will have the right to inspect all such records at all reasonable times upon request of the tax administrator.

7. Penalties; Interest.

7.1 Penalties – Late Payment. Any seller who fails to remit any portion of the tax imposed by this Ordinance within the time required will pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax due. Any seller who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent will pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due in addition to the amount of the tax due and the aforementioned ten percent (10%) penalty. When a shorter return period is required under Section 6.1, penalties and interest under Section 7 will be computed according to the shorter return period.

7.2 Penalties – Fraud or Evade. If the tax administrator determines that the nonpayment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions hereof, a penalty of twenty-five percent (25%) of the amount of the tax due will be added thereto in addition to the penalties provided under Section 7.1.

7.3 Interest. In addition to the penalties imposed under this Ordinance, any seller who fails to timely remit any tax imposed under this Ordinance will pay interest at the rate of one percent (1.0%) per month or fraction thereof, without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent

until paid in full. Penalties and interest imposed under the provisions of this Section 7 will become part of the tax required to be paid pursuant to this Ordinance.

7.4 Waiver of Penalties. Any seller who fails to remit the tax levied under this Ordinance within the time stated in this Ordinance will pay the penalties and interest stated in this Ordinance; provided, however, the seller may petition for wavier or refund of any penalty or portion thereof. If the total penalty due does not exceed \$10,000.00, any petition for waiver or refund of penalties will be directed to and determined by the tax administrator. If the total penalty due exceeds \$10,000.00, any petition for waiver or refund of penalties will be directed to and determined by the city council. Upon receipt of a petition for wavier or refund of penalties as set forth herein, the tax administrator or city council may, if a good and sufficient reason is shown, waive or direct a refund of the penalty or any portion thereof.

8. Failure to Report and Remit Tax – Tax Administrator. If any seller fails to make, within the time provided under this Ordinance, any report of the tax imposed under this Ordinance, the tax administrator will proceed in such manner as deemed best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator procures such facts and information as he or she is able to obtain to assist in estimating the tax due and payable by the seller, the tax administrator will proceed to determine and assess against such seller the tax, interest, and penalties provided under this Ordinance. In case such determination is made, the tax administrator will give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in Section 9. If no appeal is timely filed, the tax administrator's determination is final and the amount thereby is immediately due and payable.

9. Appeal. Any seller aggrieved by any decision of the tax administrator with respect to the amount of tax, interest, and/or penalties due under Section 8 may appeal to the city council by filing a written notice of appeal with the tax administrator within thirty (30) days of the serving or mailing of the tax administrator's determination of the tax due. The tax administrator will transmit the notice of appeal together with the file of the appealed matter to the city council after which the city council will fix a time and place for hearing the appeal. The city council will give the appellant not less than ten (10) days' prior written notice of the time and place of hearing of the appealed matter.

10. Refunds.

10.1 Claim of Refund. Whenever the amount of any tax, interest, and/or penalty has been overpaid or paid more than once, or has been erroneously collected or received by City under this Ordinance, it may be refunded as provided in Section 10.2, provided a claim in writing, stating under penalty of perjury, identifies the specific grounds upon which the claim is founded and is filed with the tax administrator within one year of the date of payment. The claim will be made on forms furnished by the tax administrator. No refund will be paid under the provisions of this Section 10 unless the claimant established the right by written records showing entitlement to such refund and the tax administrator acknowledged the validity of the claim.

10.2 Refund Processing. The tax administrator will have thirty (30) days from the date of receipt of a claim of refund to review the claim and make a determination in writing as to the validity of the claim. The tax administrator will notify the claimant in writing of the tax administrator's determination. Such notice will be mailed to the address provided by the claimant on the claim form. If

the tax administrator determines the claim is valid, the claimant may, in a manner prescribed by the tax administrator, claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously collected or received. The claimant will notify the tax administrator of the claimant's choice no later than fifteen (15) days following the date the tax administrator mailed the determination. If the claimant has not notified the tax administrator of the claimant's choice within the aforementioned 15-day period and the claimant is still in business, a credit will be granted against the tax liability for the immediately following reporting period. If the claimant is no longer in business, a refund check will be mailed to the claimant at the address provided in the claim form.

11. Collection Actions. Any tax required to be paid by any seller under the provisions of this Ordinance will be deemed a debt owed by the seller to City. Any such tax collected by a seller that has not been paid to City will be deemed a debt owed by the seller to City. City may bring an action in its name to recover amounts owing under the provisions of this Ordinance and/or pursue any other rights and remedies available at law or in equity. In lieu of commencing legal action, City, when taxes due are more than thirty (30) days' delinquent, may submit any outstanding tax to a collection agency. So long as City has complied with the provisions set forth in ORS 697.105, as amended, if City turns over a delinquent tax account to a collection agency, it may add to the amount owing the collection agency fees, not to exceed the greater of \$50.00 or fifty percent (50%) of the outstanding tax, penalties, and interest owing. In addition to any penalties and interest provided under this Ordinance, City may recover from the seller any and all legal and administrative fees and expenses incurred by City to enforce this Ordinance and/or to collect any unpaid taxes, penalties, and/or interest.

12. Violations; Infractions. It is a violation of this Ordinance for any seller or other person to engage in any of the following: (a) fail or refuse to comply as required herein; (b) fail or refuse to furnish any return required to be made under this Ordinance; (c) fail or refuse to permit inspection of records; (d) fail or refuse to furnish a supplemental return or other data required by the tax administrator; (e) render a false or fraudulent return or claim; and/or (f) fail, refuse, and/or neglect to remit the tax to City by the due date. Violation of subsections (a), (b), (c), (d), and/or (f) of this Section 12 will be considered a Class C violation subject to a \$500.00 fine as specified in ORS 153.018. Filing a false or fraudulent return will be considered a Class C misdemeanor subject to a prison term of no more than thirty (30) days and/or a \$1,250.00 fine as specified in ORS 161.615 and ORS 161.635. The remedies provided in this Section 12 are not exclusive and will not prevent City from exercising any other remedies available under law or in equity, nor will the provisions of this Ordinance prohibit or restrict City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance. All available remedies are cumulative and may be exercised singularly or concurrently. Each day in which a violation is caused or permitted to exist constitutes a separate offense. Each violation of this Ordinance will constitute a separate offense.

13. Confidentiality. Except as otherwise required by law, it will be unlawful for City or any officer, employee, or agent thereof to divulge, release, and/or make known in any manner any financial information submitted or disclosed to City under the terms of this Ordinance; provided, however, nothing in this Section 13 will prohibit disclosure under the following circumstances: (a) the disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; (b) the disclosure of general statistics in a form that would not reveal an individual seller's financial information; (c) the disclosure of financial information in connection with City's enforcement of this Ordinance and/or the presentation of evidence to the court or other tribunal having jurisdiction in the prosecution of any criminal or civil claims by the tax administrator or an appeal from

the tax administrator for amount due City under this Ordinance; and/or (d) the disclosure of records related to a business's failure to report and remit the tax imposed under this Ordinance. The city council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5), as amended.

14. Audits. The tax administrator, or any person authorized in writing by the tax administrator, may examine, during regular business hours, the books, papers, and accounting records relating to the matter of the seller's tax return after notification to the seller liable for the tax and may investigate the business of the seller in order to verify the accuracy of any return made or, if no return is made by the seller, to ascertain and determine the amount required to be paid. Seller will reimburse City for reasonable costs of an examination pursuant to this Section 14 if such examination discloses that the seller has paid ninety-five (95%) or less of the tax owing for the applicable period of examination.

15. Forms; Regulations. The tax administrator is hereby authorized to prescribe forms and promulgate rules and regulations to (a) aid in the making of returns, and (b) ascertain, assess, and collect the tax. Without otherwise limiting the generality of the immediately preceding sentence, the tax administrator may prescribe a form of report for sales and purchases and promulgate rules and regulations concerning the identification of records that sellers providing marijuana and/or marijuana-infused products must keep concerning the tax imposed under this Ordinance.

16. Severability; Corrections. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. The provisions of this Ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected at any time by order of the city council to cure editorial and/or clerical errors.

17. Savings. Nothing in this Ordinance affects the validity of any criminal or civil enforcement actions commenced prior to the adoption of this Ordinance; all City ordinances existing at the time that such actions were filed will remain valid and in full force and effect for purposes of those actions.

[end of ordinance – signature page immediately follows]

This Ordinance was PASSED and ADOPTED by the La Piné City Council by a vote of ___ for and ___ against and APPROVED by the mayor on October 22, 2014.

Ken Mullenex, Mayor

ATTEST:

Richard L. Allen, Interim City Manager

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RESOLUTION NO. 2014-12

A RESOLUTION OF THE LA PINE CITY COUNCIL ESTABLISHING TAX RATES FOR THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF LA PINE.

WHEREAS, on October 22, 2014, the City of La Pine, an Oregon municipal corporation ("City"), adopted the La Pine Marijuana Tax Ordinance, Ordinance No. 2014-07 (the "Ordinance"), pursuant to which City established a tax on the sale or transfer of marijuana and marijuana-infused products within City's incorporated limits; and

WHEREAS, Section 4 of the Ordinance provides that the La Pine City Council (the "City Council") will establish by resolution the amount of the tax.

NOW, THEREFORE, BE IT RESOLVED, by and through the City Council meeting in regular session, the following:

1. The above-stated findings contained in this Resolution No. 2014-12 (this "Resolution") are hereby adopted.
2. Pursuant to Section 4 of the Ordinance, the City Council establishes a tax rate of five percent (5%) of the gross taxable sale amount paid to the seller of marijuana and/or marijuana-infused products by a registry identification cardholder.
3. Pursuant to Section 4 of the Ordinance, the City Council establishes a tax rate of twelve percent (12%) of the gross taxable sale amount paid to the seller of marijuana and/or marijuana-infused products by any person who is not purchasing marijuana under the Oregon Medical Marijuana Program.
4. The provisions of this Resolution are severable. Unless the context requires otherwise, terms contained in this Resolution that are defined in the Ordinance have the meanings assigned to them in the Ordinance. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution will be in full force and effect on the date the Ordinance becomes effective.

APPROVED, ADOPTED, AND MADE EFFECTIVE by the La Pine City Council on October 22, 2014.

Ken Mullenex, Mayor

ATTEST:

Richard L. Allen, Interim City Manager

REVIEWED

LEGAL COUNSEL

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**INTERGOVERNMENTAL AGREEMENT
LA PINE INDUSTRIAL LAND SALES**

RECITALS

This Intergovernmental Agreement ("Agreement") is made and entered into by and between **Deschutes County**, a political subdivision of the State of Oregon, hereinafter referred to as "County", whose address is P.O. Box 6005, Bend, OR, 97708-6005, and **The City of La Pine**, an Oregon municipal corporation hereinafter referred to as "City", whose address is PO Box 2460, La Pine, Oregon 97739.

WHEREAS, County and City are authorized pursuant to ORS 190.003 through 190.110 to enter into an intergovernmental agreement for the performance of any or all functions which a party to the agreement, or its officers or agents, has the authority to perform; and

WHEREAS, County owns the real property more particularly identified on Exhibit A (the "Real Property"), which is commonly known as the La Pine Industrial Park. The Real Property includes two distinct sub-areas: the Newberry Industrial Park ("Newberry") and the Finley Butte Industrial Park ("Finley"). Each parcel comprising the Real Property is further described on Exhibit A; and

WHEREAS, County and City believe that the sale of the Real Property at competitive prices will benefit County and City residents by providing economic development opportunities in the southern portion of Deschutes County within the City of La Pine; and

WHEREAS, through this Agreement, County entrusts City, and City will ensure that the Real Property will be preserved and sold for Economic Development (as defined below); and,

WHEREAS, County and City believe that City is better able to locally assess, market and respond to prospective purchasers and Economic Development opportunities needing industrial land in the City; and,

WHEREAS, the parties desire to enter into this Agreement to provide the terms and conditions upon which City will list, market and promote the sale of the Real Property; and

IT IS HEREBY AGREED by and between County and City, for and in consideration of the mutual promises and covenants contained herein, as follows:

1. *Effective Date.* This Agreement is effective _____, 2014 (the "Effective Date").
2. *Term/Duration.* Subject to the terms and conditions of this Agreement, the term of this Agreement will commence on the Effective Date and will continue for a term of five (5) years unless terminated earlier pursuant to Section 8. This Agreement may be extended upon mutual written agreement of the parties.

3. *Definitions.* For purposes of this Agreement the following terms shall mean:
 - 3.1. "Economic Development" - Efforts that seek to improve the economic well-being and quality of life for the community by directly creating and/or retaining jobs, and supporting or growing incomes and the tax base.
 - 3.2. "Infrastructure" - The construction and installation of streets, sewer, water, sidewalks, street trees, street lights, utilities, and any other City required improvements, whether publicly or privately owned, including, without limitation, cable, telephone, gas, electricity to serve the Real Property or any portion thereof.
 - 3.3. "Hard Costs" - Includes, without limitation, costs associated with advertising, marketing, promotion, negotiations, Infrastructure, permitting, taxes, insurance, real estate commissions, title fees, title insurance fees, closing costs, and recording costs, or any other charges associated with the Sale and/or Conveyance of the Real Property.
 - 3.4. "Gross Sale Price" - The overall per-sale price of Real Property or any portion thereof, without any deductions for any Hard Costs.
 - 3.5. "Sale" and/or "Conveyance" - Subject to the terms and conditions contained in this Agreement, a transfer of any portion of the Real Property by any type of deed, land sale contract, and/or a lease entered into after execution of this Agreement for a term of 10 years or more, including, without limitation, all optional extensions or renewals.
4. *Control of Real Property; Agreement to Sell/Lease.* Ownership of the Real Property shall remain with County. During the term of this Agreement, County vests in City full power and authority for the marketing, promotion and sale negotiations for the Real Property for Economic Development, including, without limitation, establishing the Gross Sale Price and acceptance or rejection of an Offer (defined below), at no cost to County. City's city manager ("City Manager") shall have the exclusive right to retain licensed real estate broker(s) to assist City with the listing, marketing and sale of the Real Property. All offers accepted by City shall be written and in standardized real estate purchase and sale forms, unless otherwise prepared by competent legal counsel representing City or purchasing party (individually and collectively the "Offer(s)"). The City Manager shall have the right and obligation to respond in a reasonable time period to all Offers and shall have the sole authority for accepting or rejecting all Offers for Real Property subject to this Agreement. Upon acceptance of an Offer by City, the Offer shall be presented to County for execution of the Offer and the applicable Sale and Conveyance documents. County shall not unreasonably withhold, condition or delay execution of the Sale and/or Conveyance documents necessary to complete the Sale or Conveyance, provided, however, that the terms of the Sale and Conveyance shall have reasonable dates established for the Sale or Conveyance.
5. *Previous Purchase Option Agreement.* The purchase option agreement entered into by and between County and Cascade Divide Data Centers ("Cascade Divide"), effective August 13, 2014 (D.C. Document No. 2014-401) shall be included in this Agreement with regard to the allocation of proceeds ("Purchase Option"). Upon the Conveyance of the portion of the Real Property from County to Cascade Divide pursuant to the terms of the Purchase Option, the allocation of proceeds from that sale shall be subject to the terms of Section 6 of this Agreement.
6. *Allocation of Proceeds.* During the Term of this Agreement following the Sale or Conveyance of any portion of the Real Property to a third party, the parties will each receive the following: (i) County will receive 50% of the Gross Sale Price, and, (ii) unless otherwise

agreed in writing by the parties pursuant to Section 7 below, City will be entitled to receive the balance of the Gross Sales Price which will be subject to reduction based on any Hard Costs paid at the Sale or Conveyance. City shall be paid directly from the proceeds at the closing of each Sale or Conveyance.

7. *Hard Costs, Gross Sales Price and Lease Value.* City shall be responsible for any and all Hard Costs incurred by City related to the Real Property. City shall not be entitled to offset any Hard Cost from the Gross Sale Price unless otherwise negotiated and agreed to by the parties in writing outside the terms of this Agreement. If (and only if) deemed necessary and agreed to by the parties following each Sale or Conveyance under this Agreement, an accounting for that transaction shall be prepared that includes the Gross Sale Price, the addition of any Hard Costs, and the calculation of net sale proceeds for that transaction. A Sale or Conveyance shall not include any leases existing on the Effective Date of this Agreement, or any extensions of those leases, nor shall City be entitled to any compensation or value related to the leases existing as of the Effective Date of this Agreement.
8. *Termination.* This Agreement may be terminated at any time by the mutual written agreement of the parties. This Agreement may be terminated by either party for any reason or no reason upon sixty (60) days prior written notice to the other party. Termination of this Agreement shall not affect any obligations or liabilities accrued prior to such termination.
9. *Limitation.* This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. In the event sufficient funds are not appropriated for the payment of consideration required to be paid under this Agreement, and if City has no funds legally available for consideration from other sources, then either party may terminate this Agreement in accordance with Section 8 of this Agreement. This Agreement is made subject to any and all applicable federal, state, and local laws, regulations, and/or ordinances.
10. *No Partnership and Authorized Representative.* Neither party is, by virtue of this Agreement, a partner or joint venturer in connection with activities carried out under this Agreement, and shall have no obligation with respect to the other party's debts or any other liability or obligation of the other party of whatever kind or nature except as specifically provided herein.
 - 10.1. County's authorized representative for purposes of this Agreement shall be the Property and Facilities Department Director or the Director's designee.
 - 10.2. City's authorized representative for purposes of this Agreement shall be the City Manager or the City Manager's designee.
11. *Insurance and Indemnification.*
 - 11.1. Each party will obtain and maintain insurance policies that provide adequate coverage for all risks normally insured against by each applicable party.
 - 11.2. To the extent permitted by the Oregon Constitution, Article XI, Section 10, and to the extent permitted by the Oregon Tort Claims Act, ORS 30.260 to 30.300, County shall defend, indemnify and hold harmless City and City's current and future elected officials, officers, agents employees, and representatives harmless for, from, and against any and all claims, demands, lawsuits, or actions for damages, costs, losses,

attorney fees and expenses, arising from County's torts, as the term "tort" is defined in ORS 30.260(8) and for any of County's breach and/or failure to perform any of the its representations, warranties, obligations, and/or covenants under this Agreement. County's indemnification obligation pursuant to this Section 11.2 will survive the termination of this Agreement.

- 11.3. To the extent permitted by the Oregon Constitution, Article XI, Section 10, and to the extent permitted by the Oregon Tort Claims Act, ORS 30.260 to 30.300, City shall defend, indemnify and hold harmless County and County's current and future elected officials, officers, agents employees, and representatives harmless for, from, and against any and all claims, demands, lawsuits, or actions for damages, costs, losses, attorney fees and expenses, arising from City's torts, as the term "tort" is defined in ORS 30.260(8) and for any of City's breach and/or failure to perform any of its representations, warranties, obligations, and/or covenants under this Agreement. City's indemnification obligation pursuant to this Section 11.3 will survive the termination of this Agreement.
12. *Representations.* County makes no representations or warranties as to the condition of the Real Property or its suitability for use, including, without limitation zoning designations, public facilities and utilities, available public services, infrastructure, and environmental conditions. City acknowledges that the Real Property shall be marketed by City and conveyed by County as described and agreed to herein "As Is".
13. *Mediation.* Any disputes under this Agreement that are not resolved by the parties through direct communication without Mediation as defined below will be promptly submitted to Mediation in Deschutes County, Oregon, prior to the commencement of litigation. The mediator will be named by mutual agreement of the parties or by obtaining a list of five (5) qualified persons from the parties and alternatively striking names. The mediator will have the duty and responsibility to assist the parties in resolving all issues submitted for Mediation. The parties agree to use commercially reasonable efforts to cooperate to resolve all matters in dispute with the assistance of the mediator. The expense of Mediation will be paid as follows: The parties will share the mediator's fees and expenses equally, unless they agree otherwise. Mediation will terminate by: a) written agreement signed by the parties, b) determination by the mediator that the parties are at an irresolvable impasse, or c) two unexcused absences by either party from the Mediation sessions. The mediator will never participate in any claim or controversy covered by this Section 13 as a witness or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of Mediation. ORS 36.100 to 36.245 will apply to the entire process of Mediation as provided in this Section 13. The disputing party shall give the other party written notice of the dispute. Within twenty (20) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. The Mediation shall occur at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as often as the parties and the mediator reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. Should the Mediation fail to settle such dispute within sixty (60) days of the disputing party's notice, or if the party receiving said notice will not meet within thirty (30) days, either party may terminate Mediation. For the purposes of this Agreement, "Mediation" means a voluntary process in which the parties continue direct communication with the assistance of one or more neutral persons as mediators. These mediators have no authority to require any concessions or agreements, but will attempt to resolve any claim or controversy arising between the parties.

14. *Headings.* The headings of this Agreement are for convenience only and shall not be used to construe or interpret any provisions of this Agreement.
15. *Incorporation of Recitals.* The recitals set forth above are hereby incorporated into and made a part of this Agreement.
16. *Applicable Law.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon. Legal actions must be instituted in the Circuit Court of the State of Oregon for the County of Deschutes.
17. *Severability.* Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law.
18. *Remedies Not Exclusive.* If either County or City defaults with regard to any provisions of this Agreement, the defaulting party shall be liable to the other party for any damages caused by such default. In addition to its other rights or remedies, either party may institute any legal or equitable action (including, without limitation, an action for specific performance) to obtain any other remedy consistent with the purpose of this Agreement.
19. *Rights and Remedies are Cumulative.* Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.
20. *Attorney Fees.* In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any of the terms of this Agreement, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
21. *No Waiver of Claims.* No provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by both parties. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof.
22. *Notice.* Any notice required under this Agreement must be in writing. Any notice will be deemed given when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day.
23. *Entire Agreement and Signatures.* This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes any and all prior or contemporaneous negotiations, discussions, representations and/or

agreements among the parties, if any, whether written or oral, concerning the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be modified or amended except by a writing signed by all parties to this Agreement. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date(s) written below, but made effective for all purposes as of the Effective Date.

DATED this ____ day of _____, 2014.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

TAMMY BANEY, Chair

ANTHONY DEBONE, Vice Chair

ALAN UNGER, Commissioner

ATTEST:

Recording Secretary

DATED this _____ day of _____, 2014.

CITY OF LA PINE, OREGON

By _____
Name _____
Title _____

Exhibit A

[legal description to be inserted]