

**RESOLUTION NO. 1570
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING AMENDMENT TO DEVELOPMENT AGREEMENT
BETWEEN CITY OF PRINEVILLE AND VITESSE, LLC**

Whereas, City of Prineville (“City”) and Vitesse, LLC (“Vitesse”) executed a Development Agreement effective April 14, 2022 for the procurement, construction, installation, and maintenance of a 7,000 linear foot water pipe consisting of both 24 inch and 30 inch pipe (“Project”).

Whereas, City and Vitesse agreed to amend the Project to consist of 6,665 linear foot water pipe consisting of 30 inch polyvinyl chloride.

Whereas, due to contributions from Apple, Inc., Vitesse has agreed to contribute to seventy percent (70%) towards the Project and an additional Administrative Fee of ten percent (10%).

Whereas, Vitesse has agreed to provide the difference between the amount paid for the Project and the original estimate towards the Prineville Aquifer Storage Recover Project.

Whereas, City and Vitesse have negotiated an Amendment to Development Agreement (“Amendment”), which is attached to this Resolution and incorporated herein.

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

Now, Therefore, the City of Prineville resolves that the Amendment to Development Agreement attached to this Resolution between the City and Vitesse 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 11th day of July, 2023.



Rodney J. Beebe, Mayor

ATTEST:



Lisa Morgan, City Recorder

AMENDMENT TO DEVELOPMENT AGREEMENT
Between
City of Prineville and Vitesse, LLC

THIS AMENDMENT ("Amendment") 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 **Vitesse, LLC**, a Delaware limited liability company ("User"); each of City and User are "Party" and together, the "Parties."

RECITALS

A. The Parties **executed** a Development Agreement effective April 14, 2022 ("Agreement"), which is attached as Exhibit A and incorporated **herein**.

B. The Parties have agreed to certain **amendments** within the Agreement and wish to document those changes.

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. **Recital C – Project 1B Description.** Recital C of the Agreement is deleted and **replaced** with the following:

"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 Wells to Millican and **service** the User's property by improving fire flow capabilities and system redundancy in the event of a fire ('Project 1B')."

2. **Recital G – Project Cost.** Recital G of the Agreement is **deleted** and replaced with the following:

"**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) (the 'Maximum Price'), as set forth on Exhibit C, attached hereto and incorporated herein."

3. **Project Timelines.** **Section 5** of the Agreement is deleted and replaced with the following:

"The Projects shall be completed in accordance with the **design prepared** by the Engineer and with all laws and **regulations**. City will strive to **achieve** Final Completion for the **Projects** no later than May 31, 2024."

4. **Consideration.** Section 6 of the Agreement is deleted and replaced with the following:

“6. In consideration of City’s performance, User hereby agrees to pay City each of the following:

6.1 Seventy percent (70%) of the costs of constructing the **Projects** (collectively, the ‘Project Costs’). The Project Costs will not exceed seventy percent (70%) of the **Maximum Price**.

6.2 An administrative fee equal to the lesser of (a) ten percent (10%) of payments towards the Project Costs; or (b) FIVE HUNDRED TWENTY-TWO THOUSAND TWO HUNDRED FIFTY-SIX DOLLARS (\$522,256.00).

6.3 The difference between the amount paid pursuant to Section 6.1 and EIGHT MILLION FOUR-HUNDRED THOUSAND DOLLARS (\$8,400,000.00), which will be applied towards the Prineville Aquifer Storage Recovery Project (‘PASRP’).

6.4 An additional administrative fee of ten percent (10%) of any funds contributed under Section 6.3 and applied towards the PASRP. City agrees that User shall have the rights to claim the water conservation and environmental benefits of any improvement constructed as part of the **PASRP** under Section 6.3.”

5. **Payment Schedule.** Section 7 of the Agreement is deleted and replaced with the following:

“City may submit to User an invoice no more than once each month **consisting** of (1) all Project Costs incurred that have not been reimbursed and (2) a portion of the **administrative** fee equal to 10 percent of the Project Costs included in the invoice. The amount owed under each invoice shall also be reduced by retainage in accordance with Section 8. 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. 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. City shall submit invoices to User electronically to the following address: water@fb.com.

Notwithstanding Section 6 of this Agreement, in the event that City believes that the Project Costs will exceed seventy percent (70%) of the Maximum Price, City shall provide notice to User of its belief at least sixty (60) days before the Project Costs actually exceeds seventy percent (70%) of the Maximum Price. 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 Maximum Price. 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.

Unless City fails to provide notice as set forth in this paragraph, City shall not be responsible for costs exceeding the Maximum Price.”

6. **Project Cost Estimate Breakdown.** Exhibit C to this Agreement is deleted and replaced with Exhibit C to this Amendment.
7. **Reaffirmation of Agreement.** Except as modified by this **Amendment**, all terms and conditions of the Agreement are reaffirmed and remain unmodified and in full force and effect.
8. **Counterparts.** This Amendment may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together, shall constitute one in the same original. Facsimiles and electronic transmittals of signed documents shall be binding as though they were an original as such signed document.
9. **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 **Amendment** in order to provide and **secure** to the other Parties the full and complete enjoyment of rights and privileges hereunder.

[SIGNATURE PAGE TO FOLLOW]

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

USER:

Vitesse, LLC,
a Delaware limited liability company

By: Paul Clements
Name: PAUL CLEMENTS
Its: AUTHORIZED REPRESENTATIVE
Date: 6/26/2023

CITY:

City of Prineville, Oregon,
an Oregon municipal corporation

By: Rodney J. Beebe
Name: Rodney J. Beebe
Its: Mayor
Date: July 11, 2023

EXHIBIT C
COST ESTIMATE BREAKDOWN

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

ITEM	DESCRIPTION	QUANTITY	EACH	UNIT PRICE	AMOUNT
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
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	L.S	\$667,100.00	\$667,100.00
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Grand Total \$ 7,465,219.57