

**AGENDA**

**WILSONVILLE CITY COUNCIL MEETING  
MAY 1, 2017  
7:30 P.M.**

**CITY HALL  
29799 SW TOWN CENTER LOOP  
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr  
Councilor Susie Stevens

Councilor Kristin Akervall  
Councilor Charlotte Lehan

**CITY COUNCIL MISSION STATEMENT**

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

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**Executive Session is held in the Willamette River Room, City Hall, 2<sup>nd</sup> Floor**

- |                  |  |           |             |
|------------------|--|-----------|-------------|
| <b>5:00 P.M.</b> | <b>EXECUTIVE SESSION</b>   | [60 min.] |             |
| A.               | Pursuant to ORS 192.660 (2)(e) Real Property Transactions<br>ORS 192.660(2)(f) Exempt Public Records<br>ORS 192.660(2)(h) Litigation |           |             |
| <b>6:05 P.M.</b> | <b>REVIEW OF AGENDA</b>  | [5 min.]  |             |
| <b>6:10 P.M.</b> | <b>COUNCILORS' CONCERNS</b>  | [5 min.]  |             |
| <b>6:15 P.M.</b> | <b>PRE-COUNCIL WORK SESSION</b>  |           |             |
| A.               | Judge Weinhouse – Red-light Camera and Adult<br>Diversion Program (Cole)   | [15 min.] | Page 1      |
| B.               | Basalt Creek Concept Plan (Bateschell)   | [30 min.] | Oral Report |
| C.               | Transit Funding (Brashear/Cole)  | [20 min.] | Page 21     |
| D.               | French Prairie Bridge Evaluation Criteria (Weigel)   | [20 min.] | Oral Report |
| <b>7:25 P.M.</b> | <b>ADJOURN</b>   |           |             |
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**CITY COUNCIL MEETING**

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Monday, May 1, 2017 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on April 18, 2017. Remonstrances and other

documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

**7:30 P.M. CALL TO ORDER**

- A. Roll Call
- B. Pledge of Allegiance
- C. Motion to approve the following order of the agenda and to remove items from the consent agenda.

**7:35 P.M. COMMUNICATIONS**

- A. Republic Services Annual Wilsonville Community Garbage and Recycling Report (Cindy Dolezel, Republic Services) Page 26
- B. Community Outreach/Neighborhood BBQ's (staff – Handran) Page 47

**7:55 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

**8:00 P.M. MAYOR'S BUSINESS**

- A. Upcoming Meetings Page 49

**8:10 P.M. COUNCILOR COMMENTS**

- A. Council President Starr
- B. Councilor Stevens
- C. Councilor Lehan
- D. Councilor Akervall

**8:20 P.M. CONSENT AGENDA**

- A. Minutes of the April 17, 2017 Council Meeting. (staff – King) Page 50

**8:25 P.M. NEW BUSINESS**

- A. **Resolution No. 2626** Page 55  
A Resolution Declaring The City Of Wilsonville A Welcoming And Inclusive City (staff – Jacobson)  
Clean version Page 57  
Red lined version Page 60
- B. **Resolution No. 2628** – Placeholder. Changes may be made to the resolution prior to the City Council meeting. Page 63  
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Enter Into:  
(1) The First Amendment To Agreement Regarding Water Treatment Plant Design, Construction, Operation, And Property Ownership; (2) The Willamette Water Supply

4/25/2017 3:24 PM Last Updated

System Intake Facility Agreement With Tualatin Valley Water District; And (3) The Ground Lease For Raw Water Pipeline With Tualatin Valley Water District And The City Of Hillsboro (Staff – Jacobson)

**8:45 P.M. CITY MANAGER’S BUSINESS**

**8:55 P.M. LEGAL BUSINESS**

**9:00 P.M. ADJOURN**

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:- Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or [king@ci.wilsonville.or.us](mailto:king@ci.wilsonville.or.us)



**CITY COUNCIL MEETING  
STAFF REPORT**

<p><b>Meeting Date:</b>  May 1, 2017</p>	<p><b>Subject:</b> Mounted Cameras for Violations of Traffic Control Devices</p> <p><b>Staff Member:</b> Susan Cole, Finance Director</p> <p><b>Department:</b> Finance</p>
<p><b>Action Required</b></p> <p><input type="checkbox"/> Motion</p> <p><input type="checkbox"/> Public Hearing Date:</p> <p><input type="checkbox"/> Ordinance 1<sup>st</sup> Reading Date:</p> <p><input type="checkbox"/> Ordinance 2<sup>nd</sup> Reading Date:</p> <p><input type="checkbox"/> Resolution</p> <p><input checked="" type="checkbox"/> Information or Direction</p> <p><input type="checkbox"/> Information Only</p> <p><input type="checkbox"/> Council Direction</p> <p><input type="checkbox"/> Consent Agenda</p>	<p><b>Advisory Board/Commission Recommendation</b></p> <p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> None Forwarded</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <p><b>Comments:</b> This is a work session to inform the Council of the legal, financial, and logistical implications of installing mounted cameras to detect traffic control device violations.</p>
<p><b>Staff Recommendation:</b> N/A</p>	
<p><b>Recommended Language for Motion:</b> N/A</p>	
<p><b>Project / Issue Relates To:</b> <i>[Identify which goal(s), master plans(s) your issue relates to.]</i></p>	
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>
<p><input checked="" type="checkbox"/> Not Applicable</p>	

**ISSUE BEFORE COUNCIL:**

The current issue before Council is whether to install mounted red light cameras at key intersections as a method of alleviating traffic issues comprised of red-light running complaints and traffic congestion around the Wilsonville Road/I-5 interchange.

## **EXECUTIVE SUMMARY:**

The implementation and use of mounted cameras to detect failure to obey traffic control device violations (“TCD Violations”) is governed by ORS 810.434 through 810.436. Below is a summary of the legal requirements for installing mounted cameras, as stated in ORS 810.434 through 810.436. Also summarized is potential impact on both Law Enforcement and the Municipal Court.

### Process for Adoption

Pursuant to ORS 810.434 to 810.436, the City may, at its own expense, install mounted cameras to detect TCD Violations after the adoption of a resolution approving such installation.

Approval from the Oregon Department of Transportation (ODOT) is required for all traffic control devices which are operated by ODOT. The signals controlling the on- and off- ramps to and from I-5 are ODOT operated devices. Those located at the intersections of Wilsonville Road/SW Boones-Ferry Road and Wilsonville Road/Town Center Loop W are in the process of verifying whether ODOT approval would be needed to install cameras.

### Process for Implementation

The City would need to research and evaluate the various companies that provide this technology. Staff is currently aware of three companies: American Traffic Solutions, Inc; Redflex Traffic Systems; and Gatso USA.

For the Wilsonville Road/I-5 on- and off-ramps, the City would need to obtain prior approval from ODOT to install mounted red light cameras, which approval has associated costs (on average \$10,000 per camera) based on the number of cameras installed. The other intersections of Wilsonville Road/SW Boones-Ferry and Wilsonville Road/Town Center Loop W are being verified; while the City ensures their maintenance, it is possible that ODOT approval may be needed, much like in Tualatin when that city installed cameras at the intersection near Bridgeport Village.

If the City chooses to install mounted cameras for TCD Violations, the City must:

- Provide a public information campaign to educate the public regarding the use of the mounted cameras before any citations can be issued;
- Post signs, so far as is practicable, on all major routes entering the City to indicate that TCD Violations may be enforced through the use of mounted cameras;
- Post signs before the signal at a location near the signal, indicating that the camera may be in operation;
- Ensure that the yellow light at an intersection with a mounted camera must show for at least the length of time recommended by the standard set by the Institute of Transportation Engineers.

### Follow-Up Process

Under the statutes, the City is required to conduct a biennial process and outcome evaluation, which includes the effect of the use of the cameras on traffic safety, the degree of public acceptance of the use of the cameras, and the process of administration of the use of the cameras.

The nature and requirements of the outcome evaluation are not well-defined in statute, but the City would be installing these cameras to ensure compliance with traffic control devices. If the City decides to proceed with installing cameras, staff would need to develop outcome evaluation criteria following examples from other jurisdictions. An example from the City of Fairview is attached.

This process and outcome evaluation is to be presented to the Legislature by March 1<sup>st</sup> of every odd-numbered year.

#### Enforcement

Only police officers can review the photographs and sign citations (which may be reviewed and signed electronically).

Citations generated from the use of mounted cameras are sent to the registered owner of the vehicle within ten (10) business days of the alleged violation.

The owner then has thirty (30) days to respond to the citation. The owner of the vehicle may submit a certificate of innocence, affirming that s/he was not the driver when the citation was issued. The citations are generated by the vendor that installs and maintains the mounted cameras, but each photograph must be reviewed by a police officer to verify the identity of the driver before the citation is signed by the officer.

As mentioned in previous staff reports, the violation of obstructing cross traffic (ORS 811.290), which occurs when a driver enters the intersection during a valid green or yellow light but fails to exit the intersection prior to the light turning red, cannot be enforced by using mounted cameras. The Legislature only allows the use of mounted cameras for enforcing the violation of failure to obey a traffic control device (ORS 811.265), i.e., when a driver actually runs a red light.

#### Law Enforcement and Municipal Court Impacts

Staff has identified two main impacts to City staff and workload:

- (1) Issuing citations from the mounted cameras means a Traffic Officer will be required to spend time reviewing the citations so they can be mailed to the registered owner of the vehicle, and this time is traded-off against time spent by the Officer patrolling in the community.
- (2) The Police would need to decide how many officers would need be trained to review the camera-generated citations. Citations are available on the system for up to 10 days.
- (3) Citations from mounted cameras could lead to more not-guilty pleas at the Municipal Court, which would mean more time for the City's Municipal Judge in hearing these cases. Additionally, affidavits of innocence (when the registered owner is not the driver in the photo) could be filed with the Court for review.

Tualatin may provide an example of the potential staffing impacts: In the month of December, 2016, the Tualatin Municipal Court had five court dates, and there were 654 red-light camera citations from their two camera-enforced intersections, one of which is at Bridgeport Village.

This averages about 22 per day. Tualatin has five officers that are trained to review the red-light camera violations in addition to their other duties. The time spent by these officers reviewing red-light camera violations vary depending upon volume and other duties, but each violation takes approximately two minutes to review. Wilsonville would need to develop a staffing plan to review and approve citations, as well as ensure the Court is prepared for more volume.

**EXPECTED RESULTS:**

The overall number of citations generated for TCD Violations from mounted red light cameras may be quite significant at first, depending on the number of cameras mounted. However, as mentioned previously, the traffic flow issues surrounding the I-5 interchange have primarily been caused by cars that enter the intersection without adequate space to make the turn onto the freeway on-ramp before the light actually turns red. This is an obstruction of cross traffic violation and is not subject to citation through use of a mounted camera. However, there have been complaints of red-light running at these intersections, which these cameras may help solve, and the presence of red light cameras may discourage drivers from entering the intersections in the first place.

**TIMELINE:**

If the City Council would like to pursue the installation of mounted cameras to detect failure to obey traffic control device violations, staff can contact the three known companies and evaluate which one may best meet the City's needs. Choosing a company, conducting public outreach and education, and installing signs, calibrating yellow lights and working with ODOT, if necessary, may take several months.

**CURRENT YEAR BUDGET IMPACTS:**

The budget impacts are not known at this time. One company, Redflex, installs the cameras at their expense and then assesses a flat fee on each citation. It is not known at this time how the other companies operate. If mounting cameras requires ODOT approval, their process includes fees approximating \$10,000 per camera. At this time, the staffing impacts for Law Enforcement and Municipal Court would be absorbed within current resources.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: SCole Date: 4/21/2017

**LEGAL REVIEW / COMMENT:**

Reviewed by: Amanda Guile-Hinman Date:

**COMMUNITY INVOLVEMENT PROCESS:**

The City is required to conduct a public information campaign prior to the issuance of any citations from mounted red light cameras. The City must also place signs at the entrances into Wilsonville, and before the intersections which have mounted cameras, to notify drivers that mounted cameras may be in operation.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

Mounted cameras may help reduce complaints of red-light running, and may help alleviate some of the congestion within the intersections at and near the Wilsonville Road/I-5 intersection, but cannot be used to cite those who enter the intersection during a green or yellow light (unless the

camera catches them entering on yellow as the light turns red less than halfway into the intersection). The use of mounted cameras will require Wilsonville's traffic officer to spend time reviewing photographs/citations and may also increase Court volume due to not-guilty pleas, which court staff will need to process and the judge may need to hear with officers in attendance.

**ALTERNATIVES:**

A possible alternative is to increase police presence at the intersections surrounding the Wilsonville Road/I-5 interchange to create the halo effect – the mere presence of officers causes individuals to obey traffic laws. An Officer staffing plan could be developed to outline how much time an Officer would need to spend at the intersections to create the halo effect. Engineering staff are also working on solutions to alleviate traffic congestion along Wilsonville Road such as the Brown Road to Boones Ferry Road Connector and a possible third stacking lane at the I-5 South on-ramp.

**CITY MANAGER COMMENT:**

**ATTACHMENTS:**

City of Fairview's 2015 Photo Red Light Report to the Oregon Legislature



# 2015 Photo Red Light Report to the Oregon Legislature City of Fairview



City of Fairview Police Department

Kenneth D. Johnson, Chief of Police

February 25, 2015

**Table of Contents**

I. BACKGROUND

II. PUBLIC INFORMATION AND OUTREACH

III. PROCESS AND OUTCOME EVALUATION

- a. The effect of the use of cameras on traffic safety
- b. The degree of public acceptance of the use of cameras
- c. The process administration of the use of cameras

**BACKGROUND**

The City of Fairview is a small community of approximately 9,200 residents located forty blocks from Portland, Oregon (the largest city in the state) and sharing a boarder with the City of Gresham (the fourth largest city in the state). Interstate 84 divides the town and contributes to a high traffic volume traversing our community.

The main entrance into the City of Fairview is exit 14 from Interstate 84. This is a common exit used for those traveling to Gresham, Mount Hood and Eastern Oregon. The first intersection encountered, after exiting the freeway off ramp, is Fairview Parkway and North East Halsey Street. According to Fairview Police Officers', this particular intersection was dangerous due to the high number of red light violations. Officers were unable to safely enforce red light violations at this intersection because there was no safe place to monitor the intersection and there was significant risk when attempting to catch up to a red light violator.

After an extensive public information gathering and outreach campaign, the Fairview City Council passed Resolution 37-2011 on September 7, 2011, authorizing a photo red light camera program. On May 3, 2012, the red light cameras were activated for three approaches at Fairview Parkway and NE Halsey Street. A thirty (30) day warning period was followed, as per state law. Fairview Police began issuing citations for photo red light violations on June 2, 2012.

## **PUBLIC INFORMATION AND OUTREACH**

During the past two years, the City of Fairview has performed the following public education and outreach program related to the Intersection Safety Program:

2/21/13: Program update given to the Public Safety Advisory Committee (public meeting).

3/2013: Fairview Chief of Police Ken Johnson participated in a public safety video (PSA) entitled: "Oregon Through the Lens: Traffic Safety Cameras."

4/5/13: Oregon Association Chiefs of Police posted the video "Oregon Through the Lens: Traffic Safety Cameras" on the Association's Facebook.

9/18/13: One year review presented to the Fairview City Council during regular meeting (televised).

9/19/13: One year review presented to the Public Safety Advisory Committee (public meeting).

10/2013: Article in City of Fairview newsletter giving citizens a one year program review.

3/11/14: Fairview Chief of Police Ken Johnson was a guest panelist at a televised League of Women Voters forum and discussed the Photo Red Light: Intersection Safety Program.

8/5/13: Booth at National Night Out had continuous loop playing of the PSA- "Oregon Through the Lens: Traffic Safety Cameras."

11/15/14: Red light camera update was given at a Fairview Town Hall meeting.

1/28/15: Red light camera information was given at a Mayor's Town Hall meeting.

2/5/15: Request for public input on the Photo Red Light project was requested on the social media web site "Nextdoor Neighbor."

2/5/15: Request for public input on the Photo Red Light project was requested on the Fairview Police Department's Facebook social media site.

On Going:

- The Fairview Police Department web page includes a link to the PSA- "Oregon Through the Lens: Traffic Safety Cameras."  
<https://www.youtube.com/watch?v=aHaB57c2Cxs&feature=youtu.be>

- The Fairview Police Department web page has a link to a document entitled, “Myths of Photo Red Light Enforcement.” <http://www.fairview.or.us/DocumentCenter/Home/View/2541>
- The Fairview Police Department web page has a link to a document entitled, “Red Light Camera Brochure.” <http://www.fairview.or.us/DocumentCenter/Home/View/1341>
- Fairview Police Department web page has a section that explains how the program works:

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### Intersection Safety Camera Program

In May 2012, the City of Fairview Police Department launched a new traffic safety program focusing upon the problem of red light running at intersections in the Fairview community. The first Intersection Safety Cameras, also known as photo red light, were installed at the busy Fairview Parkway/Halsey Street intersection.



Intersection Safety Cameras are installed at specific intersections in order to enforce traffic laws by photographing drivers when they run the red lights. The cameras are connected to the traffic signals as well as sensors that monitor the traffic flow at the intersection’s crosswalks. The traffic signal is continuously monitored by the system and the cameras are triggered when a vehicle enters the intersection at a pre-established minimum speed and following a specific amount of time after the signal has turned red. Cameras record the date, time of day, time elapsed since the beginning of the red signal, and vehicle speed.

The cameras do not capture those drivers that enter the intersection against a yellow light, only those that enter against a solid red light, the most egregious offenders. The system does not issue citations to the drivers. All “suspected” violations are reviewed by a City of Fairview Police Officer who must agree and then issues the citations, which are processed the same as any other citation issued, except they are mailed. The fine for a photo citation is the same as any hand delivered citation for the same offense.

Questions? Contact the Fairview Police Department at (503) 674-6200.

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## THE EFFECTS OF THE USE OF CAMERAS ON PUBLIC SAFETY

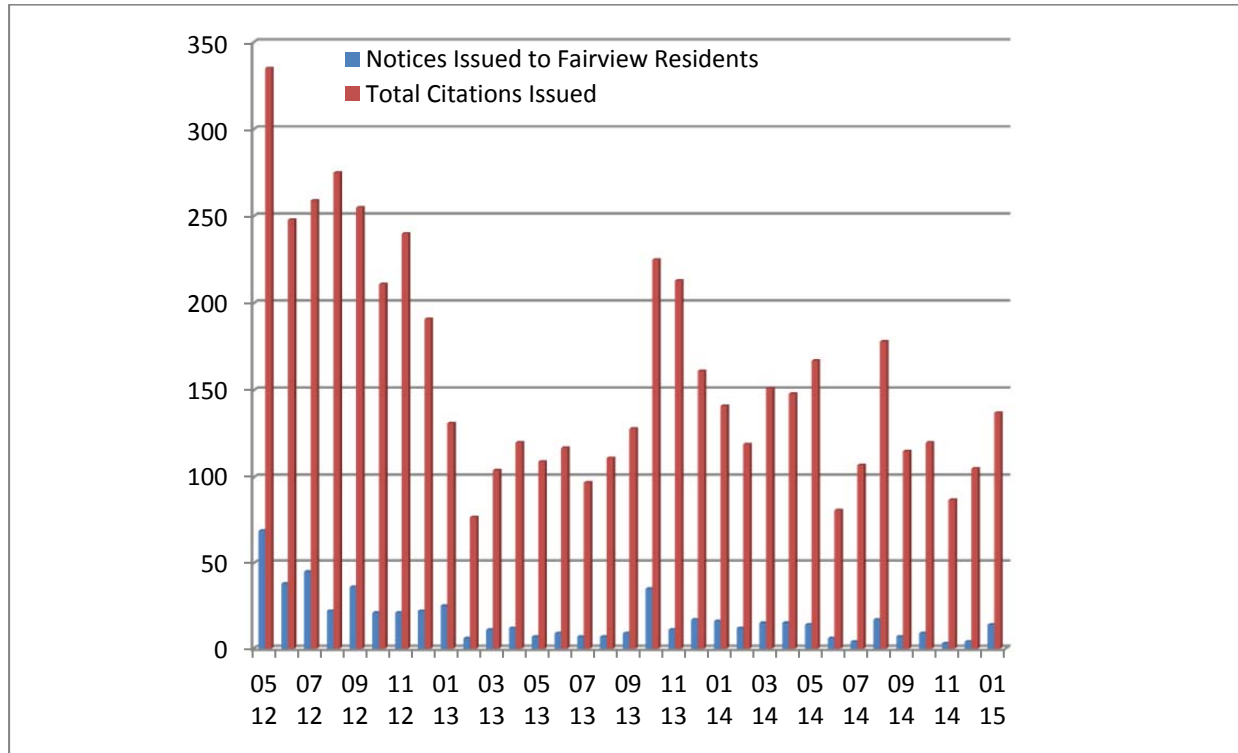
When the Fairview City Council authorized the use of red light cameras, the stated goal was to improve traffic safety by reducing the incidents of drivers running red lights. The best gauge of determining if we are making an impact is to evaluate two factors:

1. Total number of citations issued.
2. Total number of citations issued to Fairview residents.

Comparing 2014 and 2015 data to the first six months of operation shows a significant reduction in the number of drivers failing to stop for the red light at Fairview Parkway and Halsey.

<u>Month of</u>	<u>Notices Issued to</u>	<u>Notices Issued to</u>	<u>Notices Issued to</u>	<u>Total Citations Issued</u>	<u>Percent of Fairview Res.</u>
<u>Violation</u>	<u>Fairview Residents</u>	<u>Other Oregon Residents</u>	<u>Out-of-State Residents</u>		
2012 05	69	239	27	335	20.59
2012 06	38	188	22	248	15.32
2012 07	45	181	33	259	17.37
2012 08	22	211	42	275	8.00
2012 09	36	182	37	255	14.11
2012 10	21	164	26	211	9.95
2012 11	21	187	32	240	8.75
2012 12	22	145	24	191	11.51
2013 01	25	86	20	131	19.08
2013 02	6	65	6	77	7.79
2013 03	11	74	19	104	10.57
2013 04	12	96	12	120	10.00
2013 05	7	77	25	109	6.42
2013 06	9	84	24	117	7.69
2013 07	7	74	16	97	7.21
2013 08	7	84	20	111	6.30
2013 09	9	90	29	128	7.03
2013 10	35	152	38	225	15.55
2013 11	11	164	38	213	5.16
2013 12	17	119	25	161	10.55
2014 01	16	102	23	141	11.34
2014 02	12	86	21	119	10.08
2014 03	15	113	23	151	9.31
2014 04	15	111	22	148	10.13
2014 05	14	117	36	167	8.38
2014 06	6	60	15	81	7.40
2014 07	4	72	31	107	3.73
2014 08	17	132	29	178	9.55
2014 09	7	86	22	115	6.08
2014 10	9	90	21	120	7.50
2014 11	3	70	14	87	3.44
2014 12	4	87	14	105	3.80
2015 01	14	100	23	137	10.21

### CHART SHOWING TOTAL CITATIONS ISSUED COMPARED TO THE NUMBER OF CITATIONS ISSUED TO FAIRVIEW RESIDENTS



**THE DEGREE OF PUBLIC ACCEPTANCE OF THE CAMERAS**

When the City of Fairview began consideration of a red light camera at Fairview Parkway and Halsey, there was some discussion and debate about the potential impact the red light cameras would have. A few expressed concern that drivers would avoid the intersection- hurting Fairview businesses.

The traffic count data, supplied by the Multnomah County Traffic Engineer does not support that position. Although there was a dip in the traffic count in some months during calendar year 2013, the traffic count in 2014 would indicate an increase in the number of drivers using this intersection since the beginning of the red light camera program.

**TRAFFIC COUNT FROM INCEPTION OF PHOTO RED LIGHT PROGRAM  
THROUGH DECEMBER 2014**

**Fairview Parkway and Halsey South Bound on Fairview Parkway**

First month of operation (30 day written warning period) was May 2012:

May 2012- 312,869

May 2013- 320,009

May 2014- 321,857

First full month of citations was July 2012:

July 2012- 310,642

July 2013- 262,932

July 2014- 344,983

Last full month of data:

December 2012- 307,925

December 2013- 306,819

December 2014- 319,097

While there has not been any formal survey conducted, informal results obtained throughout the public information campaign (and during the early period of the program) indicate general public acceptance of the Photo Red Light Program. But, as with any enforcement based traffic safety initiative, there have been some detractors- including negative feedback from those who have received citations.



This author has personally attended several court sessions and has heard defendants make the following statements to our Fairview Municipal Court Judge:

- “I always run that light. It has gotten into a habit. Thank-you for putting those cameras there, it has made me a safer driver.”
- “Your honor, I thought it was OK to slow and look but, after being in court today and seeing these videos, I now realize I made a mistake.”

The Fairview Municipal Court Judge had this to say to defendants complaining about making right turns on red without stopping, “In all my years as a driver, lawyer and Judge, I have never heard someone *who has been in an accident* say, I looked, saw a car coming and went anyway.”

In preparing for this bi-annual report to the Oregon Legislature, this author posted a request on our police department Facebook page and on a large social media web-site Nextdoor Neighbor. I asked for any comments about the red light program, Specially, citizens were asked if they would support or oppose extending the photo red light contract beyond the original three year agreement. Two responses have been received. Both indicating that they felt the intersection was safer as a result of the photo red light cameras and both citizens urged the Fairview City Council to extend the contract.

### **THE PROCESS ADMINISTRATION OF THE USE OF CAMERAS**

The administrative process of the Photo Red Light Program includes many steps. The process includes:

- Violation detection- A car must travel across the intersection stop line against a solid red light.
- Quality control checks- Internal checks made by the vendor to insure the system was functioning properly at the time the violation was captured.
- Violation processing- Every violation is reviewed, by the vendor, to insure the violation is valid and conforms to the Oregon Revised Statute (gender match, etc.).
- Police Officer review- Final review of each violation by a City of Fairview Police Officer. The officer will conduct a review to confirm the violation is valid per the statute and that the vehicle did not stop before crossing the stop line. After review, the officer will reject or accept the citation. If the officer approves the citation, the officer will authorize their electronic signature for the issuance of a citation.

Citations issued under this program are processed by the Fairview Municipal Court and are handled in accordance with all applicable laws and court procedures.

The review process is exhaustive and intended to protect the integrity of the program and ensure that only legitimate red light violations are cited. Images captured by the red light camera and the accompanying video, do not equate to an automatic citation. There are a number of factors that cause an image to be rejected. Those factors include: Gender mismatch (driver not the registered owner), sun glare, vehicle stopping past the stop line, paper plates, inaccurate or incomplete DMV information and plate obstruction.

Since the inception of the Fairview program through January 2015, officers have issued 4,809 citations or 39.33% of the total images captured for possible violations. 60.67% of the images captured (possible violations) were rejected.

<b>TOTAL IMAGES CAPTURED SINCE PROGRAM INCEPTION</b>	<b>TOTAL NUMBER OF CITATIONS ISSUED SINCE PROGRAM INCEPTION</b>
<b>12,225</b>	<b>4,809</b>

*This report is provided in accordance with ORS 810.434 (4) and ORS 192.245.*



**CITY COUNCIL MEETING  
STAFF REPORT**

<p><b>Meeting Date:</b>  May 1, 2017</p>	<p><b>Subject:</b> Establishment of a Traffic Infraction Deferral Program (traffic school) offered as an option available through the City’s Municipal Court Violations Bureau in adjudicating certain traffic violations under specific parameters</p> <p><b>Staff Member:</b> Susan Cole <b>Department:</b> Finance/Municipal Court</p>	
<p><b>Action Required</b></p>	<p><b>Advisory Board/Commission Recommendation</b></p>	
<p> <input type="checkbox"/> Motion  <input type="checkbox"/> Public Hearing Date:  <input type="checkbox"/> Ordinance 1<sup>st</sup> Reading Date:  <input type="checkbox"/> Ordinance 2<sup>nd</sup> Reading Date:  <input type="checkbox"/> Resolution  <input checked="" type="checkbox"/> Information or Direction  <input type="checkbox"/> Information Only  <input type="checkbox"/> Council Direction  <input type="checkbox"/> Consent Agenda         </p>	<p> <input checked="" type="checkbox"/> Approval  <input type="checkbox"/> Denial  <input type="checkbox"/> None Forwarded  <input type="checkbox"/> Not Applicable         </p> <p><b>Comments:</b></p>	
<p><b>Staff Recommendation:</b></p>		
<p><b>Recommended Language for Motion:</b></p>		
<p><b>Project / Issue Relates To:</b> <i>[Identify which goal(s), master plans(s) your issue relates to.]</i></p>		
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>	<p><input checked="" type="checkbox"/> Not Applicable</p>

**ISSUE BEFORE COUNCIL:**

To establish a program to be offered through the City’s Municipal Court Violation Bureau where adult drivers (over 18 years) who are issued certain types of citations under listed circumstances

are given an adjudication option to be diverted from the Municipal Court into a program that educates drivers on traffic safety (i.e. traffic school). Terms and qualifications will be established by the City's Municipal Court Judge and Oregon Revised Statutes. Exhibit A outlines sample terms and condition for proposed traffic school agreement.

## **EXECUTIVE SUMMARY:**

The City of Wilsonville Municipal Court uses a violation bureau, as allowed under ORS 153.800 and under the supervisory authority of the City's Judge, to streamline case management and maximize court efficiency. The Violations Bureau is able to resolve many cases in an expeditious, impartial, and consistent manner without its patrons having to see a judge. The City's violation bureau is able to reduce fines for certain violations and under certain conditions using a uniform fine schedule established by the Chief Justice of the Oregon Supreme Court. It can offer payment plans and accept payment by phone, mail, internet, or in person. The existence of a court violations bureau is beneficial to both the Court and its patrons alike as many cases can be resolved in an expeditious, impartial, and consistent manner without patrons having to attend court. The City's Municipal Court Violations Bureau currently employs an array of programs to encourage public safety and /or education. Current programs offered include an equipment fix-it program, discounts for good drivers, and payment plans. The equipment fix-it program allows for the dismissal of a cited equipment violation and corresponding fine once the violation has been repaired and an administrative fee remitted to the Court. Good driver defendants, with a qualified infraction, and with no convictions in the prior 3 years are generally offered a 20% reduction in their citation fine amount.

The City's Municipal Court already has two active diversion (traffic school) programs: (1) a seatbelt program and (2) a youth offender program. The seatbelt program is offered through the City's Violation Bureau. For the youth offender program, however, youth offenders must see the judge before diversion is allowed. In both cases, once the defendant completes the terms of his or her diversion program, attends class, and remits the appropriate fees, the violation is dismissed. The proposed adult diversion program would be an expansion of existing diversion opportunities currently offered.

The proposed adult diversion program would mean defendants eligible for adult diversion would request traffic school and pay a specified fee at the time of the request instead of paying the base fine listed on their citation. Defendants would also be responsible for paying for the traffic school class. Upon successful completion of the agreement, the charge would be dismissed and would not appear on their driving record. With many Oregon traffic courts offering a similar program, including Beaverton, Happy Valley, Ashland, as well as with defendants' awareness of programs in other states, adult defendants often request traffic school in order to prevent a conviction from appearing on their driving record.

Benefits of an established diversion program include:

- It promotes compliance by educating drivers about safe driving and relevant laws that they are expected to obey. Public safety may improve if traffic violators can receive training on traffic safety

- It rewards qualified drivers for their good driving records in allowing them a one-time opportunity to keep their unblemished driving records clean.
- It affords patrons of the Wilsonville Court system a benefit being offered in some other traffic courts.
- It affords efficiency to the City's court system by encouraging some drivers who might otherwise plead "not guilty" an acceptable option, thereby relieving pressure on the court's trial dockets.
- The diversion fee would be set similar to the discounted fine amount currently offered to good drivers under the Court's good driver discount program, under which most diversion applicable candidate would already qualify.

A drawback of any diversion program is possible diminishment of the usefulness of driving records as an analytical tool for measuring a driver's lawfulness and/or competency with regards to traffic laws. As such, no basis is established for any future court sanctions or as a useful metric potentially for auto insurance companies in setting rates.

Also, there is no public entity, such as the Oregon Department of Motor Vehicles, that tracks all Oregon drivers who have utilized adult diversion programs to ensure that a driver is not repeatedly participating in diversion programs in various jurisdictions throughout the state to avoid traffic convictions. However, many local jurisdictions use the same diversion programs which do track their participants and will reject individuals who do not meet the requirements of a particular jurisdiction's diversion program.

**EXPECTED RESULTS:**

Direction to staff as to whether to bring forward an authorizing ordinance to implement an adult diversion option.

**TIMELINE:**

If the City Council would like to implement an adult diversion option, staff can bring forward an authorizing ordinance at a future Council meeting.

**CURRENT YEAR BUDGET IMPACTS:**

None.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: SCole Date: 4/19/2017

**LEGAL REVIEW / COMMENT:**

Reviewed by: ARG Date: 4/19/2017

**COMMUNITY INVOLVEMENT PROCESS:**

The Municipal Court would initiate a public education campaign notifying defendants of the

adult diversion option.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups): Enable adult drivers with good driving records an option to attend traffic school in order to avoid a conviction on their driving records.

**ALTERNATIVES:**

**CITY MANAGER COMMENT:**

**ATTACHMENTS:**

Attachment A - City of Wilsonville Adult Traffic School Program

### **City of Wilsonville Adult Traffic School Program**

This program is designed to educate drivers about safe driving and relevant law that drivers are expected to obey. If qualified for the program, a defendant may voluntarily enter into the traffic school program.

Qualifications for the program are as follows:

1. The violator is cited for a single Class B (excluding insurance violations such as failure to carry proof or uninsured), C, or D moving violation that does not involve an accident. Class A violations are ineligible.
2. The violator has no previous moving violation convictions or traffic crimes convictions anywhere within Oregon within the last three years.
3. The violator has not participated in a traffic diversion in the last three years within the State of Oregon.
4. The violator has a valid non-commercial driver's license or permit.

Terms for the program are as follows:

1. Pay a specified fee (instead of the base fine) that is equivalent to seventy-five percent (75%) of the base fine to the court with a request for traffic school.
2. Submit a "No Contest", which will be suspended pending the completion of the traffic school.
3. Complete a traffic school from a list of schools that have been approved by the Municipal Court within 60 days. No extension is permitted for any reason.

Upon successful completion of the agreement, the charge shall be dismissed and will not appear on the driving record. If the class is not completed within 60 days, the guilty plea shall be entered, the full presumptive fine assessed plus a \$50.00 noncompliance fee.



**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date:</b>  May 1, 2017	<b>Subject:</b> Synopsis of potential SMART transit revenue sources, as also discussed in the Transit Master Plan.  <b>Staff Member:</b> Keith Katko <b>Department:</b> Finance	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable	
<b>Comments:</b>		
<b>Staff Recommendation:</b> Informational purposes only.		
<b>Recommended Language for Motion:</b> n/a		
<b>Project / Issue Relates To:</b> <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

**ISSUE BEFORE COUNCIL:**

In order to maintain a high quality public transportation it is important to maintain consistent and predictable funding levels, while operating efficiently. The top priorities of SMART management continue to focus on improving operational efficiencies and seeking out new funding sources, particularly intergovernmental grants. It appears to be uncertain, however, that state or federal funds will continue as they have. Additionally, growth of local payrolls may not generate sufficient funds to keep funding sustainable long-term.



SMART aims to match its level of service with the growing demand as the City of Wilsonville attracts more employers and residents. In order for SMART to continue to provide the level of service that businesses and residents have come to expect, SMART will need to explore more revenue sources.

The predominant source of ongoing funding for SMART is the local payroll tax (transit tax) levied on businesses performing work in Wilsonville, assessed on gross payroll and/or self-employment earnings. **Attachment A** provides a historical view of the SMART payroll tax rate and also a comparison of it to neighboring jurisdictions.

Below are some options that SMART could explore further in the near future to continue to provide equitable and convenient service.

#### **EXECUTIVE SUMMARY:**

- **Payroll tax revenue:** Payroll tax revenue is a function of two variables, the tax rate and local employment wages or earnings. An increase in revenues will occur by increasing either variable.
  - **Increase local employment wages or earnings** – SMART's payroll tax revenue has grown at an average of 3.92% over the last five years, mainly due to an increasing base as commercial and industrial activity expands, and increasing local wages. Some expansion is expected to continue for the next several years as existing businesses experience growth and new developments occur, provided that the economy remains strong. Once the available industrial land has been developed, the increases will come primarily through wage and business growth, resulting in a slower, but steady level of payroll tax revenue increase. In the interim, SMART staff members remain actively involved in the City's economic development activities – hoping to expand the job base in the community. In the fiscal year 2015-16, taxable local wages and earnings totaled \$967.72 million dollars.
  - **Increase payroll tax rate** – The second variable in the calculation of payroll tax revenue is the tax rate. For every .1% (.001) the transit tax goes up (for example, from the current 0.5% to 0.6%) an additional \$968,000 in revenue is generated (based on the FY 2015-16 actual local wages and earnings amount).
- **Additional grant funding:** Funding from grants, SMART's second largest revenue source, are beginning to become fewer as monies at the federal level for transportation are being reduced. SMART has historically been successful in seeking and being awarded grants. SMART will continue to seek grants from the counties, region, state and federal sources.
- **Increase Fares:** Revenue from fares is anticipated to continue to be a small supplemental source of revenue that will serve to help offset costs associated with providing service on particular routes. Currently, fares make up about 4% of SMART's revenue. SMART currently only charges for out of town routes. Price elasticity of demand aside, a \$0.25 cent

increase in fares, as currently structured, would result in an estimated \$32,300 in additional revenue.

- **Transit Operations Monthly Fee:** Revenue could be generated from a monthly fee included on the City’s combined utility bill. For example, the City of Corvallis includes a monthly charge to its utility customers to generate revenue to support its transit system. The City of Wilsonville has approximately 5,000 residential accounts and 476 multi-family utility accounts (with approximately 4,976 individual units). With a simple per account residential and per unit multi-family dwelling unit formula, for every \$1.00 per month (\$12.00 per year), an estimated extra \$119,712 could be raised.
- **Property tax funding:** SMART could pursue property tax funding in one of three ways:
  - I. Seek funding from the City’s General Fund: The General Fund is largely funded from property taxes and is used for City services such as Police, the Library, Parks, and Administration. Funding SMART from the General Fund would be a direct offset to these other services.
  - II. A voter-approved local option property tax levy could be considered. These levies are limited to 5 years and the vote would be held in either May or November of any given year. For every dime (\$0.10) of new property tax, it means \$340,000 in revenue (based on current assessed valuation).
  - III. SMART could also seek voter approval for the formation of a special property tax district with a permanent tax rate. Measures for special district formations with permanent rate authority must be at any May or November election.
- **Sales tax funding:** Oregon counties and cities have the right to impose a sales tax at the local level. For example, in 1993 the City of Ashland, Oregon, with a current population 20,620, enacted a voter approved five percent (5%) tax on all prepared food sold in Ashland, which in fiscal year 2016 generated about \$2.2 million. Whereas in Ashland, the proceeds are restricted for the purchase of open space for parks and to offset the costs associated with the building of a new wastewater proceeds, funds could likewise be designated for transit operations.
- **Gas tax:** The City could impose a local gas tax and dedicate the funding to SMART operations. City gasoline taxes across Oregon include the following:

Woodburn	\$.01 per gallon
Milwaukie	\$.02 per gallon
Tigard	\$.03 per gallon
Astoria	\$.03 per gallon
Canby	\$.03 per gallon
Hood River	\$.03 per gallon
Eugene	\$.05 per gallon
Portland	\$.10 per gallon

The City of Woodburn (\$.01 cents per gallon) generates approximately \$102,000 per year (FY14-15). The City of Tigard (\$.03 cents per gallon) generates approximately \$600,000 per year.

Taxes on motor vehicle fuel must “be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation, and use of public highways, roads, streets, and roadside rest areas in this State” (Oregon Constitution, Article IX, Section 3a). According to ORS 319.950, “A city, county or other local government may enact or amend any charter provision, ordinance, resolution or other provision taxing fuel for motor vehicles after submitting the proposed tax to the electors of the local government for their approval”

- **Public-Private Partnerships:** Vanpool/carpool partnership with local businesses and other arrangement with local business and/or universities. For example, SMART had an ongoing contractual relationship with Oregon Institute of Technology to provide specific service funded directly by OIT.
- **Advertising Revenue:** Additional revenue could be generated from advertising revenue. Revenue could be generated from advertisements on buses, within the buses and on bus shelters. Advertising can be controversial however, because there are limitations as to the guidelines SMART could implement surrounding the types and content of advertisements.
- **Commercial services:** Commercial services at SMART Central transit center could provide a limited amount of additional incremental revenue. This could include coffee shops or food carts. There is no current commercial service at SMART Central.
- **Revert back to TriMet:** As a last resort, the City could dissolve SMART and petition to become part of TriMet once again.

**ATTACHMENTS:**

Attachment A – Oregon Payroll Tax Rates

Six transit agencies in Oregon levy payroll tax: Lane Transit District, TriMet, City of Sandy, South Clackamas Transportation District, City of Canby, and City of Wilsonville. Lane Transit District and TriMet tax amounts are collected by the Oregon Department of Revenue.

Please see table below for a comparison of payroll tax rates for SMART, TriMet, Canby, Sandy, and South Clackamas Transit District (SCTD):

<b>Oregon Payroll Tax Rates</b>						
Calendar Year	SMART	TriMet	Canby	Sandy	SCTD	Lane Transit
1972	not formed	0.3000%	N/A	N/A	N/A	N/A
1978	not formed	0.5000%	N/A	N/A	N/A	N/A
1990	0.3000%	0.6176%	N/A	N/A	N/A	N/A
2006	0.3300%	0.6418%	N/A	N/A	N/A	N/A
2008	0.5000%	0.6618%	N/A	N/A	N/A	N/A
2009	0.5000%	0.6718%	N/A	N/A	N/A	N/A
2010	0.5000%	0.6818%	0.6000%	0.6000%	0.5000%	0.6600%
2011	0.5000%	0.6918%	0.6000%	0.6000%	0.5000%	0.6700%
2012	0.5000%	0.7018%	0.6000%	0.6000%	0.5000%	0.6800%
2013	0.5000%	0.7118%	0.6000%	0.6000%	0.5000%	0.6900%
2014	0.5000%	0.7218%	0.6000%	0.6000%	0.5000%	0.7000%
2015	0.5000%	0.7237%	0.6000%	0.6000%	0.5000%	0.7000%
2016	0.5000%	0.7337%	0.6000%	0.6000%	0.5000%	0.7100%
2017	0.5000%	0.7437%	0.6000%	0.6000%	0.5000%	0.7200%
2018	0.5000%	0.7537%	0.6000%	0.6000%	0.5000%	0.7200%
2019	0.5000%	0.7637%	0.6000%	0.6000%	0.5000%	0.7200%
2020	0.5000%	0.7737%	0.6000%	0.6000%	0.5000%	0.7200%
2021	0.5000%	0.7837%	0.6000%	0.6000%	0.5000%	0.7200%
2022	0.5000%	0.7937%	0.6000%	0.6000%	0.5000%	0.7200%
2023	0.5000%	0.8037%	0.6000%	0.6000%	0.5000%	0.7200%
2024	0.5000%	0.8137%	0.6000%	0.6000%	0.5000%	0.7200%
2025	0.5000%	0.8237%	0.6000%	0.6000%	0.5000%	0.7200%
<b>Notes:</b>						
<i>Only TriMet has approved its rate beyond 2017.</i>						
<i>Wilsonville, Canby and Sandy require approval from the City Council to change the payroll tax rate.</i>						
<i>South Clackamas Transit District requires a vote in order to change the payroll tax rate.</i>						

**To:** Mayor Knapp and Wilsonville City Council  
**From:** Cindy Dolezel  
**cc:** Bryan Cosgrove, Wilsonville City Manager  
**Date:** April 14, 2017  
**Re:** 2016 Update of Solid Waste Franchise Services

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Dear Mayor Knapp and City Councilors of Wilsonville:

Republic Services Incorporated (Republic) is proud to be an integrated community and franchise partner within the City of Wilsonville (City). Since 1982, Republic has provided quality services as specified in our franchise agreement and is strong, stable partner and investor to the Wilsonville community.

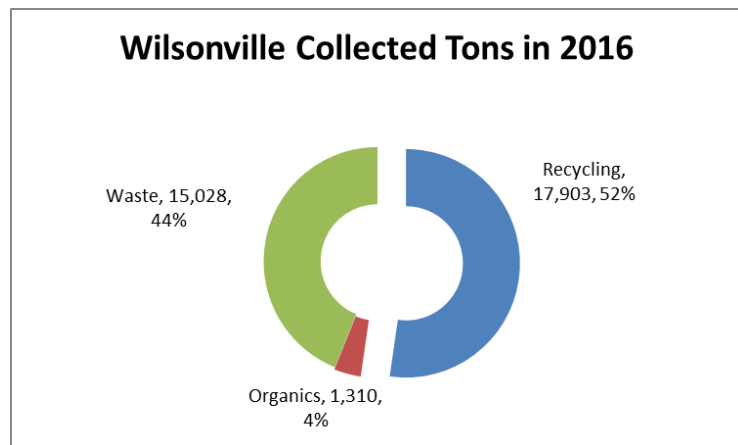
The purpose of this memo is to provide an overview of our 2016 services and activities in Wilsonville, as well as bring attention to a few upcoming changes in the Metro region. This outline includes:

- 1) How Republic Services Wilsonville
- 2) Republic's Presence in Wilsonville
- 3) Looking Ahead

### How Republic Services Wilsonville

Republic is the City of Wilsonville's franchised recycling and garbage collector and also owns and operates a transfer station and a Material Recovery Facility (MRF) within the city limits, which is collectively known as Willamette Resources Incorporated (WRI). Republic collects garbage, recycling, yard debris, and glass from residents, businesses, and industrial customers throughout the city and takes the material to be processed and prepared for transport to markets or landfills. Republic collects in the most effective and efficient manner possible and meets and exceeds the standards specified in our franchise agreement with the city.

Figure I. Tons collected in Wilsonville broken down by type.



Some interesting facts about Republic in Wilsonville:

- Republic drivers are at the curbs of roughly **870** Wilsonville homes per day (roughly **800,000** residential containers picked up per year!)
- Republic has 11 collection vehicles serving its Wilsonville customers, **six** days per week; this includes the use of five Compressed Natural Gas (CNG) Trucks in 2016.
- On collection day, three Republic trucks visit each Wilsonville home to pick up four containers left on the curb, to include a garbage cart, recycling cart, yard debris cart, and a glass bin. Most other collectors use four trucks to service one home, with a distinct truck for glass. Republic has dividers in their recycling trucks to keep glass separated from other recyclables, thereby using one truck to collect commingled recycling and glass from homes.
- Republic services an average of **514** businesses per week, equating to **70,000** commercial pickups per year (both recycling and garbage).
- Republic emptied nearly **6,000** industrial containers per year, representing **18,000** tons (both recycling and garbage) for businesses in the community.
- Wilsonville drivers travelled nearly **114,094** miles in the city and on nearby roads in 2016.
- In 2016, Republic collected approximately **34,241** tons of material for recovery and proper disposal, consisting of:
  - **5,942** tons from residents
  - **8,945** tons from businesses
  - **19,354** tons from industrial customers.

The City of Wilsonville’s support of a stable franchise system enables collection companies to make capital investments that improve service and equipment. Investments in CNG facilities, fueling station, and equipment, so that costs can be distributed across multiple years of a service contract.

If costs were covered yearly, capital purchases would raise collection rates dramatically over a one year period to cover the cost of such investments.

**Figure II. Breakdown of what one dollar of garbage service paid for in 2016.**

*What does \$1 of garbage service pay for in 2016?*

<i>\$1 paid toward your monthly service</i>	<b>\$ 1.00</b>	
<i>Disposal</i>	38.4 ¢	
<i>Labor</i>	12.9 ¢	
<i>Repairs &amp; Maintenance</i>	4.6 ¢	
<i>Fuel</i>	2.0 ¢	
<i>Insurance</i>	1.0 ¢	
<i>Franchise Fees</i>	2.5 ¢	
<i>Customer Service Costs</i>	11.5 ¢	
<i>Truck &amp; Container Replacement</i>	5.0 ¢	
<i>Facility Expenses</i>	0.7 ¢	
<i>Miscellaneous</i>	2.5 ¢	
<i>Income Taxes</i>	7.5 ¢	
<b><i>Net Profit</i></b>	<b>11.3 ¢</b>	

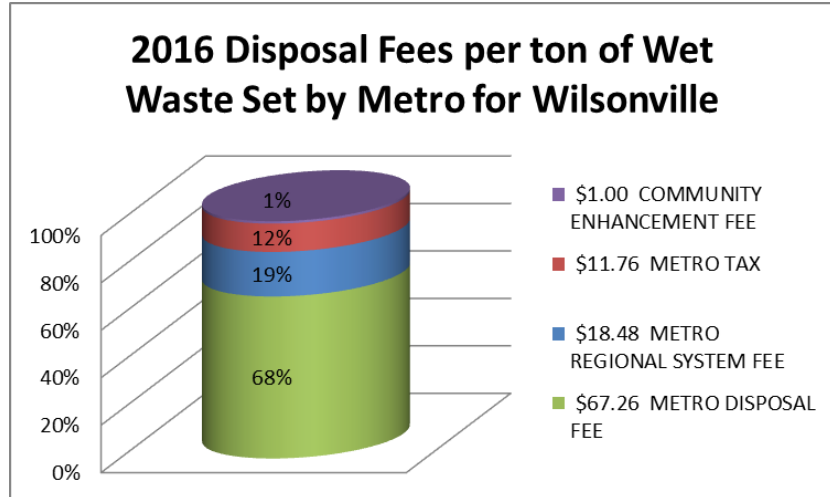
- Of the **34,241** tons collected; **17,903** tons were recycled, followed by **15,028** tons for garbage, and **1,310** tons of organic materials.

Republic works with the City to determine collection rates based on the cost of services such as the allocation of expenses in labor and capital assets to effectively collect solid waste generated by Wilsonville customers. Metro sets the disposal costs

per ton of wet waste in the region, which influences the collection rates paid by Wilsonville residents, businesses, and industrial customers.

Republic's collection rates are designed to accomplish two purposes: firstly, to recover actual costs incurred for customer collection services since the last rate increase (was in March 2016); and, secondly, to cover the costs of collection of forecasted needs (immediate future) for significant expenses that Republic will incur to support the collection of the city's garbage and recycling in a safe and efficient manner.

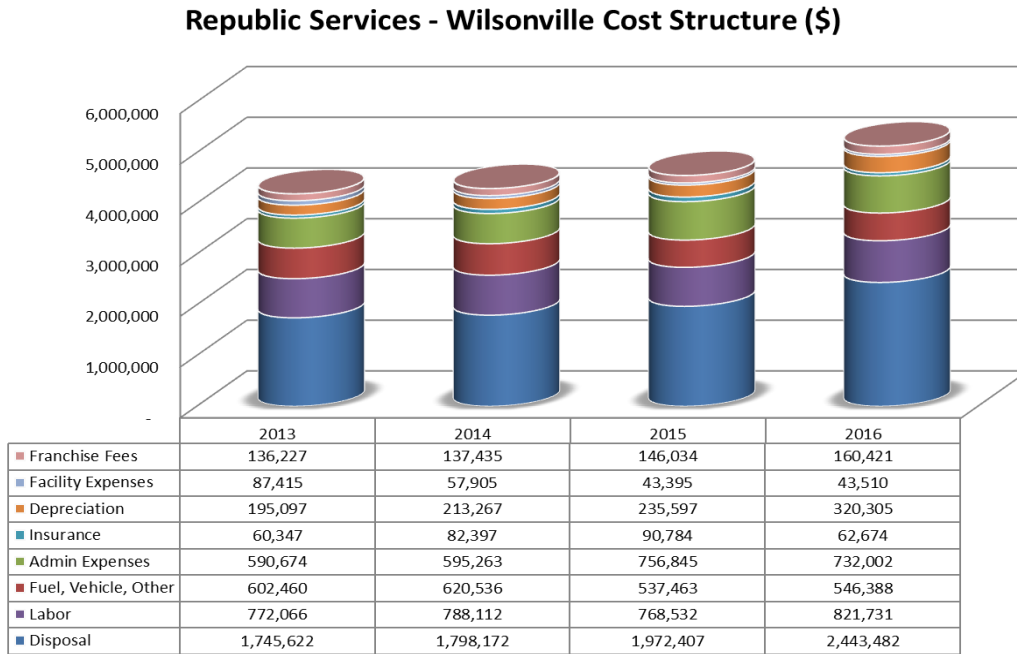
Figure III. Bar chart showing the breakdown of the total \$98.50 wet waste disposal cost.



The city sets collection standards and the rates for each type of collection service desired. The collection costs are analyzed to establish the rate to accomplish the desired service. The analysis involves the allocation of costs by customer type: residential, commercial and industrial. Costs incurred are summarized in eight categories: disposal, labor, fuel and vehicle operations, administrative, insurance, depreciation, facility and franchise fees. These costs are allocated for each type of service based on the following criteria:

- 1) Weight of material collected - average residential pounds per lift, average commercial pounds per yard and average industrial tons per haul;
- 2) Labor hours required for each type of service;
- 3) Type of waste disposal equipment used by customer:
- 4) Residential customers use 20, 35, and 60 gallon roll carts;
- 5) Commercial customers use 35, 65, and 90 gallon roll carts, plus six (6) different sized drop boxes from 1 yard to 8 yards;
- 6) Industrial customers use four different sized drop boxes and compactors - 10 yards to 40 yards.

Figure IV. Republic’s cost structure from 2013 to 2016. Note that disposal costs are the highest portion of the Franchisee’s costs.



In 2016, Republic’s franchise fees contributed \$160,421 dollars to the City of Wilsonville. These fees were paid by Republic to the city at a rate of three percent (3%) based on gross receipts. In addition to these franchise fees, Metro paid the City of Wilsonville a per ton fee (Community Enhancement Fee) for hosting a transfer station in its city limits. Metro paid \$86,676<sup>1</sup> to the city in 2016, which is likely to increase in 2017, if the proposed anaerobic facility is operationally receiving region tons.

Republic's most significant category of operating costs is disposal expenses, representing 68 percent of the total disposal fee which is \$98.50 per ton. This disposal fee is comprised of several factors: (1) transfer, transport, landfill disposal, and waste recovery costs, (2) Metro's Regional System Fee and Excise Tax<sup>2</sup>, and (4) City of Wilsonville's Community Enhancement Fee<sup>2</sup> (See Figure III).

The city guarantees the hauler a reasonable rate of return. A reasonable rate of return in the solid waste industry falls in the range of 8 to 12 percent, with a target rate of return of 10 percent."<sup>3</sup> Republic’s rate of return for 2016 was 11.3% versus 8.5% in 2015. The increase in the rate of return from 2015 to 2016 was a result of a corporate reorganization that took place in 2016. As a result, the management fees allocated to the City of Wilsonville decreased 47% (\$146,612) from 2015 to 2016. Had this

<sup>1</sup> FY16 Metro collected and paid out \$86,676.17 in R&E fees for Willamette Resources/Wilsonville. Collier. Email April 7, 2017.

<sup>2</sup> Metro's Regional System Fee & Excise Tax: <http://www.oregonmetro.gov/sites/default/files/16130-Solid-Waste-Rates-factsheet-2016-07-01.pdf>.

<sup>3</sup> Clackamas County Solid Waste Collections History Final Document, R.Winterhalter, Page 3, June 29, 2016.



reorganization not taken place, the income as a percentage of revenue would have been approximately 8.98%<sup>4</sup>, which is very similar to the rate of return for 2015. Other than this change, the data found in Appendix A is consistent with prior year reports, though tonnage disposed did increase overall increasing the cost of disposal proportionately.

## Republic's Presence in the Wilsonville

### Republic Employees in the City

There are 232 employees that are managed through Republic's local Portland and North Valley business unit headquartered on Ridder Road. About one hundred of these staff physically work at the WRI site. Twelve (12) staff live in Wilsonville, an additional 20 employees live in Washington County and 68 live in nearby Clackamas County.

### Spending Locally

Republic staff from all over the United States visit our facility for training and corporation related activities and spent over \$42,431 in 2016 at Wilsonville restaurants, hotels, and businesses, directly supporting the local economy by other business units from multiple cities and states outside of Wilsonville. Local Staff were surveyed to estimate how much money they typically spend per month at nearby Wilsonville businesses such as restaurants, gas stations, entertainment, staff lunches/coffee, groceries, retail, and other services. Staff (conservatively) estimated that they spend an average of \$50 each per week in Wilsonville, 49 weeks per year (vacation time excluded), which reaches a staggering \$245,000 spent annually by Republic employees at local establishments.

Republic is a proud member of this community. We contribute to numerous organizations, donate services, and provide financial contributions to many causes. In 2016, our company donated close to \$15,000 to various organizations and services (this does not include in kind or volunteer activities):

- 1) Wilsonville Community Sharing
- 2) City of Wilsonville Parks and Recreation
- 3) Wilsonville Arts and Culture Council
- 4) Wilsonville Boy Scouts
- 5) City of Wilsonville Fun in the Park
- 6) Charbonneau Arts Festival
- 7) Wilsonville Rotary Club
- 8) City of Wilsonville Quarterly Activity Guide
- 9) Wilsonville Chamber of Commerce
- 10) Charbonneau Cemetery
- 11) Weekly trash collection for the city's maintenance shop and trash disposal

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<sup>4</sup> Clackamas County DRC report from Republic submitted for 2016 to R.Winterhalter.

for three locations in Memorial park estimated at \$500.

- 12) Financial donations and time contributions were made to Boy Scouts, Relay for Life, Wilsonville's Chamber and Rotary.

Republic also held and supported numerous community events:

- 1) Community Sharing 2<sup>nd</sup> Annual Walk
- 2) 2016 Festival of the Arts
- 3) Kiwanis Fun Run
- 4) Fun in the Park
- 5) 2016 Charbonneau Arts Festival
- 6) Wilsonville Easter Egg Hunt
- 7) Wilsonville WERK Day
- 8) Ride Connection – A Wilsonville SMART Transportation Partner
- 9) Wilsonville Bulky Waste Day
- 10) Wilsonville Chamber Wednesday Spark Events

### A Transfer Station in your City

If the transfer station on Ridder Road did not exist, Republic would have to take its collected materials to Oregon City's Metro South station. Republic's ability to offload its municipal tons in Wilsonville - rather than transporting the waste to Oregon City for disposal - enables Republic to reduce time on the roads, reduce congestion and pollution, leading to an avoidance of costs that would be required to purchase, operate, and maintain additional collection vehicles to accommodate the increased hauling distance.

Having a transfer station in Wilsonville's industrial area also provides revenue directly to the city. Metro collects a fee per ton of wet waste that is processed at WRI and pays this to the city through the community enhancement fee. This payment to the city averages about \$90,000 per year and is expected to increase if the SORT anaerobic digestion facility is built in 2018.

### Safety

Curbside collection ranks the fifth most dangerous job in America<sup>5</sup>. Republic takes safety very seriously. Each garbage truck weighs over **60,000** pounds and driving a truck of this size takes immense training and skill. A front load driver moves containers out of enclosures and positions them for pick up over **1,600** times per year. Republic's Wilsonville 2016 safety history includes three minor claims with over **70,000** total hours worked to handle the City's

A typical residential driver is on the streets of your city for **2350** hours per year.

<sup>5</sup> Refuse and recyclable materials collection remains the fifth most dangerous job in the U.S., according to [the Bureau of Labor Statistics](http://www.bls.gov/news.release/archives/20140404.htm) (BLS) via Recycling Today: <http://www.recyclingtoday.com/article/curbside-collection-ranks-as-dangerous-job/>, 4/4/2017

collection. Republic is actively regulated by numerous agencies and has award winning<sup>6</sup> safety programs and protocols to include:

**Figure V. A list of Republic’s Regulatory Agencies and Safety Programs.**

<b>Regulatory Agencies</b>	<b>Republic Safety Programs</b>
<b>OHSA</b> - Federal Occupational Safety and Health Administration	<i>Focus 6</i> - education program to prevent 6 most common types of accidents
<b>DOT, ODOT</b> - Federal and Oregon Department of Transportation	<i>One Fleet</i> - maintenance program to quality equipment
<b>EPA</b> - Environmental Protection Agency	<i>Dedicated to Safety</i> - staff incentive program to promote safety
<b>DEQ</b> - Department of Environmental Quality	<i>Dedicated to Excellence</i> - staff incentive program to promote excellence
<b>Metro</b> - Oregon Metro Regional Government	<i>Safety Alert System</i> - communication and education program to prevent accidents

### Educating the Community about Solid Waste Collection and Systems

Republic strives to educate about the solid waste industry and has hosted many individuals and groups to tour the WRI campus. In 2016, we hosted over 150 visitors at WRI for educational tours, to ride-a-longs in garbage trucks, and as part of our CNG ribbon cutting event in April of 2016. City councilors, state representatives, government agencies, high school students, youth groups, and city staff have visited WRI to learn about the recycling and solid waste system located in their own backyard. Having a local facility is advantageous for hands on learning about the solid waste industry.

WRI hosts and operates a public recycling depot that is open to the public (at no charge) each week from Monday through Friday. The public depot is not open Saturdays as it must be staffed at all times due to safety regulations. In 2016, the depot received **142.43** tons of materials which included recycling for the following: electronics, cardboard, paper, plastics, glass, scrap metals, and plastic film.

<sup>6</sup> Republic won the CINE Golden Eagle Award for its safety videos in 2009. <http://www.waste360.com/news/republic-safety-films-receive-awards-20091026>

## Sustainability

Republic has a long tradition of implementing innovative, sustainable programs and technologies. Republic is defining its approach to environmental responsibility through reduced emissions from operations, materials management, safety, community engagement, and employee growth opportunities. This is called our Blue Planet™ sustainability initiative<sup>7</sup>.

Our collection vehicles are fully automated which enables us to safely serve more customers daily. Republic was also the first hauling company in the Metro region to use B20 biodiesel fuel in its collection vehicles. Republic began using five Compressed Natural Gas (CNG) collection vehicles in Wilsonville in March 2016 and expects to have nine in use by the end of 2017. The city supported and encouraged Republic's transition to CNG vehicles. CNG trucks cost approximately \$350,000 each, about \$50,000 more than the cost of a basic diesel truck. The city's support of a stable franchise system enables collection companies to make more capital investments, like the CNG collection vehicles, fueling facility, and other equipment, to be distributed across multiple years of a service contract. If franchise agreements were done year to year, capital purchases would raise collection rates dramatically over one year to cover the risk of purchasing high cost assets.

In early 2017, Republic was named to the elite 2017 World's Most Ethical Companies® List by the Ethisphere Institute, a global leader in defining and advancing the standards of ethical business practices.

Each CNG truck reduces pollution on the streets of your city by seven times (as compared to a traditional diesel garbage collection truck) and this is equivalent to the planting of 600 mature trees<sup>8</sup>.

Republic's Pacific Region Composts facility (PRC) near Corvallis is the first DEQ permitted food waste composting facility in Oregon. PRC has composted material at this facility for the past 20 years. In 2016, PRC accepted 15,358 tons of organics material from WRI.

Republic captures methane gas generated at its landfill near Corvallis in a quantity sufficient to generate enough energy to fuel 5,000 homes.

## Looking Forward

### Metro Food Scraps- Mandatory Program Coming to the Region

Lastly, there are a number of activities now in process in the Metro region, notably Metro's Solid Waste Roadmap Project<sup>9</sup>, which could change the cost of solid waste collection services, specifically with the proposed implementation of a mandatory food

<sup>7</sup> Republic's Sustainability Report: [RepublicServices.com/sustainabilityreport](http://RepublicServices.com/sustainabilityreport).

<sup>8</sup> According the Environmental Protection Agency (EPA).

<sup>9</sup> Metro's Solid Waste Roadmap, <http://www.oregonmetro.gov/public-projects/solid-waste-roadmap> April 10, 2017, page 13.

scraps program for commercial entities. The 2017-18 Metro Solid Waste Forecast<sup>10</sup> (Forecast) indicates that the collection of organics for residential programs is expected to increase. Metro also showed that 18% of the overall disposed waste in the region is food, with businesses responsible for nine percent<sup>11</sup>. This represents a large, untapped portion of the region's waste that could be diverted from the landfills through a food scrap collection program. A mandatory program will necessitate equipment purchases, more routes, more trucks, and more drivers. Food waste containers are also more labor intensive as food becomes acidic upon breakdown in any container.

It is not possible at this time to predict with any accuracy an expense from an outcome of this effort. A new program could cause a change in disposal methods and may influence the cost to dispose of municipal solid waste generated in the Metro region.

#### A New Facility in Wilsonville

Republic is partnering with SORT Bioenergy to build and operate an anaerobic digester at its Wilsonville site. The ultimate goal for this facility is to divert food scraps from landfills and convert these scraps into energy-rich biogas which, in turn, is then converted into renewal energy. This facility has already received Department of Environmental Quality (DEQ) permits for air and water discharge and in February 2017 and received a permit to operate from the Metro regional government. Metro is releasing a Request for Proposal (RFP) in spring 2017 that will outline a process to guarantee the flow of regional tons of commercial food scraps to be processed by this facility. We expect to compete for this allocation of tons, and if won, construction of the new facility should commence in early 2018.

If this project is awarded the bid and is constructed, the tons received at the WRI facility will increase by an estimated 50,000 tons. The siting of this new facility in Wilsonville is expected to contribute an additional \$50,000 dollars to the Wilsonville community through the community enhancement fund paid through Metro, as well as stimulate revenue for the city through permitting fees, site development and other improvements.

In 2016, Republic requested the annexation of a parcel of land adjacent to the Ridder Road property to be incorporated in to the City. Pending development, this will generate property taxes and revenue for the city. This also serves as a testament to our long term commitment and partnership with the city.

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<sup>10</sup> Metro's Solid Waste Forecast 2017-18 <http://www.oregonmetro.gov/solid-waste-forecast> April 10, 2017.

<sup>11</sup> Metro's Solid Waste Roadmap, Food Scraps Project Q&A: Businesses March 2017, page 1.

In summary, Republic Services is proud to serve as your local solid waste partner. Being a local, conscientious service partner has many benefits for the citizens, businesses, and environment of our Wilsonville community. Our long term partnership has allowed for stability and strategic investments in high-quality service, facilities, and equipment to keep your community safe. We hope to continue this partnership long into the future.

Sincerely,

*Cindy Dolezel*

Cindy Dolezel  
Municipal Relations Manager



# ATTACHMENT A

## City of Wilsonville 2016 Recap



Republic Services of Clackamas and  
Washington Counties

# Financial



We'll handle it from here.™



*Republic Services of Clackamas & Washington Counties  
City of Wilsonville  
Statement of Income  
2011 through 2016 actuals*

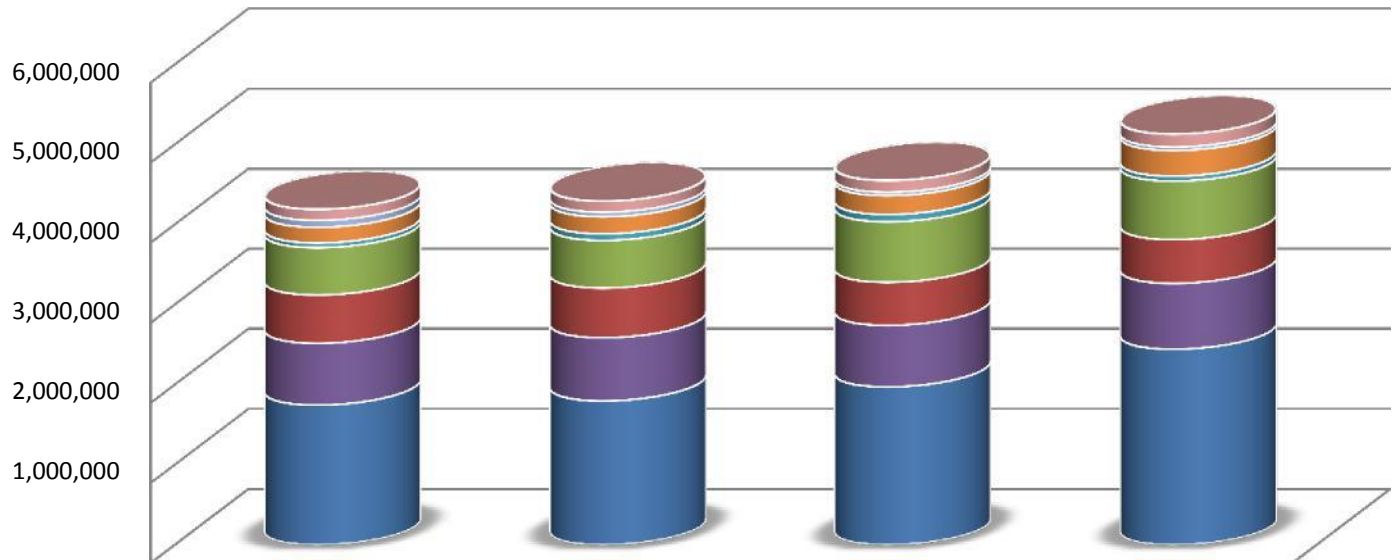
	2011	2012	2013	2014	2015	2016	% Change YOY
Revenue	4,655,237	4,902,229	5,141,169	5,167,317	5,353,653	6,358,566	18.8%
Cost of Operations	3,239,916	3,669,471	3,633,454	3,737,049	3,834,112	4,430,603	15.6%
Gross Profit	1,415,321	1,232,758	1,507,715	1,430,268	1,519,541	1,927,963	26.9%
Salaries, General and Administrative	561,135	594,000	590,674	595,263	756,845	732,002	-3.3%*
Gross Income	854,186	638,758	917,041	835,006	762,696	1,195,961	
Provision for Income Taxes (40%)	341,674	255,503	366,816	334,002	305,078	478,384	
Net Income	512,512	383,255	550,225	501,003	457,618	717,577	
Income as a Percentage of Revenue	11.0%	7.8%	10.7%	9.7%	8.5%	11.3%	

*\*As a result of a corporate reorganization in 2016, the corporate management fee allocated to the City of Wilsonville decreased \$146,612 from 2015 to 2016 (-47%). Had this reorganization not taken place income as a percentage of revenue would be approximately 8.98%.*

Republic Services of Clackamas & Washington Counties  
City of Wilsonville  
Schedule of Direct Expenses  
2011 through 2016 actuals

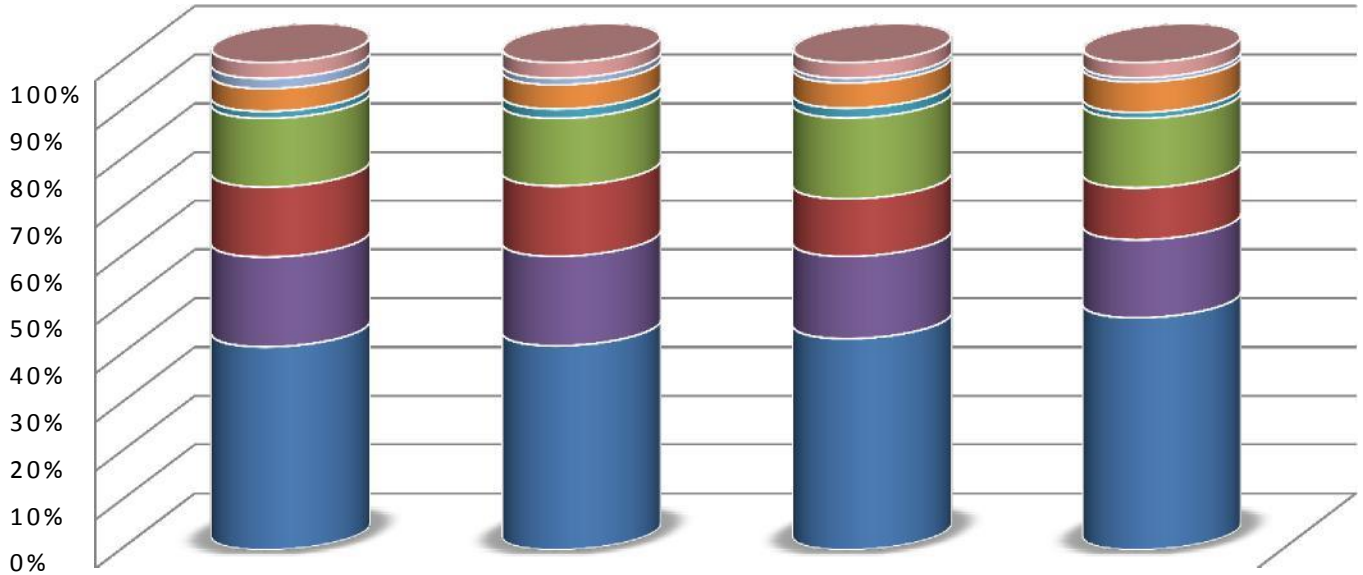
	2011	2012	2013	2014	2015	2016	% Change YOY
<b>COST OF OPERATIONS</b>							
Labor (wages, payroll tax, medical, pension)	599,787	727,486	772,066	788,112	768,532	821,731	6.9%
Repairs and Maintenance	191,844	223,415	298,016	311,785	262,155	289,831	10.6%
Vehicle Operating Costs	184,965	210,782	204,172	165,788	147,673	129,965	-12.0%
Facility	38,647	75,211	87,415	57,905	43,395	43,510	0.3%
Insurance	60,756	95,376	60,347	82,397	90,784	62,674	-31.0%
Disposal	1,650,766	1,864,565	1,745,622	1,798,172	1,972,407	2,443,482	23.9%
Franchise Fees	120,160	133,153	136,227	137,435	146,034	160,421	9.9%
Other Operating Costs	113,795	114,799	100,273	142,962	127,635	126,592	-0.8%
Wilsonville Donated Services	34,220	36,700	34,220	39,226	39,901	32,092	-19.6%
Depreciation	244,976	187,984	195,097	213,267	235,597	320,305	36.0%
<b>TOTAL COST OF OPERATIONS</b>	<b>3,239,916</b>	<b>3,669,471</b>	<b>3,633,454</b>	<b>3,737,049</b>	<b>3,834,112</b>	<b>4,430,603</b>	<b>15.6%</b>
<b>TOTAL SALARIES, GENERAL &amp; ADMINISTRATIVE</b>	<b>561,135</b>	<b>594,000</b>	<b>590,674</b>	<b>595,263</b>	<b>756,845</b>	<b>732,002</b>	<b>-3.3%</b>

### Republic Services - Wilsonville Cost Structure (\$)



	2013	2014	2015	2016
Franchise Fees	136,227	137,435	146,034	160,421
Facility Expenses	87,415	57,905	43,395	43,510
Depreciation	195,097	213,267	235,597	320,305
Insurance	60,347	82,397	90,784	62,674
Admin Expenses	590,674	595,263	756,845	732,002
Fuel, Vehicle, Other	602,460	620,536	537,463	546,388
Labor	772,066	788,112	768,532	821,731
Disposal	1,745,622	1,798,172	1,972,407	2,443,482

### Republic Services - Wilsonville Cost Structure (100%)



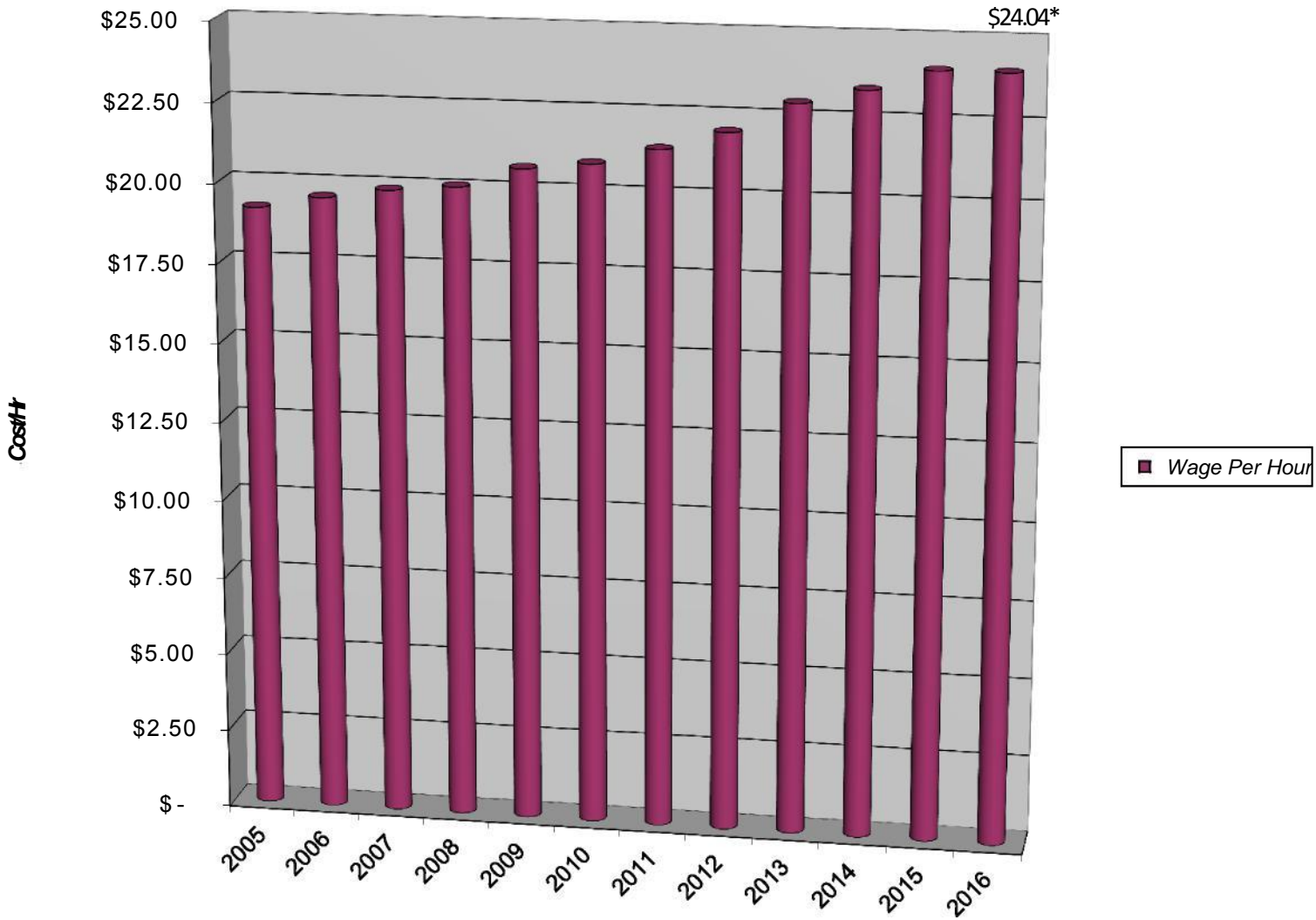
	2013	2014	2015	2016
Franchise Fees	3%	3%	3%	3%
Facility Expenses	2%	1%	1%	1%
Depreciation	5%	5%	5%	6%
Insurance	1%	2%	2%	1%
Admin Expenses	14%	14%	17%	14%
Fuel, Vehicle, Other	14%	15%	12%	11%
Labor	18%	19%	17%	16%
Disposal	42%	43%	43%	48%

**What does \$1 of garbage service pay for in 2016?**

<b>\$1 paid toward your monthly service</b>	<b>\$</b>	<b>1.00</b>
<i>Disposal</i>		38.4 ¢
<i>Labor</i>		12.9 ¢
<i>Repairs &amp; Maintenance</i>		4.6 ¢
<i>Fuel</i>		2.0 ¢
<i>Insurance</i>	1.0	¢
<i>Franchise Fees</i>		2.5 ¢
<i>Customer Service Costs</i>	11.5	¢
<i>Truck &amp; Container Replacement</i>		5.0 ¢
<i>Facility Expenses</i>		0.7 ¢
<i>Miscellaneous</i>		2.5 ¢
<i>Income Taxes</i>		7.5 ¢
<b>Net Profit</b>		<b>11.3 ¢</b>

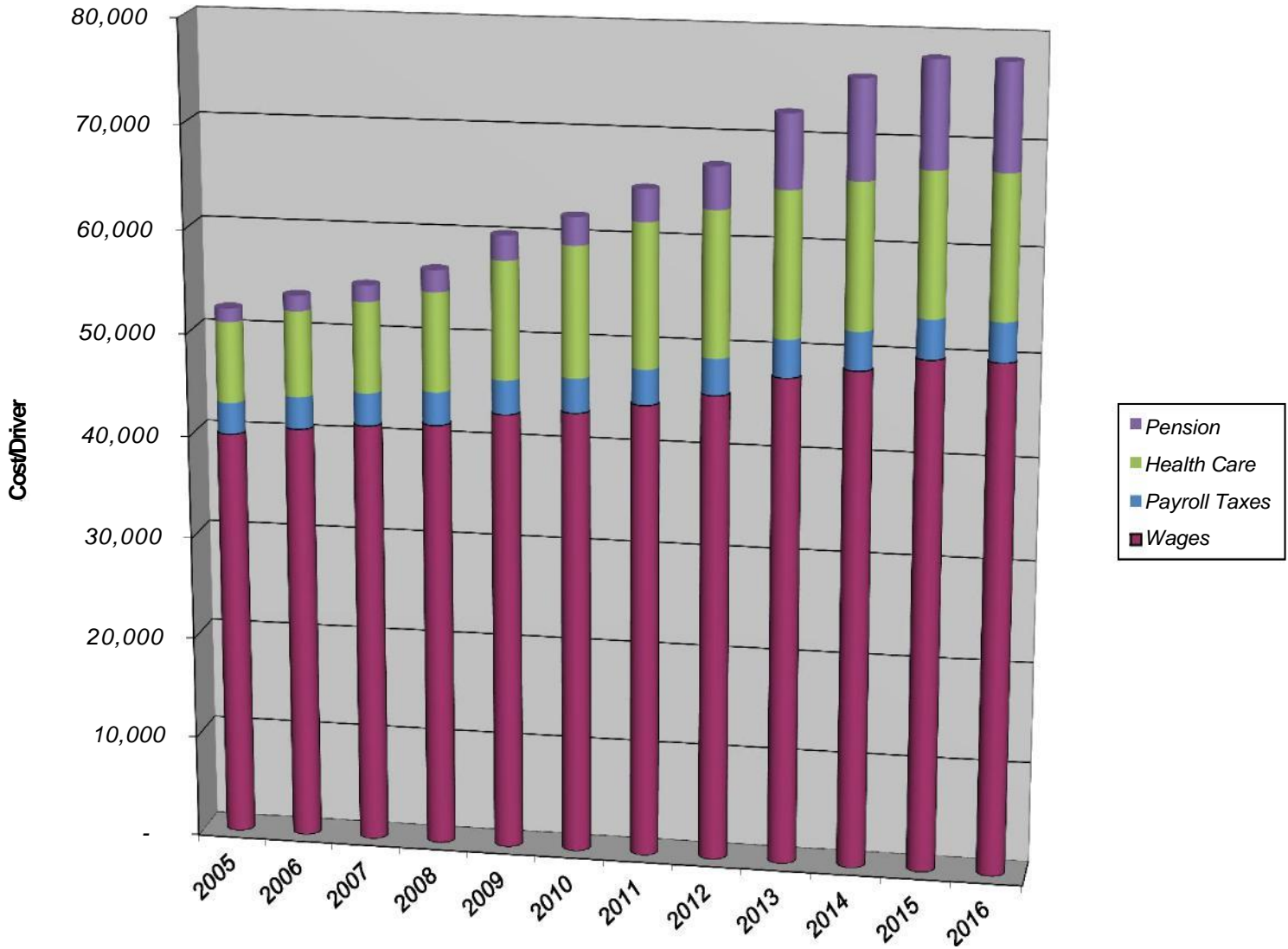


*Driver Wage Per Hour*



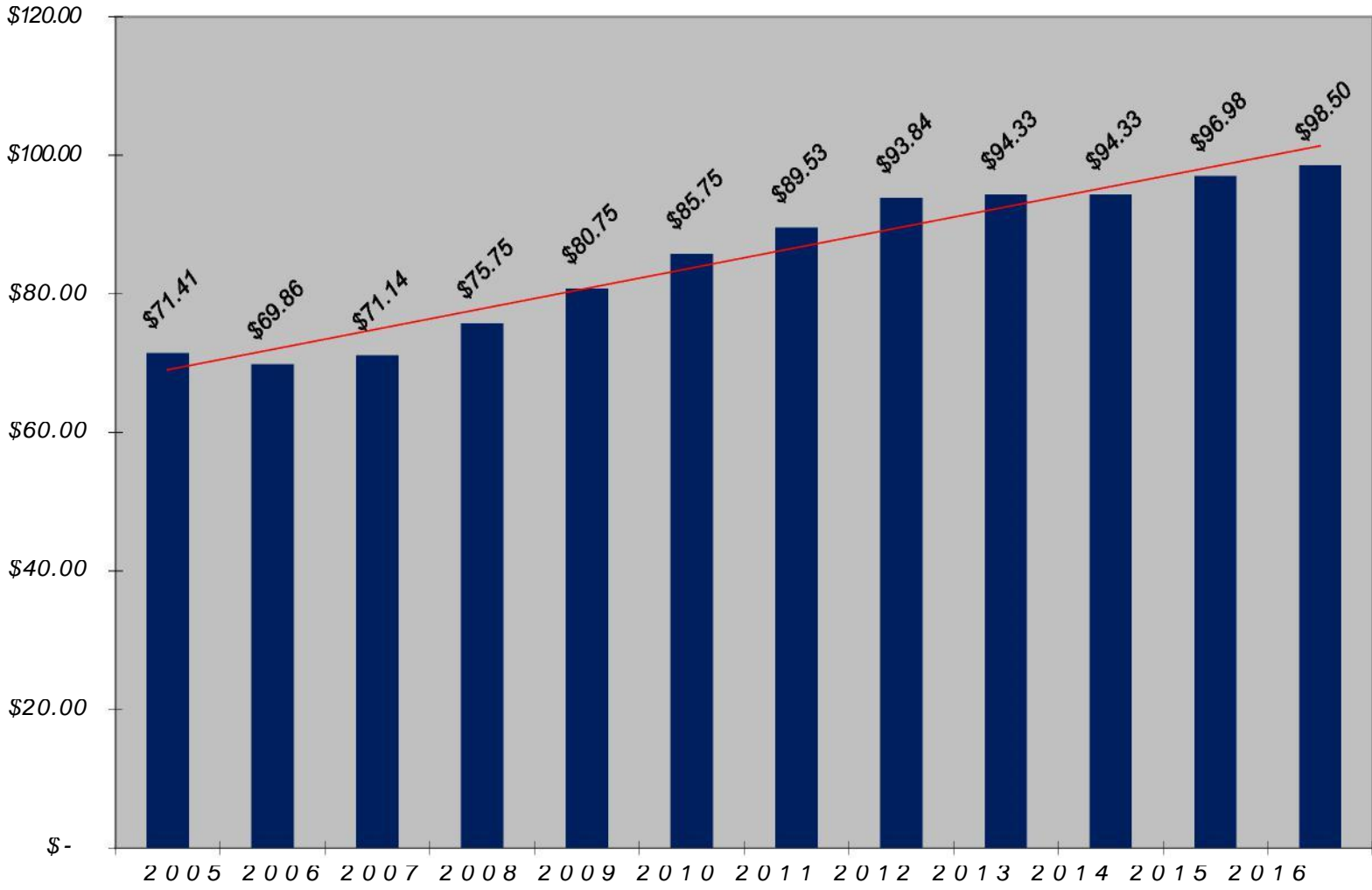
*\*Pending retroactive pay-rate change as of 10/1/2016 due to ongoing CBA negotiations*

**Labor Costs Per Year per Driver**



*\*Pending retroactive pay-rate change as of 10/1/2016 due to ongoing CBA negotiations*

*Disposal Cost Per Ton*







We'll handle it from here.™

Republic Services of Clackamas and  
Washington Counties  
10295 SW Ridder Rd  
Wilsonville, OR 97070  
503.682.3900  
[www.republicservices.com](http://www.republicservices.com)



**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date:</b> May 1, 2017		<b>Subject:</b> Community Outreach/Neighborhood BBQ's  <b>Staff Member:</b> Angela Handran <b>Department:</b> Administration	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b>	
<b>Staff Recommendation:</b> Staff is recommending moving away from the neighborhood barbeques and replacing them with one large summer event to increase attendance and make better use of city resources and staff time.			
<b>Recommended Language for Motion:</b>			
<b>Project / Issue Relates To:</b> <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:** Whether to replace the current practice of providing 2-3 neighborhood barbeques with one larger, community event in August of each year.

**EXECUTIVE SUMMARY:** The city sponsors 2-3 neighborhood barbeques each summer to help engage the public and provide information on city programs and projects. These events require significant staff time to plan, prepare and execute. Lately, these events have been sparsely

attended, despite outreach and marketing efforts targeted directly to the neighborhoods involved. Staff believes that having one large summer event will have a positive impact in terms of increasing attendance and providing a central venue for all community members to participate and learn about city programs, while highlighting one major topic each year. This year, community outreach staff proposes to work with community development staff to highlight the Town Center Master Plan. The 2018 event would highlight the city's 50<sup>th</sup> Birthday, and each succeeding year would provide an opportunity to focus on one big issue.

**EXPECTED RESULTS:** Staff believes that this change will increase community engagement, make better use of city resources and allow citizens to interact with each other on a more macro level.

**TIMELINE:** The proposed event would take place in August of each year, and staff would solicit the city council to provide direction on what item(s) to highlight prior to marketing the event.

**CURRENT YEAR BUDGET IMPACTS:** This is a budget neutral recommendation.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by:      Date:

**LEGAL REVIEW / COMMENT:**

Reviewed by:      Date:

**COMMUNITY INVOLVEMENT PROCESS:**

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups):

**ALTERNATIVES:**

**CITY MANAGER COMMENT:**

**ATTACHMENTS:**

**CITY COUNCIL ROLLING SCHEDULE**  
**Board and Commission Meetings 2017**

**Items known as of 04/25/17**

**MAY**

DATE	DAY	TIME	EVENT	LOCATION
5/1	Monday	7:30 p.m.	City Council Meeting	Council Chambers
5/8	Monday	6:30 p.m.	DRB Panel A – Cancelled	
5/9	Tuesday	4:20 p.m.	Parks & Rec Advisory Board	Park & Rec Admin Offices
5/10	Wed	1 p.m.	Wilsonville Community Seniors	Community Center
5/10	Wednesday	5 p.m.	Planning Commission	Council Chambers
5/15	Monday	7 p.m.	City Council Meeting	Council Chambers
5/18	Thursday	6 p.m.	Budget Committee	Council Chambers
5/22	Monday	6:30 pm.	DRB Panel B	Council Chambers
5/24	Wednesday	6:30 p.m.	Library Board	Library
5/29	Monday	Memorial Day All City Offices Closed		

**Community Meetings / Events**

5/13 WERK Day – 8 a.m. to Noon, Community Center

5/20 Bulky Waste Day 9 a.m. Republic Services

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**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

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A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, April 17, 2017. Mayor Knapp called the meeting to order at 7:20 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp  
Councilor Starr  
Councilor Stevens  
Councilor Lehan  
Councilor Akervall

Staff present included:

Bryan Cosgrove, City Manager  
Jeanna Troha, Assistant City Manager  
Barbara Jacobson, City Attorney  
Sandra King, City Recorder  
Chris Neamtzu, Planning Director  
Nancy Kraushaar, Community Development Director  
Delora Kerber, Public Works Director  
Jon Gail, Community Relations Coordinator  
Dwight Brashear, SMART Director  
Adam Phillips, Police Chief  
Mark Ottenad, Government and Public Affairs Director  
Eric Loomis, SMART

Motion to approve the order of the agenda.

Mayor Knapp suggested revising the agenda by moving Citizens Input to follow Mayors Business due to the number of proclamations on the agenda.

**Motion:** Councilor Starr moved to approve the order of the agenda with the recommended change in agenda sequence and to remove Resolution No. 2627 from the Consent Agenda. Councilor Lehan seconded the motion.

**Vote:** Motion carried 5-0.

## **MAYOR'S BUSINESS**

A. Wilsonville High School Basket Ball Team

Mayor Knapp read the proclamation recognizing the Wilsonville High School Basket Ball Team into the record and presented the team members with copies of the proclamation.

B. Appointment of Emily Bryant Utz, Group/Tourism Specialist for World Of Speed Museum for the Tourism Promotion Committee for Position No. 1 with a term ending June 30, 2019.

**Motion:** Councilor Lehan moved to appoint Emily Bryant Utz to the Tourism Promotion Committee Position No. 1, with the term ending June 30, 2019. The motion was seconded by Councilor Starr.

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**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

---

Councilor Lehan indicated there was one more position to fill on the Tourism Promotion Committee and the City was entertaining applications.

**Vote:** Motion carried 5-0.

C. Construction Safety Week Proclamation – Bill Kalapsa Safe Building Alliance

Mayor Knapp read the Construction Industry Safety Week Proclamation for the record.

D. Arbor Day Proclamation

Jennifer Scola presented the Arbor Day proclamation and announced the City has received the Tree City USA recognition for the 19<sup>th</sup> year. The Arbor Day Proclamation was read for the record by the Mayor.

E. The Mayor also reported on the meetings he attended on behalf of the City.

#### **CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

John Mohatt described his encounter with a dump truck on Wilsonville Road, who he believed was speeding. He complained he has not seen a traffic officer or police car in his neighborhood for months. Mr. Mohatt also expressed concerns about the diesel fumes from the number of trucks and buses traveling through the neighborhood.

Jan Johnson understood the City was considering the removal of the “No Thru Trucks” signs and she urged that the signs remain up. She thought the number of semi-trucks has increased, and they are speeding. She cautioned against becoming a sanctuary city due to the potential for gangs to feel they would be safe in Wilsonville if it is designated a sanctuary city.

Levi Levasa said he was an employee for Stafford Development Company who was involved in the Basalt Creek project. He maintained Tualatin needed space for residential housing, and that the UGB expansion was to include residential uses.

Gordon Root of the Stafford Development Company provided a handout containing portions of Exhibit F and G to Metro Ordinance No. 04-1040B. He felt those involved in the Basalt Creek area development are not familiar with the Metro Ordinance which lays out expansion process and that the principles of the ordinance should have been followed.

Sherman Leitgeb owns lands in the 41 acres of Basalt Creek central subarea. He does not think the area is suited for industrial or employment lands due to the topography and the rock; rather it is best suited for residential land. He understood when the 5500 acres of land were included in the UGB in 2004, the land was to be used “where possible” for employment lands; however, not all land can be used for employment use.

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**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

---

Simon Springall supported draft Resolution No. 2626. He thought it was important for people to understand this is not a resolution declaring the city a “sanctuary city”; rather it is designed to be supportive of federal and state laws.

Debra Smith Arthur spoke in support of inclusivity and the resolution. She thought the resolution is great way to represent our community and begin the work.

Vince Alexander congratulated the Council on the inclusivity resolution. Mr. Alexander sent Chief Phillips a survey regarding law enforcement policies dealing with law enforcement and immigration status. The list was provided by the ACLU which would like to see law enforcement agencies adopt the policies. The survey asked if certain policies were in place, and if not would the agency support the policy. Mr. Alexander met with Chief Phillips about the written policies and which ones were written for the sheriff’s office. He responded, “We politely decline to participate in this survey” and he provided a hand out from Sheriff Roberts department which states they adhere to the law under ORS181a(20). Mr. Alexander thought Council should consider the attitude of law enforcement in light of the increase in immigration sweeps.

Linda Ingalls, a teacher in Wilsonville schools, supported the inclusion resolution and thought it was a good message to give the whole community.

Parasa Chanramy expressed her support for the inclusivity resolution. She hoped the city continues to be a safe, healthy and inclusive place where everyone is embraced for their gifts.

Lyneil Vandermolen did not support a sanctuary city resolution and believed such a designation encouraged lawlessness and attracted gangs. She commented anti-bias laws were already in place and the resolution was unnecessary social engineering.

Deb Zundel believe in the inclusivity resolution reflects who we are in the community. She wants the community to feel safe and caring and that neighborhoods have strong connections. Ms. Zundel believed that citizens set the values in a community. She distributed an article written by Mayor Bloomberg of New York.

Hector Marquez explained he is a criminal justice student at Western Oregon University. He is concerned that bias and false information will create an unjust justice system. Mr. Marquez has been involved in the adoption of inclusivity resolutions in a number of cities throughout the state which shows the state can come together to support all citizens and that everyone is welcome.

Kathleen Thackham believed love and compassion will bring people together and pointed out criminals come in all shapes and sizes. She supported the inclusivity resolution and thanked the Council for considering an inclusion resolution.

Speaking through an interpreter Maria Jesus a 13 year Wilsonville resident, asked the Council to vote in favor of the inclusivity resolution.

Mayor Knapp stated there is a consensus of Council to incorporate revisions to the resolution and that it will be on the May 1<sup>st</sup> agenda for adoption.

## COUNCILOR COMMENTS

Council President Starr reflected in the second whereas in the inclusivity resolution, the first few words include “race, color, and national origin”. He pointed out the last segments of the whereas clause includes the terms “mental, emotional, and/or physical ability, age, or economic status...” The City helps to subsidize six multi-family apartments where many of people with these challenges live. The Councilor wanted the community to know he, Councilor Lehan, and Ms. Jacobson have toured the facilities in Villebois for people suffering from mental and emotional issues as well as other locations that were more about economic status, and he thought they did a good job of communicating the facility standards that should be maintained. They found these apartments and facilities are well maintained and dignified places to live. Councilor Starr wanted the community to know the Council cares about this group of residents and that it was important they have a good, safe place to call home.

Councilor Stevens appreciated Councilor Starr’s comments since it broadened the discussion to include everyone. One of the Councilors goals in drafting the resolution was to make sure it was all encompassing. There was a catalyst that prompted these actions and it was important to restate these values on a regular basis. It is important to make sure everyone knows they are welcome in Wilsonville and their voices matter.

Councilor Stevens noted the Parks and Recreation Master Plan will be holding an open house this coming Thursday. She announced WERK Day on May 13<sup>th</sup>

Councilor Lehan agreed with the remarks Council Starr made regarding the city’s fragile populations and that having a safe place to live is a part of the inclusivity resolution. Wilsonville’s population has made a commitment to address needs of the city’s fragile residents. The Councilor announced Document Shred Day scheduled for April 22 at Academy Mortgage, and the opportunity to learn about cemetery monument maintenance that same day at the Pleasant View Cemetery.

Councilor Akervall confirmed that it was appropriate for families and children to attend the Parks and Recreation Open House. She announced Bulky Waste Day has been scheduled for May 20<sup>th</sup> at Republic Services on Ridder Road.

## CONSENT AGENDA

Ms. Jacobson read the titles of the Consent Agenda items into the record.

- A. **Resolution No. 2627** – *This item was removed from the consent agenda.*  
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Change Order With Northstar Electrical Contractors Inc. For Additional Street Lighting Improvements (Capital Improvement Project #4696). (staff Mende)
- B. Minutes of the March 6, 2017 and March 20, 2017 Council Meetings. (staff – King)

**Motion:** Councilor Stevens moved to approve the Consent Agenda. Councilor Lehan seconded the motion.

**Vote:** Motion carried 5-0.



**PUBLIC HEARING**

A. Transit Master Plan Public Hearing to be continued to a date certain of June 5, 2017.

**Motion:** Councilor Lehan moved to continue the hearing on the Transit Master Plan to June 5, 2017. Councilor Starr seconded the motion.

**Vote:** Motion carried 5-0.

B. Continue the public hearing for the Frog Pond Master Plan to June 19, 2017.

Staff requested continuing the public hearing for the Frog Pond Master Plan.

**Motion:** Councilor Lehan moved to continue the hearing on the Frog Pond Master Plan to June 19, 2017. Councilor Starr seconded the motion.

**Vote:** Motion carried 5-0.

**CITY MANAGER'S BUSINESS**

No report was given.

**LEGAL BUSINESS**

No report was given.

**ADJOURN**

Mayor Knapp adjourned the meeting at 8:50 p.m.

Respectfully submitted,

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Sandra C. King, MMC, City Recorder

ATTEST:

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Tim Knapp, Mayor



**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date:</b> May 1, 2017		<b>Subject: Resolution No. 2626</b> Inclusive Cities  <b>Staff Member:</b> Barbara Jacobson <b>Department:</b> Legal	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b>	
<b>Staff Recommendation:</b> Staff recommends that Council adopt Resolution No. 2626			
<b>Recommended Language for Motion:</b> I move to approve Resolution No. 2626			
<b>Project / Issue Relates To:</b> <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:**

Whether or not to adopt the attached Resolution.

**EXECUTIVE SUMMARY:**

Pursuant to several City Council discussions and work sessions, the following is a revised version of the inclusionary resolution, taking into account comments made by Council during the last work session.

**EXPECTED RESULTS:**

Awareness of desire for inclusive and welcoming environment within the Wilsonville community.

**TIMELINE:**

Upon passage.

**CURRENT YEAR BUDGET IMPACTS:**

None.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by:      Date:

**LEGAL REVIEW / COMMENT:**

Reviewed by: Barbara Jacobson      Date: 4/18/17  
Author of Report.

**COMMUNITY INVOLVEMENT PROCESS:**

Three public City Council meetings where testimony was taken.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

Resolution supports fair and equal treatment for community members.

**ALTERNATIVES:**

Pass Resolution or do not pass Resolution.

**CITY MANAGER COMMENT:**

**ATTACHMENTS:**

Resolution No. 2626

**RESOLUTION NO. 2626**

**A RESOLUTION DECLARING THE CITY OF WILSONVILLE A WELCOMING AND INCLUSIVE CITY**

WHEREAS, the City of Wilsonville has and will continue to encourage all Wilsonville residents to thrive and advance in all aspects of community life, including education, employment, recreation, City services, and community involvement; and

WHEREAS, persons of all races, color, national origin, immigration or refugee status, religion, sex, gender identity, sexual orientation, marital status, mental, emotional, and/or physical ability, age, or economic status all collectively contribute to the health, well-being, economy, and general welfare of the Wilsonville community as families, neighbors, workers, and taxpayers; and

WHEREAS, discrimination against any group of persons can negatively impact the health, well-being, and general welfare of the City by leading to community disengagement, diminished economic and educational opportunities, increased stigmatization, and diminished physical, mental, and emotional health; and

WHEREAS, the City recognizes the inherent worth and dignity of all persons and believes all should be treated with compassion and respect regardless of race, color, national origin, immigration or refugee status, religion, sex, gender identity, sexual orientation, marital status, mental, emotional, and/or physical ability, age, or economic status; and

WHEREAS, the City Council has received a significant amount of public testimony expressing concern that recent changes to federal immigration policies are generating fear and anxiety among members of the City's diverse communities; and

WHEREAS, in keeping with the City's commitment to fairness and equity, as recently expressed in the January 5, 2017 Martin Luther King Jr. Day Proclamation, Wilsonville hereby reaffirms a strong commitment to social equality and justice;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City of Wilsonville is an inclusive City that has and will continue to welcome the collective contributions of all persons, honoring and respecting people of every race, color, national origin, immigration or refugee status, heritage, culture,

religion, sex, gender, gender identity, sexual orientation, marital status, mental and/or physical ability, age, or economic status.

2. The City will continue, in a manner consistent with the laws of the United States of America, the State of Oregon, and the City of Wilsonville, to prohibit the use of City funds, personnel, and/or equipment for the enforcement of federal immigration laws. This Resolution shall be interpreted and executed in a manner consistent with ORS 181A.820 and with 8 U.S.C. §§ 1373 and 1644. In the event this Resolution directly conflicts with either state or federal law, such directly conflicting state or federal law must control.
3. The City of Wilsonville will ensure all City services are provided regardless of immigration status. Further, City staff will not ask for or otherwise seek out an individual's immigration status as a condition of providing City services, unless the provision of such services has a legal requirement to obtain such information.
4. The City desires that all of its residents feel safe to utilize all City-owned or sponsored facilities, including the parks, Community Center, library, and SMART transit, without fear of discrimination or federal immigration enforcement or detention.
5. The Wilsonville City Council encourages all Wilsonville residents to unite and work together to promote kindness and understanding in our shared community, rejecting hatred, bigotry, and divisiveness, as this community strives to protect the freedoms held dear and granted to all by the United States Constitution. While this City Council may pass this inclusivity resolution in the hope that it is inspirational, the only true measure of its success will be in how all members of the community elect to treat each other day in and day out.
6. This Resolution becomes effective upon the date of adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 1st day of May, 2017, and filed with the Wilsonville City Recorder this date.

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Tim Knapp, Mayor

ATTEST:

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Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Stevens

Councilor Lehan

Councilor Akervall

**RESOLUTION NO. 2626**

**A RESOLUTION DECLARING THE CITY OF WILSONVILLE A WELCOMING AND INCLUSIVE CITY**

WHEREAS, the City of Wilsonville has and will continue to encourage all Wilsonville residents to thrive and advance in all aspects of community life, including education, employment, recreation, City services, and community involvement; and

WHEREAS, persons of all races, color, national origin, immigration or refugee status, religion, sex, gender identity, sexual orientation, marital status, mental, emotional, and/or physical ability, age, or economic status all collectively contribute to the health, well-being, economy, and general welfare of the Wilsonville community as families, neighbors, workers, and taxpayers; and

WHEREAS, discrimination against any group of persons can negatively impact the health, well-being, and general welfare of the City by leading to community disengagement, diminished economic and educational opportunities, increased stigmatization, and diminished physical, mental, and emotional health; and

WHEREAS, the City recognizes the inherent worth and dignity of all persons and believes all should be treated with compassion and respect regardless of race, color, national origin, immigration or refugee status, religion, sex, gender identity, sexual orientation, marital status, mental, emotional, and/or physical ability, age, or economic status; and

WHEREAS, the City Council has received a significant amount of public testimony expressing concern that recent changes to federal immigration policies are generating fear and anxiety among members of the City's diverse communities; and

WHEREAS, in keeping with the City's commitment to fairness and equity, as recently expressed in the January 5, 2017 Martin Luther King Jr. Day Proclamation, Wilsonville hereby reaffirms a strong commitment to social equality, and justice, ~~and inclusion; and;~~

~~WHEREAS, Oregon Governor Kate Brown's Executive Order 17-04 renews Oregon's commitment to protecting its immigrant, refugee, and religious minority residents;~~

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City of Wilsonville is an inclusive City that has and will continue to ~~embrace, celebrate, and~~ welcome the collective contributions of all persons, honoring and respecting people of every race, color, national origin, immigration or refugee status, heritage, culture, religion, sex, gender, gender identity, sexual orientation, marital status, mental and/or physical ability, age, or economic status.
2. The City will continue, in a manner consistent with the laws of the United States of America, the State of Oregon, and the City of Wilsonville, to prohibit the use of City funds, personnel, and/or equipment for the enforcement of federal immigration laws. This Resolution shall be interpreted and executed in a manner consistent with ORS 181A.820 and with 8 U.S.C. §§ 1373 and 1644. In the event this Resolution directly conflicts with either state or federal law, such directly conflicting state or federal law must control.
3. The City of Wilsonville will ensure all City services are provided regardless of immigration status. Further, City staff will not ask for or otherwise seek out an individual's immigration status as a condition of providing City services, unless the provision of such services has a legal requirement to obtain such information.
4. The City desires that all of its residents feel safe to utilize all City-owned or sponsored facilities, including the parks, Community Center, library, and SMART transit, without fear of discrimination or federal immigration enforcement or detention.
5. The Wilsonville City Council encourages all Wilsonville residents to unite and work together to promote kindness and understanding in our shared community, rejecting hatred, bigotry, and divisiveness, as this community strives to protect the freedoms held dear and granted to all by the United States Constitution. While this City Council may pass this inclusivity resolution in the hope that it is inspirational, the only true measure of its success will be in how all members of the community elect to treat each other day in and day out.
6. This Resolution becomes effective upon the date of adoption.



ADOPTED by the Wilsonville City Council at a regular meeting thereof this     1<sup>st</sup> day of ~~April~~May, 2017, and filed with the Wilsonville City Recorder this date.

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Tim Knapp, Mayor

ATTEST:

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Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Stevens

Councilor Lehan

Councilor Akervall



**CITY COUNCIL MEETING  
STAFF REPORT**

<p><b>Meeting Date:</b> May 1, 2017</p>	<p><b>Subject:</b></p> <ul style="list-style-type: none"> <li>➤ Ground Lease for Raw Water Pipeline;</li> <li>➤ First Amendment Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership (“First Amendment”); and</li> <li>➤ Willamette Water Supply System Intake Facility Agreement (“Intake Agreement”)</li> </ul> <p><b>Staff Member:</b> Barbara Jacobson, Delora Kerber, and Susan Cole</p> <p><b>Department:</b> Legal</p>	
<p><b>Action Required</b></p>	<p><b>Advisory Board/Commission Recommendation</b></p>	
<p> <input type="checkbox"/> Motion  <input type="checkbox"/> Public Hearing Date:  <input type="checkbox"/> Ordinance 1<sup>st</sup> Reading Date:  <input type="checkbox"/> Ordinance 2<sup>nd</sup> Reading Date:  <input checked="" type="checkbox"/> Resolution  <input type="checkbox"/> Information or Direction  <input type="checkbox"/> Information Only  <input type="checkbox"/> Council Direction  <input type="checkbox"/> Consent Agenda                 </p>	<p> <input checked="" type="checkbox"/> Approval  <input type="checkbox"/> Denial  <input type="checkbox"/> None Forwarded  <input type="checkbox"/> Not Applicable                 </p> <p><b>Comments:</b></p>	
<p><b>Staff Recommendation:</b> Staff recommends that Council approve the above-referenced documents.</p>		
<p><b>Recommended Language for Motion:</b> I move that we adopt Resolution No. 2628 directing the City Manager to enter into the Ground Lease, First Amendment, and Intake Agreement in substantially the forms as attached to this Resolution (subject to any minor clean-up or conformity edits).</p>		
<p><b>Project / Issue Relates To:</b> <i>[Identify which goal(s), master plans(s) your issue relates to.]</i></p>		
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>	<p><input type="checkbox"/> Not Applicable</p>

**ISSUE BEFORE COUNCIL:** Whether to enter into a ninety-nine (99) year Ground Lease for a Raw Water Pipeline that would allow Tualatin Valley Water District (TVWD) and the City of Hillsboro (collectively “Lessors”) to run an approximately five-and-a-half to six-foot (5.5’ to 6’) diameter raw water pipeline through approximately three (3) miles of City of Wilsonville property in order to pump Willamette River water from Wilsonville to a new water treatment plant owned and operated by TVWD to supply water to Hillsboro, and potentially other cities, with Willamette River water. If the City elects to enter into the Ground Lease, then the City would also enter into the First Amendment and Intake Agreement. The foregoing agreements are collectively referred to as the “Water Agreements.” The Water Agreements are attached hereto as Exhibits 1, 2, and 3 and are incorporated by reference herein.

**EXECUTIVE SUMMARY:** Several discussions regarding negotiations relating to the three Water Agreements before Council have been occurring regularly for more than two (2) years. As a brief recap of the transactions at issue, in approximately July of 2000, Wilsonville and TVWD entered into an Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership for the current water treatment plant located in Wilsonville that currently serves Wilsonville and Sherwood. Since that time, only Wilsonville, and later Sherwood, have utilized that water treatment facility, with TVWD having sold some of its use rights to Sherwood. TVWD has determined, for seismic reasons and other considerations, that it will build a water treatment facility of its own but will retain ownership in the current water treatment plant and will use the Wilsonville intake facility to serve its new plant. TVWD would then pump raw water from the river through that intake facility to that new, yet to be constructed, water treatment plant to be built at an undisclosed location in Washington County, with Hillsboro as the primary user of the new plant. Wilsonville stands to gain no use rights and only limited beneficial use from installation of the raw water pipe, intake facility upgrades, and construction of the new plant. Wilsonville will, however, experience significant disruption of its land and roads over an anticipated six (6) year construction period in order to allow this facility to be built for the benefit of other local governments in the region. Therefore, in exchange for allowing the raw water pipeline to be run through Wilsonville and an expanded use of the existing intake facility, through long and protracted negotiations, the parties would agree to the following three Water Agreements:

**Ground Lease:**

1. Wilsonville will lease to TVWD and Hillsboro a large area of land (primarily below the ground surface) in which to place an approximately 6-foot (6’) diameter raw water pipeline approximately eight feet (8’) underground, stretching for approximately three (3) miles through the City. The Lease will be for 99 years.
2. In consideration of the Lease, Lessors will pay the City rent in the total cash amount of Seventeen Million One Hundred Eighty-Four Thousand One Hundred Twenty-Seven Dollars (\$17,184,127). Lessor will pay this rent in annual installments of \$173,577, payable in advance of each fiscal year, retroactive to July 1, 2016, and every July 1 up to and including on July 1, 2025. On July 1, 2026, a final lump sum rent payment in the

amount of \$15,448,357 will be paid to Wilsonville. Construction is expected to be completed by no later than this date.

3. As additional consideration, Lessor will make six (6) significant infrastructure improvements to City streets, which will benefit Wilsonville, as outlined in the attached Ground Lease, as Lessor constructs in those various areas.
4. Lessor will also provide significant seismic upgrades to the existing intake facility owned by TVWD and Wilsonville, at TVWD's expense, as well as some other seismic improvements that will benefit Wilsonville's existing plant, at no financial cost to Wilsonville.

There are many other important provisions of the Lease, including a requirement for removal of the pipe, at Wilsonville's direction, upon termination of the Lease; significant provisions regarding environmental compliance, cleanup, and remediation; strict construction requirements and oversight; and insurance and indemnities. The full Ground Lease is attached with the exhibits available at this time. Final alignment is still being determined.

**First Amendment:**

1. Although TVWD will continue to retain co-ownership in the existing Wilsonville Water Treatment Plant and land with Wilsonville, the Agreement between Wilsonville and TVWD will be amended to provide that Wilsonville will become the Managing Owner of the Treatment Plant in perpetuity unless Wilsonville elects to resign from that position.
2. The First Amendment adds a new section that provides that Wilsonville will give TVWD and the other municipalities an easement to run from the current intake facility location westerly along the Willamette River, and then northerly through the property owned by TVWD and Wilsonville, in an exact location to be agreed upon by Wilsonville and TVWD. The Easement Agreement will also include area for several aboveground structures that will take up approximately two acres, as currently configured. This construction will cause some disruption to the park area around the treatment plant and will make the use of the upper site for sports fields, as has previously been talked about, a likely incompatible use.
3. TVWD, as co-owner of the plant real estate, will dedicate right-of-way to Wilsonville for an extension of Kinsman Road through a portion of the property, yet to be determined, for the future Boones Ferry Road to Brown Road east-west connector road and the Kinsman extension to the connector road.
4. TVWD also agrees to pay a pro rata share of the repairs and improvements needed to the existing intake facility. The prior agreement put all responsibility for such repairs on the users of the water plant (Wilsonville and Sherwood only).

**Intake Agreement:**

After much negotiation, it has been agreed that the City will receive an additional 5 MGD in exchange for the Easement Agreement discussed above and a payment not to exceed \$125,000 to TVWD, based on actual cost to upgrade and permit the expanded intake facility. Staff views this as a very favorable price. The City is getting credit for the screen and permitting already done and is the only entity whose buy-in price is capped. Negotiations originally started at close to \$700,000.

**EXPECTED RESULTS:** Lessors will construct the raw water pipeline through an agreed upon route in Wilsonville, which will cause disruption to the community. In exchange, however, Wilsonville will receive a significant benefit in terms of the rent received that will be used to pay for future City improvements, as well as the road improvements that Lessors will make as a part of the construction project. Wilsonville will also receive a benefit of increased capacity at the intake facility and will have managing control of the Treatment Plant. Additionally, water is an essential resource for all citizens of the region and this line will benefit the region in providing an alternative for increased water supply to Hillsboro and potentially other communities.

**TIMELINE:** 2016-2022 for construction through Wilsonville. Lease expires on June 30, 2115.

**CURRENT YEAR BUDGET IMPACTS:** Retroactive Rent of \$173,577 will be received within thirty (30) days of execution of the Lease.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: SCole Date: 4/24/2017

**LEGAL REVIEW / COMMENT:** These documents memorialize a complex transaction. Several more documents pertaining to the larger group and Wilsonville remain to be negotiated. Thus, City Council may wish to consider authorizing the City Manager to enter into the above documents only after the Intake IGA, Purchase and Sale Agreements, and Easement Agreement are agreed to.

Reviewed by: BJacobson Date: April 20, 2017

**COMMUNITY INVOLVEMENT PROCESS:** n/a

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:** As outlined above, construction of this magnitude over a period anticipated to be up to six (6) years (although hoped to be shorter) will be disruptive to certain City streets and will cause additional managed traffic congestion to various areas of the City, at times. This inconvenience is offset by the regional need for this facility, as well as the substantial rent, seismic improvements, and roadway improvements that will be made to directly benefit the citizens of Wilsonville. Additionally, as a part of this project, the City retains management and control over the existing water treatment plant and may acquire additional capacity at its water treatment plant which will help ensure an adequate water supply for the City further into the future.

**ALTERNATIVES:** Reject the proposal and direct staff to negotiate for different terms. Elect not to offer a ground lease.

**CITY MANAGER COMMENT:**

**ATTACHMENTS:**

Resolution No. 2628

**RESOLUTION NO. 2628**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO: (1) THE FIRST AMENDMENT TO AGREEMENT REGARDING WATER TREATMENT PLANT DESIGN, CONSTRUCTION, OPERATION, AND PROPERTY OWNERSHIP; (2) THE WILLAMETTE WATER SUPPLY SYSTEM INTAKE FACILITY AGREEMENT WITH TUALATIN VALLEY WATER DISTRICT; AND (3) THE GROUND LEASE FOR RAW WATER PIPELINE WITH TUALATIN VALLEY WATER DISTRICT AND THE CITY OF HILLSBORO**

WHEREAS, the City of Wilsonville and the Tualatin Valley Water District (TVWD) are the original and current owners in the Wilsonville Willamette River Water Treatment Plant (WRWTP) land and facilities, including the current Willamette Intake Facilities (WIF); and

WHEREAS, on or about July 6, 2000, Wilsonville and TVWD entered into an Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership (the "Agreement") for the WRWTP that currently serves Wilsonville and Sherwood, and pursuant to that Agreement, improvements were made to the WRWTP, and

WHEREAS, the Agreement provides for a transfer of the Managing Owner position from Wilsonville to TVWD if Wilsonville's usage from the WRWTP is less than fifty percent (50%) of the total usage, but Wilsonville has continuously been the designated Managing Owner, managing the WRWTP since its construction, and desires to retain that position; and

WHEREAS, TVWD has determined, for seismic reasons and other considerations, that it will build a water treatment facility of its own; and

WHEREAS, TVWD, along with the City of Hillsboro and potentially other units of local government, plans to build the new water treatment facility at a location other than the WRWTP; and

WHEREAS, TVWD will most likely not obtain finished drinking water from the WRWTP but will retain ownership in the WRWTP and desires to use the WIF to serve its new plant; and

WHEREAS, TVWD intends to pump raw water from the river through the WRWTP WIF to its new, yet to be constructed, water treatment plant to be built at an undisclosed location in Washington County, with Hillsboro as the primary user of the new plant; and

WHEREAS, although Wilsonville stands to gain no use rights and only limited beneficial use from installation of the raw water pipe, intake facility upgrades, and construction of the new

plant, Wilsonville is amenable to allowing this facility to be built for the benefit of other local governments in the region; and

WHEREAS, to this end, Wilsonville, TVWD, and the City of Hillsboro (the “Parties”) have undertaken arm’s length negotiations over the past two years with regards to the rents, terms, and conditions of a Ground Lease and, given the respective public interests to be furthered, and taking into consideration the various circumstances, the Parties are satisfied that the terms and conditions are reasonable and rational given the impacts and benefits to be incurred; and

WHEREAS, The Parties are authorized to enter into this Lease under the authority of ORS Chapter 190, ORS 271.310, and ORS 271.380; and

WHEREAS, one of the elements of consideration by TVWD for the negotiated Ground Lease is to amend the Agreement to vest Wilsonville as the permanent Managing Owner of the WRWTP; and

WHEREAS, TVWD wishes to sell a portion of its interest in the WIF to other municipal partners (“WIF Partners”) through a Willamette Intake Facilities Intergovernmental Agreement and, in conjunction therewith, desires to upgrade the WIF; and

WHEREAS, Wilsonville is satisfied with the function of the WIF, as it currently exists, but is willing to cooperate with TVWD so that TVWD can sell and upgrade the assets to the WIF Partners and, in conjunction therewith, is also willing to become a WIF Partner along with TVWD and the others;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. Wilsonville will lease to TVWD and Hillsboro a large area of land (primarily below the ground surface) in which to place an approximately 6-foot (6’) diameter raw water pipeline approximately eight feet (8’) underground, stretching for approximately three (3) miles through the City. The Lease will be for 99 years.
2. In consideration of the Lease, Lessors will pay the City rent in the total cash amount of Seventeen Million One Hundred Eighty-Four Thousand One Hundred Twenty-Seven Dollars (\$17,184,127). Lessor will pay this rent in annual installments of \$173,577, payable in advance of each fiscal year, retroactive to July 1, 2016, and every July 1 up to and including on July 1, 2025. On July 1, 2026, a final lump sum rent payment in the



amount of \$15,448,357 will be paid to Wilsonville. Construction is expected to be completed by no later than this date.

3. As additional consideration, Lessor will make six (6) significant infrastructure improvements to City streets, which will benefit Wilsonville, as outlined in the attached Ground Lease, as Lessor constructs in those various areas.
4. Lessor will also provide significant seismic upgrades to the existing intake facility owned by TVWD and Wilsonville, at TVWD's expense, as well as some other seismic improvements that will benefit Wilsonville's existing plant, at no financial cost to Wilsonville.
5. Although TVWD will continue to retain co-ownership in the existing Wilsonville Water Treatment Plant and land with Wilsonville, the Agreement between Wilsonville and TVWD will be amended to provide that Wilsonville will become the Managing Owner of the Treatment Plant in perpetuity unless Wilsonville elects to resign from that position.
6. The First Amendment adds a new section that provides that Wilsonville will give TVWD and the other municipalities an easement to run from the current intake facility location westerly along the Willamette River, and then northerly through the property owned by TVWD and Wilsonville, in an exact location to be agreed upon by Wilsonville and TVWD. The Easement Agreement will also include area for several aboveground structures that will take up approximately two acres, as currently configured. This construction will cause some disruption to the park area around the treatment plant and will make the use of the upper site for sports fields, as has previously been talked about, a likely incompatible use.
7. TVWD, as co-owner of the plant real estate, will dedicate right-of-way to Wilsonville for an extension of Kinsman Road through a portion of the property, yet to be determined, for the future Boones Ferry Road to Brown Road east-west connector road and the Kinsman extension to the connector road.
8. TVWD also agrees to pay a pro rata share of the repairs and improvements needed to the existing intake facility. The prior agreement put all responsibility for such repairs on the users of the water plant (Wilsonville and Sherwood only).
9. After much negotiation, it has been agreed that the City will receive an additional 5 MGD in exchange for the Easement Agreement discussed above and a payment not to exceed

\$125,000 to TVWD, based on actual cost to upgrade and permit the expanded intake facility. Staff views this as a very favorable price. The City is getting credit for the screen and permitting already done and is the only entity whose buy-in price is capped. Negotiations originally started at close to \$700,000.

10. This Resolution becomes effective upon the date of adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this \_\_\_\_ day of \_\_\_\_\_, 2017, and filed with the Wilsonville City Recorder this date.

---

Tim Knapp, Mayor

ATTEST:

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Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Stevens

Councilor Lehan

Councilor Akervall

Attachments:

Exhibit A – Ground Lease for Raw Water Pipeline

Exhibit B – First Amendment to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership

Exhibit C – Willamette Water Supply System Intake Facility Agreement

## **GROUND LEASE FOR RAW WATER PIPELINE**

This Ground Lease (the “Lease” or “Agreement”) is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2017 (the “Effective Date”), by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (hereinafter referred to as “Lessor”), the **City of Hillsboro**, a duly chartered home rule municipal government of the State of Oregon, and the **Tualatin Valley Water District** (“TVWD”), a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (hereinafter jointly and severally referred to as “Lessee”), for a raw water transmission pipeline under the following terms, conditions, and limitations. Lessor and Lessee may be collectively referred to as the “Parties” or individually as a “Party.”

### **RECITALS**

- A.** The Parties are authorized to enter into this Lease under the authority of ORS Chapter 190, ORS 271.310, and ORS 271.380.
- B.** The Parties have undertaken arm’s length negotiations with regard to the rents, terms, and conditions of this Lease and, given the respective public interests to be furthered, and taking into consideration the various circumstances, are satisfied that the terms and conditions are reasonable and rational given the impacts and benefits to be incurred.

NOW, THEREFORE, incorporating the above Recitals as if fully set forth below, the Parties agree as follows:

### **AGREEMENT**

**1. PROPERTY.**

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the land described in **Section 2** to construct, reconstruct, operate, maintain, repair, replace, and remove a pipeline and necessary appurtenances for the transportation of raw water from the Willamette River to a treatment facility outside the City of Wilsonville, subject to all the terms, conditions, and provisions of this Lease.

**2. DESCRIPTION OF LEASE AREA AND PROJECT AREA.**

2.1. **Lease Area.** The leased property (“Lease Area”) is generally described as an area of subsurface land that begins in an area that, unless allowed otherwise in accordance with **Section 3.3**, will be a minimum of eight (8) feet below ground surface, is twelve (12) feet wide, and can range in depth from fourteen (14) to twenty-one (21) feet from the surface in order to house a 66 inch pipeline, together with such land as described below to reasonably accommodate appurtenances such as vent pipes, meters, vaults, and their screening, as may be required by Lessor

under its regulations or otherwise agreed to by the Parties. The minimum depth may be adjusted by Lessor, as provided in **Section 3.3**. See **Section 2.4** for a more detailed description of the Lease Area.

2.2. **Project Area.** The Project Area is composed of the following: Lease Area and all of the area located above it, plus Temporary Construction Areas during any given period of construction (“Project Area”). The Project Area, like the Lease Area, will expand as the construction progresses.

2.3. **Temporary Construction Areas.** At the time 30% construction plans required for initial construction, or for any subsequent maintenance, repair, reconstruction, or removal, are submitted by Lessee to Lessor for Lessor’s approval, Lessee shall request use of any needed reasonable adjacent area, which shall be added to the Project Area, for the temporary time to conduct construction, maintenance, repair, reconstruction, or removal of the pipeline and any appurtenances and screening. Lessor’s approval of the area shall not be unreasonably withheld, provided such area is located adjacent to the Project Area and does not interfere with Lessor’s use of the area or with any other third-party’s use of the area with a prior right to use the requested area. Upon Lessor’s approval, the area shall be included in the Project Area. Such approval shall not be deemed a waiver of any other condition or obligation regarding construction, maintenance, repair, reconstruction, or removal as provided for in this Lease.

2.4. **Description and Location of Lease Area.** The pipeline route map within the City of Wilsonville provides a general overall location of the Lease Area and Project Area. The map is marked **Exhibit A**, attached hereto, and incorporated by reference as if fully set forth herein. The City of Tualatin and Lessor have reached a preliminary agreement on a northern boundary between the two cities, along the center line of the proposed Basalt Creek Parkway. Subject to the final approval of the boundary agreement between the two cities, the northern terminus of the pipeline within Wilsonville is anticipated to be at the intersection of the Basalt Creek Parkway and Grahams Ferry Road. The southern terminus is intended to extend beyond the intersection of Wilsonville Road and Kinsman Road to tie into a raw water pipeline to be constructed over, under, and across the Willamette River Water Treatment Plant (“Treatment Plant”) site. The exact route and depth between the Treatment Plant site and the intersection of Wilsonville Road and Kinsman Road is being planned. Therefore, the Parties agree that at the time the proposed as-built plans are submitted to Lessor for the constructed pipeline and its appurtenances, Lessee shall also submit to Lessor a metes and bounds description of the Lease Area, prepared by a surveyor registered and licensed to do business in the State of Oregon. This legal description, together with the as-built plans showing the location of the pipeline and the appurtenances, will be marked as **Exhibits B and B-1**, considered as if attached hereto, and incorporated by reference as if fully set forth herein.

2.5. **Private Easement Areas.** Lessee has or will acquire certain private easement rights for Lessee’s pipeline and appurtenances within the City of Wilsonville, along certain parts of the route described in **Exhibit A**. Lessee shall use best efforts to provide Lessor with a copy of such easements, but inadvertent failure to do so shall not be deemed a violation of this Lease.

2.6. **Willamette River Water Treatment Plant Site.** The raw water pipeline segment over, under, and across the Treatment Plant site referenced in **Section 2.4** is not a part of the Lease

Area and is being addressed in a separate agreement by the Parties. Additionally, Lessor will require a right-of-way dedication for an extension of Kinsman Road through a portion of the Treatment Plant site for the future Boones Ferry Road to Brown Road east-west connector road and the Kinsman Road extension to the connector road. TVWD and Lessor, as joint owners of the Treatment Plant site, agree to execute a roadway dedication to the City of Wilsonville, with the location to be coordinated, determined, surveyed, and dedicated on or about July 1, 2017.

**3. PURPOSE AND LIMITATIONS ON USE OF LEASE AREA.**

3.1. **Permitted Use.** Lessee may install, operate, maintain, repair, replace, and remove one pipeline, to be owned and operated by Lessee at all times, with a maximum diameter of 66 inches, and a pressure range to be provided as soon as it can reasonably be calculated by Lessee. The pipeline shall only be used for the transportation of raw water from the Willamette River at the current point of diversion of the Treatment Plant intake supply facility. Lessee represents that the pressure will be significantly less than the pressure that would be required for treated water flow. Excepting appurtenances as otherwise described in this Lease, all of the pipeline located on Lessor's property must be located within the Lease Area.

3.2. **Compliance with Laws and Regulations.** Lessee will comply with all applicable laws, ordinances, rules, and regulations of the United States, State of Oregon, City of Wilsonville, County of Clackamas, County of Washington, and all other government authorities with jurisdiction over the Project Area, including, but not limited to, local fire codes, zoning regulations, and occupancy codes.

3.3. **Depth.** Lessor retains sole discretion to approve the depth of the pipeline based on current and future planned utility lines, allowing for reasonable conservative separation of lines to allow for installations, repairs, replacements, and removals. Except as otherwise provided herein, the top of the pipeline shall be a minimum of eight (8) feet from the surface (after construction and settlement), or the minimum depth as may be required by any applicable regulation, whichever is greater. Notwithstanding the foregoing, Lessor is aware that several existing utility lines may conflict with this minimum eight (8) foot depth. Therefore, in all cases, Lessee's pipeline must be located below existing water, sanitary, and storm utilities that cross the proposed alignment for the pipeline. Where the pipeline and Lease Area run parallel with existing utilities, pipeline installation depth and location must conform to the minimum depths specified herein, or with other depth and separation distance criteria as found in the City of Wilsonville Public Works Standards, if greater. Additionally, Lessor has planned deep sewer extensions in Garden Acres Road, Grahams Ferry Road, and Day Road that may conflict with the proposed general alignment and depth criteria of the Lease Area. Therefore, during preliminary design of the pipeline within or impacting these three (3) roads, Lessee must work with Lessor to coordinate pipeline design efforts to be consistent with the Lessor's planned utilities and must either modify the installed depth in these areas, as approved in writing by Lessor, as needed for the future gravity sewer lines serving the planned new developments in the Basalt Creek and Coffee Creek Planning Areas, or adjust the location of the pipeline within these segments of the right-of-way. This project and others will be addressed as provided in **Section 7.33**. Finally, there may be segments of the pipeline where the Parties mutually agree, in writing, that the depth can be less than the minimum eight (8) feet, and that will be determined during Lessor's design and plan review, as described in **Section 7.5**; provided, however,

that Lessor expects that the pipe, for the most part, should be at a generally consistent depth level. Once Lessor has approved the depth of any segment of the line, Lessor and Lessee shall both be entitled to rely upon that depth approval and it will not be changed without mutual agreement of both Parties.

3.4. **Appurtenances.** There shall be no surface or subsurface appurtenances to the pipeline (including, but not limited to, valves, vent pipes, meters, screens, fences, or signs) other than as specifically provided in 90% construction plans approved, in writing, by Lessor, or as otherwise agreed to by the Parties, in writing.

3.5. **Other Uses and Easements.** The Lease Area shall be used by Lessee only for the purposes set forth in this Lease. No other uses are allowed. Lessor may lease or grant easements, franchise agreements, or other rights of use to other parties or to itself over, along, under, or across the Lease Area (“Other Allowed Uses”); provided, however, such Other Allowed Uses do not materially interfere with Lessee’s Permitted Use. To the extent there are existing ingress and egress accesses and/or existing leases, easements, or franchises over, under, along, across, or above the Lease Area, Lessee shall locate and construct its pipeline in a manner that will not interfere with those existing uses. If Lessee damages any other utilities or improvements located within the Project Area or any Temporary Construction Areas, Lessee must immediately repair such damage, at Lessee’s expense. Lessor will not be responsible for any delay caused by another utility located within or about the Lease Area. One of the purposes of the eight (8) foot depth from the surface for the pipeline is in recognition of existing road surface and subsurface and that other utility services may exist or may need to be provided for over and across the Lease Area to service adjacent development. Lessor shall notify Lessee, in writing, of any such proposed additional use. Lessee shall provide to Lessor, within fifteen (15) Business Days of receipt of the notice, Lessee’s written consent, which shall not be unreasonably withheld. If Lessee objects, Lessee will provide a written statement as to why the proposed additional use will interfere with Lessee’s Permitted Use and will also indicate if Lessee believes there are any conditions that could be imposed that would allow Lessee to approve the other use, subject to those suggested conditions. If Lessee does not respond within the fifteen (15) Business Days, Lessee will be deemed to have consented to the proposed additional use, which will then be considered an Other Allowed Use. In the event of a disagreement, the Parties shall follow the dispute resolution process set forth in **Section 15**. Lessee shall have no right to provide additional leases, subleases, easements, or grants of use of any kind to the Lease Area; provided, however, this prohibition does not prevent Lessee from selling or otherwise transferring all or a portion of its right, title, and interest in the pipeline and Lease Area to another governmental entity, upon notice to Lessor and assumption of this Lease by such other governmental entity. In such case, Lessee shall be required to follow the assignment process set forth in **Section 20.2**.

3.6. **Lessor’s Use of Lessor’s Property.** Lessor retains, reserves, and shall continue to enjoy use of all of Lessor’s properties not located within the Lease Area, including the Project Area. If Lessor shall become owner of all or any part of any property where the pipeline is located, then any such property shall become a part of the Lease Area and subject to the terms and conditions of this Lease. Lessee shall execute all instruments that may be necessary or appropriate to effectuate this additional area’s inclusion in this Lease. Lessor reserves the right for the Lessor’s public purposes, at Lessor’s expense, to relocate the Lease Area or any part of the Lease Area and the

pipeline installed therein; provided that relocation can be accomplished to Lessee's satisfaction, that any disruption is minimal and without loss of service, and the relocated Lease Area and pipeline can be reasonably used for its intended purpose by Lessee. Lessor may exercise this right by giving Lessee a minimum of one hundred eighty (180) calendar days' prior written notice of the intention to relocate any portion of the Lease Area and pipeline and to coordinate a relocation plan with Lessee.

**4. TERM.**

The term of this Lease shall commence on the Effective Date of this Lease, and terminate on June 30, 2115 ("Expiration Date").

**5. RENT FOR TRIPLE NET LEASE.**

5.1. Rent in the sum of Seventeen Million One Hundred Eighty-Four Thousand One Hundred Twenty-Seven Dollars (\$17,184,127) shall be paid as follows:

5.1.1. Retroactive to July 1, 2016, Lessee shall pay to Lessor annual rent of One Hundred Seventy-Three Thousand Five Hundred Seventy-Seven Dollars (\$173,577), due in advance each July 1, up to and including July 1, 2025. In recognition of the prior Memorandum of Agreement between the Parties that allowed a segment of the pipeline to be constructed as part of the Kinsman Road extension project construction to proceed in advance of this Agreement, and in acknowledgment that this Agreement satisfies the Memorandum of Understanding as to user fee charges, the Construction Period for purposes of the Lease Term shall run from July 1, 2016 (the "Commencement Date") through June 30, 2026. The first Rent payment, for July 1, 2016, is due and payable within thirty (30) days of the Effective Date.

5.1.2. On or before July 1, 2026, the remaining balance of the Rent shall be prepaid to Lessor in the sum of Fifteen Million Four Hundred Forty-Eight Thousand Three Hundred Fifty-Seven Dollars (\$15,448,357) ("Lump Sum"). Payment of the amounts set forth in **Subsections 5.1.1 and 5.1.2** shall constitute all of the Rent due for the Lease Area, including any land where Lessor's pipeline is already located that may be acquired by Lessor in the future.

5.2. **Triple Net Lease.** This is a triple net lease, meaning Lessor will have no responsibility to make any expenditure in conjunction with the Lease Area. Lessee is responsible to pay any taxes, as set forth in **Section 5.10**, insurance, utilities, repairs, replacements, or any other costs associated with the Lease Area.

5.3. **AS IS.** The Lease Area is being leased in absolute AS IS condition and subject to other utilities and improvements located within the Lease Area. Lessor is not responsible for any site condition, including, but not limited to, any environmental site conditions encountered by Lessee in its construction, except as otherwise provided in **Section 11.2**. Lessee will be responsible for reporting any such conditions and remediating any such site conditions in accordance with state and federal law, at Lessee's expense.

**5.4. Additional Consideration.**

5.4.1. Lessee will be investing in seismic upgrades to the Treatment Plant site to protect its respective share of raw water intake facilities (“Intake Facilities”). Lessor owns a portion of the Intake Facilities. The site is currently owned by Lessor and TVWD. The Parties agree that Lessee shall undertake the seismic upgrade work, that the seismic upgrade work shall be completed by July 1, 2026, and that Lessee shall pay the entire cost of the upgrade, including Lessor’s entire share. Lessor will cooperate with Lessee, as reasonably requested by Lessee, to obtain federal and state grants to help fund the costs of the seismic upgrade.

5.4.2. Lessee also agrees to make those right-of-way enhancements commensurate with pipeline construction, as described in **Section 7.29** and City of Wilsonville requirements set forth in the **Public Works Plan Submittal Requirements and Other Engineering Requirements Revised for Willamette Water Supply Program Plan Submittals** (and any subsequent amendments thereto), attached hereto as **Exhibit C** and incorporated by reference as if fully set forth herein. In return, Lessor shall limit its public works permit fees to actual costs plus eight percent (8%).

5.4.3. Lessor and TVWD agree that Section 6.1 of the *Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership*, dated July 6, 2000, by and between the City of Wilsonville and Tualatin Valley Water District, shall be amended to provide that Wilsonville shall be designated as the managing owner, with full operation and control of the Treatment Plant that is the subject thereof, as more particularly set forth in that amendment to be entered into contemporaneously herewith. Additionally, a separate agreement shall be entered into by the Parties and other municipal parties concerning the governance, management, cost-sharing, operation, maintenance, repair, and replacement of the Intake Facilities prior to construction of the Intake Facilities.

**5.5. Security Deposit.**

5.5.1. Amount of Security Deposit. Upon execution of this Lease, Lessee will deposit with Lessor, and continuously maintain, a “Security Deposit” in the amount of Five Hundred Thousand Dollars (\$500,000) through final completion of the pipeline until it is placed into use and has been in use for a period of one (1) full year, and until full payment of all Rent has been received by Lessor, in the form set forth in **Subsection 5.5.3** below. Thereafter, the Security Deposit will be required to be reinstated in the event of a material violation of this Lease which is not promptly corrected by Lessee, as provided in **Subsection 13.1.1, 13.1.2, or 13.1.3.**

5.5.2. Increase in Security Deposit Based on Changes in Index. Five (5) years from the Effective Date, and every ten (10) years thereafter, the Security Deposit will be increased by a percentage equal to the percentage increase in the CPI-U, as defined in **Subsection 5.5.5**, measured from the Effective Date.



5.5.3. Form of Security Deposit. The Security Deposit must be in the form of a continuously maintained irrevocable standby letter of credit (the “Letter of Credit”), drawn on a bank reasonably acceptable to Lessor, in a form reasonably acceptable to Lessor, and with drawing instructions reasonably acceptable to Lessor.

5.5.4. Use of Security Deposit. The Security Deposit secures Lessee’s full and faithful performance and observance of all of Lessee’s obligations under this Lease and under any other written agreement between Lessee and Lessor specifically referring to the Security Deposit. Lessor may, but will not be obligated to, after ten (10) Business Days’ advance written notice is delivered to Lessee in accordance with **Section 18**, draw on and apply the Security Deposit to: (a) pay any delinquent Rent not paid within the applicable time period; and/or (b) remedy any violation of this Lease Lessee has failed to timely cure, as provided in **Subsection 13.1.3**. Lessor may additionally draw on the entire Security Deposit immediately, without notice to Lessee, upon receipt of a notice of nonrenewal of the Letter of Credit. If Lessor applies any of the Security Deposit to any of the above, Lessee will, immediately upon demand, replenish the Security Deposit to its full amount. If Lessee fully performs all of its obligations under this Lease, any Security Deposit then in effect may be cancelled within thirty (30) days after the Expiration Date or earlier termination of this Lease and delivery of the restored Lease Area back to Lessor, including removal of the pipeline, as described in **Section 12**. However, if a reasonable question exists concerning Lessee’s full compliance with this Lease, or if there is any obligation under this Lease to be performed after the Expiration Date or earlier termination of this Lease, Lessor may require that the Security Deposit remain in place until Lessor is satisfied that there has been no violation of this Lease and all obligations due under this Lease have been fully performed, even if it takes Lessor longer than thirty (30) days to make such a determination to Lessor’s reasonable satisfaction.

5.5.5. Consumer Price Index. The Consumer Price Index Rate will be an amount calculated by increasing the then-current Security Deposit amount by a percentage equal to Lessor’s calculation of the percentage change over the period from the Commencement Date to the Adjustment Date of the “Consumer Price Index—U.S. City Average for all Items for All Urban Consumers (1982 through 1984=100)” published in the *Monthly Labor Review* by the Bureau of Labor Statistics of the United States Department of Labor (“CPI-U”), using the CPI-U most recently published sixty (60) days before the Adjustment Date as the ending date of the adjustment period. In the event that the change in the CPI-U for the relevant period decreases, the Security Deposit will remain unchanged. If this Index is no longer in use, then the index or like measuring device as designated by the United States Government shall apply.

5.6. **Late Charge.** If Lessee fails to pay any Rent required to be paid under this Lease within ten (10) Business Days after it is due, Lessor may elect to impose a late charge of the higher of twelve percent (12%) of the overdue payment or the highest rate allowed by Oregon law at the time the payment becomes past due. Lessor’s election not to impose a late charge in any instance does not waive Lessor’s other rights and remedies for the late payment nor Lessor’s right to later charge and collect a late charge for the late payment or any other overdue amount. Acceptance of payment of a late charge by Lessor will not constitute a waiver of Lessee’s default with respect to

the overdue amount in question, nor will it prevent Lessor from exercising any other rights or remedies granted under this Lease, by law or in equity.

5.7. **Lessee's Payment of Rent.** Lessee's payment of Rent does not constitute a waiver of Lessee's right to allege default by Lessor or otherwise preclude Lessee from seeking enforcement of Lessor's obligations or exercising any other right or remedy granted under this Lease, by law, or in equity.

5.8. **Time and Place of Payments.** Lessee will pay Rent to Lessor, in advance, as set forth in this **Section 5**, without abatement, deduction, or offset. Rent will be paid on or before the due date. Payment of all Rent will be made to Lessor, Attention Finance Director, to the address set forth in **Section 18** or such other place as Lessor may designate in accordance with the requirements of **Section 18**.

5.9. **Partial Payment of Rent.** Lessor's acceptance of a partial payment of Rent does not constitute a waiver of any Event of Default (defined in **Section 13**), nor does it prevent Lessor from exercising any of its other rights and remedies granted to Lessor under this Lease, by law or in equity. Any endorsements or statements on checks of waiver, compromise, payment in full, or any other similar restrictive endorsement will have no legal effect. Lessee will remain in violation of the rental terms of this Lease and will remain obligated to pay all Rent due, even if Lessor has accepted a partial payment of Rent. Acceptance of a late but full payment of Rent, including all interest and late charges, will constitute a waiver and satisfaction of that late payment only, and does not constitute a waiver of any rights related to any other late payment, violation, or other Default under this Lease.

5.10. **Taxes.** In the event any real or personal property taxes are imposed upon Lessor or Lessee by any governmental body, other than Lessor, by reason of the pipeline or this Lease, Lessee shall assume and pay all such taxes. Lessee agrees to pay, on or before the date they become due, all taxes, assessments, special assessments, user fees, and other charges, however named, that, after the Effective Date and before the expiration of this Lease, may become a lien or that may be levied by any state, county, city, district, or other governmental authority (other than Lessor) on the Lease Area, any interest of Lessee acquired under this Lease, or any possessory right that Lessee may have in or to the Lease Area or Project Area by reason of its occupancy thereof, as well as all taxes, assessments, user fees, or other charges on all property, real or personal, owned or leased by Lessee in or about the Lease Area (collectively, "Taxes"), together with any other charge levied wholly or partly in lieu thereof. To the extent that Lessee qualifies for tax-exempt status with regard to any Taxes described herein, Lessee may apply for an exemption; however, until a written exemption is obtained and presented to Lessor, Lessee will pay all Taxes due under this **Section 5.10**. If Lessee fails to pay Taxes before any delinquency, then, in addition to all other remedies set forth in this **Section 5.10**, Lessor will automatically have the right, but not the obligation, to pay the Taxes and any interest and penalties due thereon, any time after Lessor gives Lessee ten (10) Business Days' written notice that Taxes are past due and Lessee continues to fail to pay the past due Taxes within that ten (10) Business Day period. Lessee will immediately reimburse Lessor for any sums so paid.

**6. OPTION TO NEGOTIATE NEW LEASE.**

If the pipeline is still in good, safe condition and repair and if the pipeline continues to be in continuous and primary use for its intended purposes, then commencing July 1, 2096, and continuing through December 31, 2096, Lessee may notify Lessor, in writing, that Lessee wishes to enter into negotiations for a new ground lease. Lessor shall then set a date, within sixty (60) days of the date of the written notice provided by Lessee, to begin negotiations for a new lease. The Parties shall have until June 30, 2099 to reach agreement on a new lease and, if agreement is reached, the new lease must be fully executed on or before the Expiration Date of this Lease.

**7. LESSEE OBLIGATIONS DURING CONSTRUCTION.**

7.1. **Lessor's Project Manager.** Lessor's current Project Manager is Eric Mende, P.E. Lessor shall give Lessee prompt written notice of any redesignation of its Project Manager. In addition to a Project Manager, Lessor may have a full time construction oversight inspector on site (On-Site Inspector) and if Lessor elects to do so, Lessor will supply Lessee with contact information for the On-Site Inspector.

7.2. **Lessee's Project Manager.** Lessee's current Project Manager is Mike Britch, P.E. In the event that Lessee's Project Manager is changed, Lessee shall give Lessor prompt written notification of such redesignation.

7.3. **Project Authority.** In the event Lessor or Lessee receives any communication from the other that is not directly from the Project Manager, the Party receiving the communication shall request verification from the other Party's Project Manager, which verification must be promptly furnished. In the event of any dispute or disagreement with any observation of the On-Site Inspector, however, such dispute will be communicated to and addressed by Lessor's Project Manager.

7.4. **Project Schedule.** Lessee shall provide Lessor with a projected overall construction schedule for the pipeline that identifies the preliminary schedule for design and construction of all discrete segments or phases. The overall construction schedule shall also identify Lessee's desired sequencing of any segments or phases, i.e., which segments or phases need to come before any subsequent segments or phases and the estimated time period which Lessee forecasts will be required to complete the design and construction of the discrete segments or phases. Because of its speculative nature, the overall construction schedule is intended for planning purposes only and is not intended to be binding. Lessee shall periodically update the overall construction schedule and provide Lessor with a copy.

7.5. **Lessor Plan Review.** In accordance with Lessor's regulations and then current Public Works Standards, Lessor shall have the right to review, comment on, approve, or disapprove Lessee's design plans at 30%, 60%, and 90%, and final construction plans and specifications. If disapproved, Lessor will provide the reasons for disapproval and any suggested revisions. During such plan review, Lessor may agree, in writing, to a change in the minimum pipe depth of eight (8) feet if Lessor, in its sole discretion, determines that allowing a lesser depth will not adversely impact other projects or utilities.

7.6. **Removal of Trees, Landscaping, Utilities, and Structures.** Prior to any activity that changes the condition of trees, landscaping, utilities, stormwater flow, or structures in the Project Area (“Impacted Improvements”), Lessee shall provide Lessor a written accounting for each Impacted Improvement. Lessee shall identify such Impacted Improvements at the 30% plan stage and account fully for the Impacted Improvements at the 90% plan stage. For trees, Lessee shall provide Lessor with a description of each affected tree by type and diameter (above three (3) inches diameter only, measured three (3) feet from ground level), and structure by dimension and description. Lessee shall compensate Lessor or the applicable damaged utility for the damage or loss to any Impacted Improvement at current market value. Lessee shall compensate the owner of any structure for the loss of any structure prior to its removal or being damaged, in an amount to be determined by a qualified independent appraiser, at Lessee’s expense. Any tree deemed by Lessor to be a significant tree under Lessor’s regulations shall not be removed and shall be protected, with oversight by an arborist approved by Lessor. Any tree that is not significant will be mitigated for in accordance with Lessor’s then current tree removal ordinance.

7.7. **Fences, Drains, and Dewatering.** Lessee shall construct and maintain appropriate temporary fencing and provisions for maintaining drainage during the period of construction so uses conducted on property adjoining the Project Area can be maintained; this will include temporary fencing to contain animals, ditches, drain lines, and/or low impact drainage facilities to allow surface water drainage, and the like. Upon completion of construction, any fences, ditches, and drains will be reinstalled in a manner and condition equal to or better than that existing prior to construction. Lessee shall comply with all construction dewatering requirements and shall be responsible for all sediment control and stream contamination, as more particularly set forth below.

7.8. **Work Standards.** Lessee shall supervise and direct all design and construction regarding the pipeline. Lessee shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the design and construction of the pipeline. Lessee shall evaluate the jobsite safety within the Project Area throughout construction and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If Lessee determines that such means, methods, techniques, sequences, or procedures may not be safe, Lessee shall give written notice to Lessor no later than three (3) days after Lessee’s determination and shall not proceed with that portion of the design or construction of the pipeline until Lessee makes the jobsite safe. Notwithstanding the foregoing, Lessee further has the duty to Lessor to ensure that all activities conducted in the Project Area are in accordance with good, workmanlike standards in the industry, and in accordance with the terms of this Agreement and Lessor’s Public Works Standards. Lessor’s Public Works Standards and the provisions of this Lease must be adhered to at all times. With respect to construction work at the intersection of Kinsman Road and Wilsonville Road, including making the improvements described in **Section 7.29(1)**, restricted open trench construction will be allowed by Lessor, in accordance with the following City Engineer directive pertaining to temporary traffic control and lane closures: All construction shall occur between the hours of 8:00 p.m. and 5:00 a.m. and, during that time, Wilsonville Road must remain open to vehicles with at least one lane in each direction at all times. The contractor will be permitted to place both directions of traffic on one side of the road, allowing half of the road to be closed at a time. A limited duration closure that occurs between the hours of 9:00 a.m. and 3:00 p.m.; construction that

keeps one lane open with flaggers; or a full nighttime road closure with detour will be considered for approval by the City Engineer on a case by case basis.

7.9. **Construction in the Project Area and Temporary Construction Areas.** All construction within the Project Area and Temporary Construction Areas shall be in compliance with all applicable City of Wilsonville Public Works Standards, as they may be amended from time to time, unless otherwise provided in any permit issued by Lessor. The Public Works Standards are incorporated by reference as if fully set forth herein. Prior to performing any construction or maintenance in the Project Area, Lessee shall apply for and obtain all necessary permits, including a City of Wilsonville public works permit. Except as otherwise provided in this Lease, Lessee shall pay, prior to issuance, all applicable fees of the requisite permits and give appropriate notices to any licensees or permittees of Lessor or other utility service providers which may be affected by the proposed construction. To obtain a permit to construct or maintain in the Project Area, plans shall be submitted to Lessor that comply with the Wilsonville Public Works Plan Submittal Requirements as illustrated in **Exhibit C – 2016 Public Works Plan Submittal Requirements and Other Engineering Requirements Revised for Willamette Water Supply Program Plan Submittals**; provided the requirements in effect at the time of plan submittal will apply.

7.10. **Emergency Repairs.** In the event that emergency repairs are necessary, Lessee shall immediately notify Lessor of the need for such repairs. Lessee may initiate such emergency repairs, and shall apply for appropriate permits as soon as reasonably practicable but in no event later than seventy-two (72) hours after discovery of the emergency. Lessee shall comply with all applicable Lessor regulations relating to such excavations or construction, including the payment of permit or license fees. Any temporary repairs made shall be permanently repaired by Lessee as expeditiously as possible. Lessee will make a good faith effort to make permanent repairs within a time period of one hundred twenty (120) days from the date of temporary repairs being performed unless the Parties otherwise agree in writing to extend the period. If Lessee fails to immediately make any needed repairs that, without being made, would impede the right-of-way, endanger public health or safety, or could result in damage to the Project Area, other Lessor property, or private property, Lessor shall have the right, but not the obligation, to make the repair. If Lessor elects to make the repair, and there is time, Lessor will notify Lessee of its intent to make the emergency repair by calling the emergency number provided in **Section 18.2** and leaving a message for Lessee, and charge Lessee Lessor's actual cost of making the repairs, which shall bear interest at the then current judgment rate of interest until paid in full. If Lessor makes emergency repairs as provided in this **Section 7.10**, Lessee will remain responsible to make all future repairs and pay all future costs and/or damages in the Project Area, even if caused by, arising out of, or related to Lessor's emergency repairs.

7.11. **Restoration of Project Area.** Whenever Lessee excavates, damages, or disturbs the surface above or adjacent to the Lease Area for any purpose, Lessee shall promptly restore the surface above or adjacent to the Lease Area, to the satisfaction of Lessor, in strict accordance with Lessor's applicable Public Works Standards, ordinances, and codes, the provisions of this Lease, and any permit issued by Lessor. In the event there is no applicable ordinance, code, or permit, Lessee shall promptly restore the disturbed area to at least its prior condition. Unless otherwise provided in any permit issued by Lessor, and pending permanent restoration, when any opening is made by Lessee in a hard surface pavement in any public right-of-way, Lessee shall, within twenty-

four (24) hours, temporarily backfill, pave, plate, and/or otherwise bring the disturbed or damaged surface to a safe and travelable condition and take all reasonable and legal safety precautions to prevent injury. Lessor may, after providing notice to Lessee, or without notice where Lessor determines the disturbance or damage may create a risk to public health or safety, backfill or repave any opening made by Lessee, and the expense thereof shall be paid by Lessee. Lessor may, after providing notice to Lessee, remove and/or repair any temporary or permanent work done by Lessee that, in the determination of Lessor, is inadequate or unsafe. Additionally, if Lessee fails to immediately make any needed repairs that, without being made, would impede the right-of-way or access to, from, or over any of Lessor's other property, endanger public health or safety, or could result in damage to Lessor's other property or private property, Lessor shall have the right, but not the obligation, to make the repair without notice. In the case of any repair made by Lessor that is otherwise Lessee's obligation to make, Lessor will charge Lessee Lessor's actual cost of making the repairs, which shall bear interest at the then current judgment rate of interest until paid in full. Notwithstanding the foregoing, if there is time, Lessor will notify Lessee of its intent to make an emergency repair by calling the emergency number provided in **Section 18.2** and leaving a message for Lessee. If Lessee then promptly arrives at the scene, Lessor will allow Lessee to promptly make the repair or complete the repair. If Lessor does make the repair because Lessee fails to timely do so, Lessee nonetheless remains solely responsible for assuring the repair is adequate and is further responsible to make any additional or further repairs, and to pay all costs thereof and/or damages caused thereby, arising out of or related to Lessor's repair.

7.12. **Lessor's Right to Inspect.** Lessor shall have the right to inspect all construction or installation work performed by Lessee as it deems necessary to ensure compliance with the terms of this Agreement, other pertinent provisions of law, and any permit issued by Lessor. However, Lessor does not exercise any control over the construction methodology of the pipeline and, to the extent Lessor provides notice to Lessee or to any contractors or subcontractors constructing the pipeline regarding safety concerns of Lessor, Lessee alone shall be and remain responsible and liable for the safety, efficiency, and adequacy of the construction means, methods, techniques, sequences, and procedures, irrespective of whether or not Lessee makes any change as a result of any notice provided by or received from Lessor.

7.13. **Cost of Inspections.** All costs of Lessor's inspection, oversight, and supervision, as set forth in this Lease or in the Public Works Standards, shall be paid by Lessee within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials, and equipment and in accordance with **Section 5.4.2** with respect to public works permit fees.

7.14. **Temporary Crossings.** Lessee shall construct temporary crossings, in accordance with all safety standards, across open trenches and ditches to assure continued access, ingress, and egress for Lessor and other property owners, and their lessees, workers, and guests, to areas adjacent to the Project Area. Any streams located along or across the Project Area shall be maintained in a manner that flow is not disrupted during construction, and flow upon completion of construction can be maintained at the same rate and volume as prior to construction, with all workmanlike and accepted standards being followed for erosion of stream banks.

7.15. **Soils.** Lessee shall follow the "double ditch" construction method for pipeline construction outside of a paved roadway, segregating top soil removed, and replacing top soil above

sub-soils. Lessee shall implement measures to avoid re-deposited topsoil being compacted to any degree greater than existed prior to construction. Lessee will reseed or resod, as applicable, the Project Area, and replace shrubs and other plantings so that, upon completion of construction, the Lease Area has an appearance and contains plantings similar to those that existed prior to construction, to the degree reasonably practicable.

**7.16. Handling of Construction Debris.** Lessee will be responsible for the legal and proper sanitary handling of all construction debris, excess soils and rocks, trash and other debris for the Project Area and will provide for its timely removal. Lessee will gather, sort, and transport all garbage, refuse, and recyclable materials from the Project Area. Lessee will provide and use suitable fireproof receptacles for all trash and other refuse temporarily stored in the Project Area. Except as otherwise provided for in the applicable permit, Lessee will not permit boxes, cartons, barrels, pallets, scrap piles, or other similar items to be piled or stored within the Project Area. Lessee will not allow trash or debris of any nature to accumulate in the Project Area and will store all trash and debris in a manner that will prevent it from being an environmental, health, or safety hazard or creating an unsightly condition in and around the Project Area. Lessor encourages Lessee to cooperate with available recycling programs and to recycle in accordance with state, federal, and local requirements.

**7.17. Safety Requirements.** Lessee will conduct its operations, activities, and duties under this Lease in a safe manner and in compliance with all safety standards imposed by applicable federal, state, and local laws and regulations. Lessee will require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee under this Lease. Lessee will exercise due and reasonable care and caution to prevent and control fire on or in the Project Area and, to that end, will provide and maintain fire suppression equipment approved by FM Global or an equivalent insurance company and other fire protection equipment as may be required under applicable governmental laws, ordinances, statutes, and codes for the purpose of protecting the improvements adequately and restricting the spread of any fire from the Project Area to any property adjacent to the Project Area, all at Lessee's sole cost and expense. Lessee will be solely responsible for provision and maintenance of fire extinguishers. Lessee will immediately provide Lessor with a copy of any notification from OSHA concerning any violation or alleged violation of safety laws or regulations.

**7.18. Compliance with Labor Laws.** Lessee must at all times, including during construction, comply with all applicable state and federal laws pertaining to wage and hour and health and safety regulations. Lessee will also comply with all its own collective bargaining requirements to avoid labor disturbances in the Project Area. Lessee should promptly notify Lessor in the event of any threatened labor action. Lessee will also reasonably cooperate with Lessor to mitigate the impact of labor disturbance with respect to access to the Project Area and operations within the Project Area, regardless of the source of the labor dispute. Lessee shall be liable to Lessor for any damages suffered by Lessor as a result of a labor action against Lessee that prevents Lessor from accessing any of its ongoing construction projects.

**7.19. Compliance with Environmental Laws.** Lessee shall comply with all applicable Environmental Laws, as described in **Section 11**. Lessee shall not use, dispose of, or release within the Project Area, or on lands adjacent thereto, or permit to exist or to be used, disposed of, or

released any substances (other than those Lessee has been licensed or permitted by applicable public authorities to use in the Project Area) which are defined as “Hazardous Substances” in **Section 11**. Should any Hazardous Substance be accidentally released, Lessee shall notify Lessor immediately and contemporaneously with notifying the applicable regulatory agencies of such event, with a copy of such notice to Lessor. Lessee shall be responsible for and timely pay all costs of clean-up, remediation, fines, and other costs related to and arising from the event, including, but not limited to, penalties. Lessee shall be responsible for and shall comply with all applicable laws and regulations as to any required permitting, licenses, and fees related thereto concerning, relating to, or arising from Lessee’s use of the Project Area, this Lease, or the pipeline.

7.20. **Liens.** Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment that have been provided or ordered with Lessee’s consent to the Project Area. If any lien is filed against the Project Area that Lessee wishes to protest, then Lessee will immediately notify Lessor of the basis for its protest and must deposit cash with Lessor, or procure a bond acceptable to Lessor, in an amount sufficient to cover the cost of removing the lien from the Project Area. Failure to remove the lien or furnish the cash or a bond acceptable to Lessor within ten (10) Business Days will constitute an Event of Default (defined in **Section 13**) under this Lease, and Lessor will be entitled to satisfy the lien without further notice to Lessee, and Lessee will immediately reimburse Lessor for any sums paid to remove any such lien.

7.21. **Lessor Access to Project Area.** Lessor and its respective agents have the right to enter the construction portion of the Project Area for the purposes of: (a) confirming the performance by Lessee of all obligations under this Lease, (b) doing any other act that Lessor may be obligated or have the right to perform under this Lease, and (c) for any other lawful purpose. Such entry will be made on reasonable advance notice and during normal business hours, when practical, except in cases of emergency or a suspected violation of this Lease or the law. Lessee waives any claim against Lessor for damages for any injury or interference with Lessee’s business, any loss of occupancy or quiet enjoyment of the Project Area, or any other loss occasioned by the entry except to the extent caused by the negligence or willful misconduct of Lessor. Lessor will use reasonable efforts to disturb Lessee’s operations as little as reasonably possible during any of Lessor’s repair and maintenance work. Lessee will provide Lessor with keys to all gates and doors in, on, or about the Project Area, and Lessor will have the right to use any and all means that Lessor may deem reasonable to open the gates and doors in an emergency to obtain entry to the Project Area.

7.22. **Identification of Contractors.** Prior to construction, Lessor shall be provided, in writing, the name, address, email, and telephone number of, and a contact person for, each independent contractor and subcontractor that enters upon the Project Area. Nothing herein shall limit the obligation, liability, and responsibility of Lessee for any and all actions and activities occurring in connection with construction and Lessee’s uses in general of the Project Area. All identified contractors must meet the insurance requirements provided in **Section 10**.

7.23. **Liability for Contractors.** Lessee is solely responsible to Lessor for all acts or omissions of any of its contractors, subcontractors, suppliers, agents, and employees. Lessor shall be entitled to such damages or may seek any other remedies directly against Lessee for any act, omission, or construction defect caused by any of the foregoing third parties, and Lessor shall have



no obligation or responsibility to first sue or make a claim against any of said third parties but will rather be entitled to hold Lessee primarily, directly, and fully responsible and liable for any and all acts or omissions caused by any of the foregoing third parties.

7.24. **As-Built Survey.** Upon completion of construction, and prior to the pipeline being placed in any service, Lessee shall provide Lessor with an electronic and hard copy of an as-built survey that reflects the location of the pipeline, its depth and diameter; the location of any appurtenances and any connection to the pipeline; and the pipeline Lease Area and any Private Easement area, prepared by and stamped by a licensed surveyor in good standing in the State of Oregon. Lessee shall provide Lessor with a supplemental survey that reflects any subsequent corrections or changes to the pipeline, appurtenances, and/or Lease Area.

7.25. **Construction Drawings.** Construction Drawings shall be submitted to Lessor at 30% design, 60% design, and 90% design in order to verify alignment, appurtenances, and potential impacts to Lessor and Lessor's property. At any of these stages, Lessor will have authority to require reasonable changes or alterations to any aspect of design that Lessor deems could create an adverse impact, including, but not limited to, alignment, depth, relocation of utilities, and natural resource impacts, excepting once Lessor has approved depth, as provided in **Section 3.3**, that approval cannot be changed or withdrawn without mutual agreement of the Parties.

7.26. **Stop Work Order.** Lessor's Project Manager shall have the right, but not the obligation, to suspend work in the Project Area and give written notice to Lessee or Lessee's general contractor of such suspension when construction practices are materially violating any Lease term or are anticipated to create a health or safety issue or property damage. A stop work order may be issued if any materials being used do not conform to specifications. The suspension will remain in effect until appropriate corrections are made. In no case shall Lessor incur any liability for any suspension of work, unless such suspension was done with a willful and malicious intent. In all cases except emergency, Lessor will inform Lessee and Lessee's contractor of the violation and will only issue the stop work order if Lessee and Lessee's contractor fail to take immediate action to resolve the violation or safety hazard. Notwithstanding the foregoing, Lessor is under no obligation to issue a stop work order. Lessor's Project Manager's role is not one of supervision or safety management. Nothing contained in this Section or anywhere else in the Agreement shall be interpreted to obligate Lessor to act in any situation, nor shall it shift any of Lessee's responsibilities for safety and compliance with all laws to Lessor in any way. No responsibility for the safety of the work, construction means, methods, techniques, sequences, or procedures shall attach to Lessor by virtue of any action or inaction.

7.27. **Site Security.** Lessee shall be responsible for securing the work area twenty-four (24) hours per day, seven (7) days per week, to prevent vandalism or injury due to attractive nuisance.

7.28. **Wildlife and Wetlands.** Lessee must provide for the protection of wildlife, wetlands, and other natural resources at all time in and about the Project Area. Lessee must obtain all required permits, and provide copies to Lessor, from all applicable regulatory agencies, including, but not limited to, the Department of State Lands, Army Corps of Engineers, National Environmental Policy Act, and National Marine Fisheries Service.

7.29. **Right-of-Way Enhancement Projects and Deficiencies.** As additional consideration for this Lease, Lessee has agreed to make the following improvements or upgrades to Lessor's existing deficient infrastructure on or about the Project Area to bring it up to current City of Wilsonville Public Works Standards at the time of pipeline construction in those areas, at Lessee's sole cost (collectively "Enhancement Projects"). The Enhancement Projects Lessee has agreed to make and pay for are depicted on the map attached hereto as **Exhibit D** and incorporated by reference herein:

1. Truck turning radius improvements at the northeast corner of Wilsonville Road and Kinsman Road (including correction or construction of curb ramps to meet ADA standards at all intersection corners), as depicted on **Exhibit E**, attached hereto and incorporated by reference herein.
2. Truck turning radii at the northeast and northwest corner of Boeckman Road and 95<sup>th</sup> Avenue (including correction or construction of curb ramps to meet ADA standards).
3. Correct curb ramps at all intersection ramps along the pipeline route to meet ADA standards.
4. Sidewalk infill on west side of 95<sup>th</sup> Avenue (approximately 500 feet) and associated street tree replacement.
5. Sidewalk infill on south side of Ridder Road (approximately 1700 feet).
6. Streetlight infill on 95<sup>th</sup> Avenue, just north of the intersection of 95<sup>th</sup> and Ridder Road.

By mutual agreement, these Enhancement Projects may be adjusted during the **Section 7.5** plan review process. Additionally, if Lessee, including any of its contractors or subcontractors, discovers any defective or damaged utilities located in the Project Area not caused by Lessee's construction, Lessee will promptly notify Lessor of such discovery. Lessor may then direct Lessee to repair the defect or damage while working in the area and to charge Lessor its actual costs of making the repair or, alternatively, Lessor may use its own contractors to make the repair, but Lessor and Lessee will work in good faith to coordinate the repair(s) so that such repair does not unreasonably disrupt Lessee's construction.

7.30. **Damage to Property and Utilities.** Lessee will promptly repair any damage caused to the property or utilities of others caused by its construction or ongoing pipeline operations and will be responsible to defend, indemnify, and hold harmless Lessor, as more particularly described in **Section 16**.

7.31. **Detailed Construction Schedule and Staffing.** Prior to Lessee conducting any construction or construction-preparation activities in the Project Area (other than surveying and measuring), Lessee shall provide Lessor a written construction schedule, which Lessee shall continuously update with its contractors and share with Lessor on not less than a quarterly basis.

7.32. **Coordinated Construction Schedules.** For construction of any discrete segment or phases by Lessee, or any construction project by Lessor that may impact Lessee's construction schedule or Project Area, Lessee and Lessor shall jointly establish a detailed and binding design and construction schedule for the purpose of avoiding delays or adverse impacts on the other Party's

project(s). Any deviation from the agreed-upon schedule must be approved by both Parties in writing. If agreement cannot be reached, the Party seeking to deviate from the schedule must wait until the other Party's project(s) reach a state such that the schedule change will not interfere with or delay the other project(s). For construction by Lessee in the Project Area, the Parties may agree to rely on the construction schedule described in **Section 7.4** above. As used in this **Section 7.32**, "interfere with" includes, but is not limited to, change or deviation from the agreed-upon schedule that can reasonably be expected to result in the closure of more than one roadway in Wilsonville or that would have a negative traffic impact, unless agreed to in advance by Lessor.

**7.33. Joint Construction Projects Between Lessee and Lessor.** Lessor and Lessee shall develop a separate agreement for construction or maintenance projects that are to be jointly undertaken between Lessee and Lessor. Regardless of whether Lessor or Lessee is managing and contracting for the Joint Construction Project, if the Joint Construction Project includes new road or road widening construction, the costs for all improvements located above the Lease Area, including the pavement section or other finished surface over the Lease Area, shall be apportioned to Lessee, and the remaining payment or other finished surface shall be apportioned to Lessor.

**7.34. Public Outreach and Communication.** For any construction in the Project Area that has the potential for impacting adjacent properties, businesses, utilities, and their occupants, Lessor and Lessee shall mutually and cooperatively work together to develop a written program for notice and outreach to the affected property owners and occupants. Lessee will be solely responsible for all costs associated with such program and will have a designated 24-hour attended hotline with contact information that will be readily available to the public (for example, located on its website and the Lessor's website), as well as posted along the Project Area under construction, so that any impacted parties may immediately contact Lessee to advise of any complaints, issues, or problems associated with the construction. Lessee will defend, indemnify, and hold Lessor harmless from any claims or causes of action that result from any aggrieved third party due to Lessee's use, operations, or activities within the Project Area.

**7.35. Relocation of Existing Utilities and Appurtenances.** In the event that relocation of existing utilities and appurtenances are required or desired to facilitate Lessee's pipeline installation, in compliance with Lessor's Public Works Standards, the design of said relocation shall be subject to Lessor's review and approval. All costs for design, coordination, and construction of the relocated facilities shall be the sole responsibility of Lessee.

**7.36. Compliance with State and Federal Historic Preservation.** To the extent applicable, Lessee must follow all state and federal law requirements with respect to performing an assessment for the protection of significant environmental, archeological, and historic resources under the National Environmental Policy Act of 1969, as amended, 42 USC § 470 *et seq.* (NEPA), and the National Historic Preservation Act of 1966, as amended, 16 USC § 470 *et seq.* (NHPA), as well as other applicable state and federal laws pertaining to the foregoing.

## **8. LESSEE OBLIGATIONS BEYOND CONSTRUCTION.**

**8.1. Excavation or Construction Concerning Replacement, Repair, or Removal.** In the event any replacement, repair, or removal of the pipeline shall necessitate a Temporary

Construction Area, then the process under **Section 2.3** shall apply. The standards and requirements applicable for initial construction activities set forth in this Lease shall apply equally to the replacement, repair, or removal activities.

8.2. **Warnings.** Lessee shall provide Lessor with written notice as to whether water being transported in the pipeline is subject to an increase in pressure over the assigned maximum pressure and what, if any, effect that may have on pipeline joints and welds and on operations. If Lessee determines that for safety reasons signing is necessary, such signs shall meet Lessor's signage regulations.

8.3. **Maintenance Obligations; Contact Person.** Maintenance of the Project Area applicable to the pipeline use, and maintenance of the pipeline and any related approved appurtenances, shall be the sole obligation of Lessee. Upon completion of construction and prior to the pipeline being placed in service, Lessee shall provide Lessor with a written maintenance and inspection plan and schedule for Lessee's maintenance, upkeep, and inspection of the pipeline and Project Area. Lessee shall therewith provide Lessor with a contact person designated by Lessee, including name, address, 24/7 telephone access number, fax number, and email. The contact person shall have information and knowledge pertinent to the pipeline and Project Area in order to address questions and concerns from Lessor or the public. In the event the contact person is replaced or changed by Lessee, Lessor shall be given reasonable prior written notice of the change, along with the required information for the new contact person. Lessee shall provide Lessor with at least an annual inspection report documenting the overall condition of the pipeline, any maintenance, repairs, or replacements performed, and any areas of concern.

8.4. **Access to Project Area by Lessee.** The as-built survey described in **Section 7.24** above, shall specifically depict the access areas whereby Lessee will have access to the pipeline and pipeline Project Area. Other than in case of emergency, or as scheduled, in writing, with Lessor for inspection, maintenance, repair, or replacement, Lessee will not access the Project Area from points other than the stated access areas. In the event any appurtenant facilities are permitted in the Project Area, such appurtenances shall be protected by such reasonable means as is customary in the industry and in keeping with Wilsonville City Code and regulations. No protective means shall obstruct full access by Lessor to Lessor's property unless Lessor is given a key and the right of ingress and egress at Lessor's discretion. Unless otherwise provided in this Lease, no person or entity shall have access to the Project Area other than Lessor and Lessee, their contractors, or employees, and then only for purposes of inspection, maintenance, repair, and replacement of the pipeline or allowed appurtenances, in accordance with the terms, conditions, and provisions of this Lease. The City of Wilsonville is an underground utilities district and all appurtenances must be located underground unless otherwise approved, in writing, by Lessor, which approval shall not be unreasonably withheld. Nothing in this Section prohibits Lessor's access to the Project Area.

## **9. MUTUAL GOOD FAITH COOPERATION.**

The Parties shall mutually cooperate in good faith with each other in their interactions and dealings with the terms, conditions, and provisions of this Lease.

9.1. **Informal Dispute Resolution.** The Parties agree to engage in informal dispute resolution, but if a dispute cannot be resolved within ten (10) Business Days, the dispute shall be submitted to formal mediation, as set forth in **Section 15**.

9.2. **Lease Contacts Following Construction.** Lessor and Lessee will each appoint a person to be the primary contact to resolve any issues that may arise between the Parties under this Lease. That information shall be provided in writing and will include the name, address, telephone number, email address, and other pertinent contact information for the person. Each Party will provide an alternate contact person in the event the primary contact person is unavailable.

9.3. **Security.** To the extent any exhibits to this Lease or plans and as-built surveys referenced in this Lease provide the location of the pipeline and the Parties determine the disclosure of which will impose a security threat, the Parties shall treat such Lease provisions, exhibits, plans, and surveys as confidential and exempt from disclosure under applicable provisions of ORS 192.501 and/or ORS 192.502, with Lessee being responsible to defend against any claim for public records disclosure.

## 10. **INSURANCE.**

10.1. **Insurance Amounts and Policies.** The insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage that Lessor is willing to accept to help ensure full performance of all terms and conditions of this Lease. All insurance required of Lessee by this Lease must meet all the minimum requirements set forth in this **Section 10**. Copies of all policies required hereunder shall be provided to Lessor and, if a change in policy shall occur, that change shall be promptly provided to Lessor. Additionally, an updated Certificate of Insurance must be provided annually, showing all policies remain in full force and effect. Any modification to policies or new policies shall be provided to Lessor.

10.2. **Certificates; Notice of Cancellation.** On or before the Effective Date, Lessee will provide Lessor with certificates of insurance establishing the existence of all insurance policies required under this Lease. Thereafter, Lessor must receive notice of the expiration or renewal of any policy at least thirty (30) days before the expiration or cancellation of any insurance policy. No insurance policy may be canceled, revised, terminated, or allowed to lapse without at least thirty (30) days' prior written notice to Lessor. Insurance must be maintained, without any lapse in coverage, continuously for the duration of this Lease. Cancellation of insurance without Lessor's consent will be deemed an immediate Event of Default (defined in **Section 13**) under this Lease. Lessee will give Lessor certified copies of Lessee's policies of insurance promptly upon request. In addition, Lessee will require its general contractor and all subcontractors to maintain the same level of insurance and provide proof of insurance. Should Lessee determine to require less insurance from the general contractor or any subcontractor, Lessee will be responsible for any shortfall in coverage.

10.3. **Additional Insured.** Lessor will be named as an additional insured in each required liability policy and, for purposes of damage to the Project Area, as a loss payee. The insurance will not be invalidated by any act, neglect, or breach of contract by Lessee. On or before the Effective

Date, Lessee must provide Lessor with a policy endorsement naming Lessor as an additional insured as required by this Lease. Lessor shall also be named as an additional insured under the general contractor's general liability policy.

10.4. **Company Ratings.** All policies of insurance must be written by companies having an A.M. Best rating of "A" or better, or the equivalent. Lessor may, upon thirty (30) days' written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A" rating. Notwithstanding the foregoing A.M. Best rating requirements, Lessee may procure insurance coverage through municipal insurance pools, such as City-County Insurance Services, Special District Insurance Services, or similar organizations that may supersede those organizations in the future.

10.5. **Required Insurance.** At all times during this Lease, Lessee will provide and maintain the following types of coverage:

10.5.1. Commercial General Liability Insurance. Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Lease and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$10,000,000** for each occurrence and **\$10,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$10,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$100,000**, and Medical Expense (any one person) in the minimum amount of **\$20,000**. The policy must also cover damage to the Project Area and to adjoining properties from water damage, mold, or equipment failure due to the pipeline or activities related thereto. The policy must also include an endorsement for "XCU" hazards.

10.5.2. Business Automobile Liability Insurance. If Lessee will be using a motor vehicle in the performance of any work on the pipeline and/or any activities in the Project Area, Lessee shall provide Lessor a certificate indicating that Lessee has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$5,000,000**.

10.5.3. Pollution Liability Coverage. During construction activities, and any time Hazardous Substances are being used within the Project Area, other than in small quantities as generally needed for landscaping or as cleaning supplies, Lessee or Lessee's contractor shall carry full environmental coverage, including sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of chemicals, fuels, oils, lubricants, de-icing, anti-freeze, or other hazardous materials, or disturbance of any Hazardous Substances, as that term is defined in this Lease under **Subsection 11.1.5**, during the performance of any work on the pipeline and/or other activities in the Project Area or as a result of any pipe rupture, leakage, or other failure, written on an "occurrence" form policy. Lessee will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality

(“DEQ”) and Federal Environmental Protection Agency (“EPA”) clean-up requirements. The coverage shall be in the amount of **\$10,000,000** for each occurrence and **\$20,000,000** general aggregate. If said insurance is carried by Lessee’s contractor, in lieu of Lessee, then Lessee must ensure that Lessor is named as an additional insured on the pollution policy in accordance with all requirements for naming Lessor as an additional insured. Nothing contained herein, however, shall be construed to relieve Lessee from claims by Lessor for environmental damage or Environmental Costs. Lessor shall maintain a direct right of action against Lessee and shall not be required to first seek relief through the insurance carrier or general contractor.

10.5.4. Workers Compensation Insurance. Lessee and all employers providing work, labor, or materials within the Project Area that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. Coverage shall include Employer’s Liability Insurance with coverage limits of not less than **\$1,000,000** each accident.

10.5.5. Additional Insured Coverage and Endorsements. Additional Insured coverage under Lessee’s and Lessee’s general contractor’s Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 11 85, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: “The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give Lessor at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder.

10.5.6. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by Lessor is excess. Lessee shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are “Claims Made” policies, Lessee will be required to maintain such policies in full force and effect throughout any warranty period.

10.6. **Duty to Maintain Minimum Insurance Coverages.** Any lapse or material adverse change in insurance coverage by Lessee shall constitute an Event of Default under this Lease, as provided in **Subsection 13.1.2.**

10.7. **Indexing.** Within six (6) months of the five (5) year anniversary date of this Lease, and each subsequent fifth (5<sup>th</sup>) anniversary, Lessor may request in writing, and Lessee shall agree to

institute, new insurance amounts based on the original insurance amounts indexed to the Producers Price Index for All Commodities, issued for the anniversary month by the U.S. Department of Labor, Bureau of Labor Statistics. Should such index be discontinued and/or replaced, a conversion to a substitute or replacement index shall be accomplished using normally accepted conversion factors. Such adjusted amounts shall be rounded off to the nearest Thousand Dollars (\$1,000) amount. Failure of Lessor to request an adjustment for any five (5) year period shall not preclude a full adjustment at a subsequent five (5) year anniversary if requested.

## **11. ENVIRONMENTAL OBLIGATIONS OF LESSEE.**

11.1. **Definitions.** References to the acts, omissions, and liabilities of Lessee in this Section include liability and responsibility for any act or omission of Lessee's employees, agents, officers, contractors, and suppliers. As used in this Lease, the following terms are defined as follows:

11.1.1. Best Management Practices. "Best Management Practices" means those environmental or operational standards: (a) implemented by a business or industry group pertinent to Lessee's operations as a matter of common and accepted practice, (b) articulated by a trade association or professional association pertinent to Lessee's operations, (c) developed by Lessee for use in its operations, (d) developed by pertinent state or local regulatory agencies for a business or industry group pertinent to Lessee's operations, or (e) developed from time to time by Lessor in cooperation with Lessee.

11.1.2. Environmental Audit. "Environmental Audit" means an environmental site assessment and compliance audit satisfying, at a minimum, the "all appropriate inquiry" requirements of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC § 9601(35)(B); the Oil Pollution Act, as amended, 33 USC § 2703(d)(4); 40 CFR Part 312; ORS 465.255(6); ASTM E1527-13 (Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process); and any other compliance assessment or auditing standards, including ASTM E2107-06 (Standard Practice for Environmental Regulatory Compliance Audits), relevant and appropriate to Lessee's use of the Project Area, or the successors to any of these criteria or standards. If as a result of such an Environmental Audit, additional evaluation, testing, analysis, or supplemental audit work is recommended, then the Environmental Audit includes the additional evaluation, testing, analysis, or supplemental audit work scoped and performed in accordance with commercially reasonable practices.

11.1.3. Environmental Costs. "Environmental Costs" include, but are not necessarily limited to: (a) costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (b) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (c) the cost, expense, or loss to Lessor as a result of any injunctive relief, including preliminary or temporary injunctive relief, applicable to Lessor or the Project Area; (d) all expenses of evaluation, testing, analysis, cleanup, remediation, removal, and disposal relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals, and experts; (e) all expenses of reporting the existence of Hazardous Substances or the violation of



Environmental Laws to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (f) any and all expenses or obligations, including, without limitation, attorney and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom, whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone and telefax charges, and other expenses; and (g) any damages, costs, fines, liabilities, and expenses that are claimed to be owed to any federal, state, or local regulating or administrative agency.

11.1.4. Environmental Laws. “Environmental Laws” include any and all federal, state, and local statutes, regulations, rules, and ordinances (including those of the Oregon Department of Environmental Quality (DEQ), the Environmental Protection Agency (EPA), or any such state or federal successor agency) now or hereafter in effect, as they may be amended from time to time, that in any way govern materials, substances, or products and/or relate to the protection of health, safety, or the environment.

11.1.5. Hazardous Substances. “Hazardous Substances” include, but are not necessarily limited to, any substance, material, or product defined or designated as hazardous, toxic, radioactive, or dangerous, regulated wastes or substances, or any other similar term in or under any Environmental Laws as now apply or may apply in the future.

11.1.6. Hazardous Substance Release. “Hazardous Substance Release” includes the spilling, discharge, deposit, injection, dumping, emitting, releasing, placing, leaking, migrating, leaching, and seeping of any Hazardous Substance into the air or into or on any land, sediment, or waters, except any release in compliance with Environmental Laws and specifically authorized by a current and valid permit issued under Environmental Laws with which Lessee is in compliance at the time of the release, but not including within the exception any such release in respect of which the State of Oregon has determined that application of the State’s Hazardous Substance removal and remedial action rules might be necessary to protect public health, safety, or welfare, or the environment.

11.1.7. Natural Resources Damage. “Natural Resources Damage” is the injury to, destruction of, or loss of natural resources resulting from a Hazardous Substance Release or raw water release. The measure of damage is the cost of restoring injured natural resources to their pre-release baseline condition, compensation for the interim loss of injured natural resources pending recovery, and the reasonable cost of a damage assessment. Natural resources include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state, an Indian tribe, or a local government.

11.2. **Existing Environmental Condition**. As generally stated in **Section 5.3**, Lessor makes no representations or warranties with respect to the Project Area and will not be responsible to Lessee for any cleanup of any Hazardous Substance that may be discovered as a result of or exacerbated by Lessee’s activities in the Project Area. To determine the condition of the Project Area, pre-construction, Lessee will be responsible for conducting an Initial Audit (defined in **Subsection 11.17.1**) to reasonably determine the existing condition and whether it is acceptable for

Lessee's intended installation and use. Because "but for" this Lease, Lessor would have no reason to disturb any existing conditions, Lessor will have no responsibility to Lessee to remediate or otherwise address any existing environmental condition in order to allow for Lessee's intended use or construction activities. Notwithstanding any other provision of this Lease, excepting this **Section 11.2** and **Subsection 11.10.2**, if Lessee disturbs or discovers a reportable pre-existing Hazardous Substance by virtue of any of its activities under this Lease, regardless of who caused it or when it occurred, Lessee shall be responsible for any reporting and remediation required by any state or federal agency and will indemnify and hold Lessor harmless from any remediation responsibility, regardless of who caused the Hazardous Substance Release. Notwithstanding the foregoing, this responsibility will not apply if Lessor had actual knowledge of the Hazardous Substance Release and did not disclose it to Lessee. Lessor hereby represents that it knows of no such pre-existing Hazardous Substance Release. Lessor will take whatever action is reasonably necessary to assign any rights of contribution it may have, as the land owner, to Lessee against any third party, excepting Lessor, that Lessee has reason to believe has caused the discovered Hazardous Substance Release. Whether a reportable quantity or not, Lessee will be required to clean up any Hazardous Substance Release in a way that will not exacerbate the pre-existing condition.

**11.3. Limited Business Use of Hazardous Substances.** Subject to the other provisions of this **Section 11**, Lessee is permitted to use, handle, and store Hazardous Substances as necessary to conduct its Permitted Use, and in quantities needed to conduct its Permitted Use, in compliance with applicable Environmental Laws, Best Management Practices, and the provisions of this Lease. Lessee will be using heavy equipment containing Hazardous Substances, including fuels and lubricants. Lessee shall diligently monitor the use and storage of all such equipment in order to prevent any Hazardous Substance Release therefrom.

**11.4. Hazardous Substance Storage Tanks.** Lessee may not operate mobile storage tanks (including fueling trucks), Aboveground Storage Tanks ("AST"), or any AST facility for the storage of Hazardous Substances except with the prior written consent of Lessor, which consent may be granted or denied in Lessor's sole discretion. For the purposes of this **Section 11.4**, "Aboveground Storage Tank" or "AST" means any tank, including fueling tank, with a capacity of greater than 55 gallons. No underground storage tanks are allowed to be installed by Lessee in the Project Area. If any mobile fueling trucks are allowed and are used, they may not be left unattended at any time.

**11.5. Spill Prevention and Response Plan.** During any period of construction when Lessee is using Hazardous Substances within the Project Area, Lessee will maintain a written Spill Prevention and Response Plan ("SPAR Plan") that addresses the measures to be followed by Lessee to prevent, control, and perform corrective actions in the event of a Hazardous Substance Release at or from the Project Area. In addition to meeting all requirements of applicable law, the SPAR Plan will address the measures Lessee will take to prevent Hazardous Substance Releases and to respond immediately to any Hazardous Substance Release. A copy of the SPAR Plan will be maintained at the Project Area construction office, and a copy will be provided to Lessor. The SPAR Plan will be revised and updated to reflect current operations of Lessee within the Project Area, as necessary. Lessor will be provided a copy of all such revisions and updates. In addition to any elements required by Environmental Laws, Lessee will address the following in its SPAR Plan or, at its

option, in a separate document: (a) procedures for the proper receipt, storage, and dispensing of Hazardous Substances authorized as a Permitted Use, including the maintenance, observation and monitoring, safety checks, and safe practices applicable to the Lessee's use of Hazardous Substances; (b) procedures for regular inspection of each AST system, including, but not limited to, confirmation that each such system and key components, such as pumps, hoses, and fittings, are in good and safe working condition; (c) procedures for promptly, but in no case later than within forty-eight (48) hours of acquiring relevant information or knowledge, notifying Lessor of any suspected or confirmed Hazardous Substance Release, and for verbal and written notification to appropriate regulatory agencies under applicable Environmental Laws required in connection therewith; (d) operating procedures for spill contingency and emergency response to Hazardous Substance Releases, including the designation of individuals responsible for directing the removal, response, and restoration actions for the releases; (e) procedures to address large Hazardous Substance Releases that on-site resources may be inadequate to manage, including, but not limited to, identification of an outside 24-hour emergency response contractor to handle large Hazardous Substance Releases; (f) procedures to keep Lessor timely informed during the course of Lessee's response to a Hazardous Substance Release; (g) provision for prompt use of on-site spill response equipment designed to keep a Hazardous Substance Release from reaching other property, storm water or sanitary sewers, or area groundwater or surface waters; (h) provision for trained on-site personnel to operate any Lessee spill response equipment during filling and dispensing operations and to be available on call at all other times; (i) provision for prompt regular submission to Lessor of copies of all relevant permits, consents, approvals, reports, and other correspondence with any regulatory agencies pertaining to compliance in any material respect with Environmental Laws; and (j) provision for training of personnel to implement Lessee's SPAR Plan and Lessee's compliance with applicable Environmental Laws.

11.6. **Soil or Waste.** Lessee will not store, treat, deposit, place, or dispose of treated or contaminated soil, industry by-products, or any other form of waste in the Project Area without the prior written consent of Lessor, which consent may be granted or denied in Lessor's sole discretion.

11.7. **Environmental Inspection.** Lessor reserves the right to inspect for Hazardous Substances and/or Lessee's management of Hazardous Substances in the Project Area at any time, and from time to time, with notice to Lessee, except in the case of a suspected emergency or violation, then without notice. During active construction, Lessor's representative will be free to inspect any area at any time as long as such inspection does not delay Lessee's construction. If a delay will be caused, Lessor will give Lessee a minimum of eight (8) hours' notice, except in the case of a suspected emergency or ongoing violation of Environmental Law. Thereafter, if Lessor at any time during the Lease term or any extension thereof has reason to believe that Lessee is handling Hazardous Substances contrary to the requirements of this Lease, in violation of this Lease, or in any manner that may allow contamination of the Project Area, Lessor may, without limiting its other rights and remedies, cause to be conducted a Special Audit with respect to the matters of concern to Lessor. Lessee will cooperate with all such audits. If Lessor's suspicions are confirmed by the audit, Lessee will reimburse Lessor for the full cost of the audit.

11.8. **Safety and Security.** Under the terms of this Lease, Lessee must comply with all applicable state, federal, and local laws and ordinances. As a part of this requirement, Lessee will maintain material safety data sheets for each and every Hazardous Substance used by Lessee, or

Lessee's agents, employees, contractors, licensees, or invitees in the Project Area, as required under the Hazard Communication Standard in 29 CFR § 1910.1200, as it may be amended, redesignated, or retitled from time to time, and comparable state and local statutes and regulations. To ensure that such information is available to Lessor in the event of a spill or other emergency, all the information will be kept current at all times, and a copy of all such materials will be kept in a place known to and easily accessible to Lessor. Additionally, during periods of construction when Hazardous Substances, or equipment containing Hazardous Substances, is stored on site by Lessee or any of its contractors, Lessee will be responsible for securing the Project Area from vandalism and will be responsible to remediate any Hazardous Substance Release caused by vandalism.

**11.9. Disposal of Hazardous Substances.** Lessee will not dispose of any Hazardous Substance, regardless of the quantity or concentration, within the storm or sanitary sewer drains or plumbing facilities within the Project Area. The disposal of Hazardous Substances will be in approved containers, and Hazardous Substances will be removed from the Project Area only in accordance with the law. If Lessee knows, or has reasonable cause to believe, that any Hazardous Substance Release has come to be located on or beneath the Project Area, Lessee must immediately give written notice of that condition to Lessor, whether or not the Hazardous Substance Release was caused by Lessee.

**11.10. Lessee's Liability.**

**11.10.1. Hazardous Substance Releases.** Except as provided in **Subsection 11.10.2**, Lessee will be responsible for any Hazardous Substance Release in the Project Area, on other properties, in the air, or in adjacent or nearby waterways (including groundwater) that results from, or occurs in connection with, Lessee's occupancy or use of the Project Area. Lessee is responsible for securing the Project Area to prevent vandalism or the dumping of Hazardous Substances within the Project Area during any Lessee construction periods.

**11.10.2. Limitation of Lessee's Liability.** Notwithstanding anything to the contrary provided in this Lease, particularly in **Subsection 11.12.2**, Lessee will have no responsibility for any Hazardous Substances or Hazardous Substance Releases that: (a) are caused by Lessor or the agents, employees, or contractors of Lessor, which occur after the date of Lessee's Initial Audit; (b) a Hazardous Substance Release caused by a third party unrelated to Lessor or Lessee, or their respective agents, employees, or contractors, that occurred after the Effective Date; or (c) except as provided in **Section 11.2**, a Hazardous Substance Release that Lessee can demonstrate migrated into the Project Area from a source off-premises that was not caused by Lessee and was not exacerbated by Lessee's activities on or about the Project Area. Nothing in this **Subsection 11.10.2** shall be construed to restrict Lessee's ability to seek contribution or reimbursement from any responsible third party, excepting Lessor, as provided in **Section 11.2**. Nothing in this **Subsection 11.10.2** shall be construed to limit Lessee's responsibilities under **Section 11.2** and, in the case of any ambiguity, **Section 11.2** shall control. Finally, in the event of a joint construction project between Lessor and Lessee within the Project Area after the Effective Date hereof, as described in **Section 7.33**, Lessor and Lessee will equitably apportion any discovered Hazardous Substance Release remediation and will share the cost of investigating the source of the Hazardous Substance Release and, if caused by a third party, will share in the cost of

pursuing recovery and/or contribution from such third party. Lessor and Lessee will ensure that this apportionment is agreed upon in the separate written agreement for joint construction before the joint project begins construction. In the event of a dispute with respect to apportionment, **Dispute Resolution Section 15** will apply.

11.10.3. Lessee's Environmental Indemnity. Without in any way limiting the generality of the General Indemnity set forth in **Section 16.2**, Lessee will be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Lessor, taking into account insurance defense requirements), indemnify, and hold harmless Lessor from and against all Environmental Costs claimed against or assessed against Lessor arising, in whole or in part, from acts or omissions of Lessee (including Lessee's own employees, agents, contractors, or suppliers) on or about the Project Area. Lessee will be responsible to promptly and fully address and remediate any claims for natural resources damages, as directed by the agency assessing such damage claim. Notwithstanding the foregoing, Lessee will not be responsible for, and does not indemnify Lessor for, any actions of Lessor, including Lessor's own employees, agents, contractors, suppliers, or any other tenant of Lessor that cause environmental damage or a violation of any Environmental Law within the Project Area after the Initial Audit, as provided in **Subsection 11.12.2**.

11.11. **Reimbursement for Damages**. Lessee will fully compensate Lessor for harm to Lessor's real or personal property caused by the acts or omissions of Lessee. This compensation will include reimbursement to Lessor for any diminution in value of, or lost revenue from, the Lease Area or other Lessor owned property caused by a Hazardous Substance Release, including damages for loss of, or restriction on use of, rentable or usable property or of any amenity of the Lease Area, including, without limitation, damages arising from any adverse impact on the leasing or sale of all or part of the Project Area as a result thereof.

#### 11.12. **Environmental Remediation**.

11.12.1. Immediate Response. In the event of a violation of applicable Environmental Laws, a violation of an environmental provision of this Lease, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which Lessee is responsible under this Lease, Lessee will immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or to investigate, contain, and stop the Hazardous Substance Release and remove the Hazardous Substance.

11.12.2. Remediation. As a part of the foregoing response, Lessee will promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release is remediated and that any violation of any applicable Environmental Law or environmental provision of this Lease is corrected. Lessee will remediate, at Lessee's sole expense, any Hazardous Substance Release for which Lessee is responsible under this Lease and will restore the Project Area to its baseline condition, as established in the Initial Audit (defined in **Subsection 11.17.1**). Lessee will also remediate any Hazardous Substance Release for which it is responsible under this Lease on any other impacted property or bodies of water. The obligations of Lessee under this **Subsection 11.12.2** are subject to the limitations on Lessee's liability set forth in **Subsection 11.10.2**.

**11.13. Natural Resources Damages Assessment and Restoration.** Lessee will promptly undertake, at Lessee's sole expense, all actions necessary to ensure that any Natural Resources Damage associated with Lessee's use or occupancy of the Project Area is investigated, determined, quantified, assessed, and permanently restored and compensated for, to the extent legally required by any natural resource trustee with jurisdiction over the matter.

11.13.1. Report to Lessor. Within thirty (30) days following completion of any investigatory, containment, remediation, or removal action required by this Lease, Lessee will provide Lessor with a written report outlining, in detail, what has been done and the results thereof.

11.13.2. Lessor's Approval Rights. Except in the case of an emergency or an agency order requiring immediate action, Lessee will give Lessor advance notice before beginning any investigatory, remediation, or removal procedures. Lessor will have the right to approve or disapprove the proposed investigatory, remediation, or removal procedures and the company or companies and individuals conducting the procedures that are required by this Lease or by applicable Environmental Laws, whether in the Project Area or any affected property or water. Lessor will have the right to require Lessee to contract for and fund oversight by any governmental agency with jurisdiction over any investigatory, containment, removal, remediation, and restoration activities and to require Lessee to seek and obtain a determination of no further action or an equivalent completion-of-work statement from the governmental agency. The agency's no further action letter or an equivalent completion-of-work statement may be subject to reasonable conditions that Lessee must fulfill within a defined period of time before which Lessee will be released from responsibility under this Lease.

**11.14. Notice to Lessor.** Lessee will immediately notify Lessor upon becoming aware of: (a) any violation or alleged violation of any Environmental Law; (b) any leak, spill, release, or disposal of a Hazardous Substance in, on, under, or adjacent to the Project Area or threat of or reasonable suspicion of any of the same; and (c) any notice or communication to or from a governmental agency or any other person directed to Lessee or any other person relating to such Hazardous Substances in, on, under, or adjacent to the Project Area or any violation or alleged violation of, or noncompliance or alleged noncompliance with, any Environmental Laws with respect to the Project Area. Although the raw water contained in the pipeline is not a Hazardous Substance, Lessee will have the same responsibility to notify Lessor of a spill or leak of the raw water and to remediate any damage caused thereby, whether to Lessor's property or the property of others.

**11.15. Certification.** Not later than thirty (30) days after receipt of written request from Lessor, Lessee will provide a written certification to Lessor, signed by Lessee, that certifies that Lessee has not received any notice from any governmental agency regarding a violation of or noncompliance with any Environmental Law; or, if such a notice was received, Lessee will explain the reason for the notice, explain what has been done to remedy the problem, and attach a copy of the notice. Lessee will also certify that Lessee has obtained and has in force all permits required

under Environmental Law. Lessee will make copies of all such permits available to Lessor upon request.

**11.16. Documentation of Hazardous Substances.** During construction and for a period of two (2) years thereafter, Lessee will maintain for periodic inspection by Lessor and deliver to Lessor, at Lessor's request, true and correct copies of the following documents related to the use, handling, storage, transportation, treatment, disposal, and/or emission of Hazardous Substances, concurrently with the receipt from or submission to a governmental agency: permits; approvals; reports and correspondence; storage and management plans; material safety data sheets (MSDS); spill prevention control and countermeasure plans; other spill contingency and emergency response plans; notice of violations of any Environmental Laws; plans relating to the installation of any storage tanks to be installed in, under, or around the Project Area (but the installation of tanks will be permitted only after Lessor has given Lessee its written consent to do so, which consent may be withheld in Lessor's sole discretion).

**11.17. Hazardous Substance Reporting.**

11.17.1. Initial Audit. Lessee shall cause an Environmental Audit of the Project Area to be performed by a duly licensed environmental services provider in the business of conducting Phase I and Phase II audits in the State of Oregon in accordance with local and national standards. This Environmental Audit will be provided to Lessor. The foregoing audit is referred to herein as the "Initial Audit." This Initial Audit will serve as a baseline for determination of current environmental condition and potential future environmental liability. The scope of the Initial Audit will be determined by Lessee.

11.17.2. Special Audit. If Lessor, at any time during the Lease Term or any extension thereof, has reason to suspect that Hazardous Substances are being or have been created, used, handled, stored, generated, disposed, placed, or transported contrary to the requirements of this Lease, in violation of applicable Environmental Laws, or in any manner that has resulted, or is likely to result, in a Hazardous Substance Release, then Lessor may, after written communication of those reasons to Lessee, without limiting its other rights and remedies, request that Lessee conduct a special Environmental Audit ("Special Audit") of the Project Area with respect to the environmental matters of concern to Lessor. If Lessee declines or fails to conduct a Special Audit, then Lessor may proceed to conduct the Special Audit. If no Hazardous Substance Release or violation of Environmental Laws is discovered, Lessor will pay for the Special Audit. If a Hazardous Substance Release or Environmental Laws violation is discovered and is identified as the responsibility of Lessee, as provided by this Lease, Lessee will pay for the Special Audit.

11.17.3. Exit Audit. Upon expiration or earlier termination of this Lease, Lessor will conduct, and Lessee will pay for, an exit Environmental Audit ("Exit Audit") of the Project Area to determine: (a) the environmental condition of the Project Area, (b) whether any Hazardous Substance Release has occurred or exists on or about the Project Area, and (c) whether there is evidence of any violation of Environmental Laws or the provisions of this Lease. The Exit Audit shall, at a minimum, (1) certify that a diligent investigation of the Project Area has been conducted, including a specific description of the work performed,

and (2) either (a) certify that diligent investigation of the Project Area has revealed no evidence of a Release of Hazardous Substances or violation of Environmental Laws, or (b) if a Release or violation of Environmental Laws is detected, identify and describe (i) the types and levels of Hazardous Substances detected; (ii) the physical boundaries of the Release, including operation other than the Project Area; (iii) the actual and potential risks to the environment from such Release or violation; and (iv) the procedures and actions necessary to remedy the Release or violation in compliance with Environmental Laws and the requirements of this Lease. If such Exit Audit discloses a Release of Hazardous Substances by Lessee (including any of its contractors, employees, or agents), a violation of Environmental Laws by Lessee, or a Default by Lessee of its obligations under this Lease, including **Section 11.2**, Lessee shall pay the expense of performing all remediation.

11.17.4. Audit Requirements. The scope of any Special Audit and the Exit Audit will be reasonably determined by Lessor, in consultation with Lessee, consistent with the definition of Environmental Audit in **Subsection 11.1.2**. If any Special Audit or the Exit Audit recommends additional testing or analysis, or recommends an additional audit, then, unless otherwise agreed to in writing by Lessor and Lessee, Lessee will perform the additional recommended testing, analysis, or audit, and the records and results of the additional work will be considered a part of the audit that triggered the need for the additional work. Lessor and Lessee will each receive a signed copy of any such report prepared under this Lease.

11.17.5. Audit Results. The Initial Audit will be used as a baseline for determining the current environmental condition of the Project Area and Lessee's potential future environmental responsibility under this Lease. If the presence of a Hazardous Substance, a Hazardous Substance Release, a violation of Environmental Laws, or a violation of an environmental provision of this Lease is discovered or disclosed in the Project Area during Lessee's construction or by virtue of the Initial Audit, Lessee will be responsible for all response, remediation, restoration, and Environmental Costs arising from the Hazardous Substance, Hazardous Substance Release, violation of Environmental Laws, and any required clean-up, as determined by the applicable government reporting agency. The Exit Audit will be used to assess the environmental condition of the Project Area at the termination of the Lease. If any reportable quantity of any Hazardous Substance is discovered through the Exit Audit that is located in an area where Lessee has been performing work since the Initial Audit, and the Hazardous Substance identified is one that Lessee used during the Lease, then Lessee will be responsible for all environmental remediation unless Lessee can establish that Lessee did not cause or contribute to that Hazardous Substance Release.

11.17.6. Limitation on Lessor Liability. Lessor shall have no liability to Lessee for any Hazardous Substance Release caused by any third party, even if Lessor gave that third party permission to use the Project Area, but Lessee shall have a direct right of recourse against such third party. As used herein, a third party does not include Lessor's own contractors, agents, or employees operating in the Project Area on Lessor's behalf after the date of the Initial Audit who cause a Hazardous Substance Release, for which Lessor will then be responsible. Lessor shall have no liability for any Hazardous Substance Release



within the Project Area unless actually caused by Lessor after the Initial Audit. If any Hazardous Substance is discovered by the Initial Audit, or during Lessee's construction, Lessor will have no obligation to Lessee to remediate or contribute to the remediation of any discovered Hazardous Substance due to Lessor's ownership of the land. Lessee shall be responsible for such remediation and Lessee shall not seek contribution from Lessor.

11.17.7. Lessor's Environmental Indemnity. Without in any way limiting the generality of the General Indemnity set forth in **Section 16.3**, Lessor will be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Lessee, taking into account insurance defense requirements), indemnify, and hold harmless Lessee from and against all Environmental Costs claimed against or assessed against Lessee arising from acts of Lessor on or about the Project Area after the date of the Initial Audit. Lessor will be responsible to promptly and fully address and remediate any claims for Natural Resources Damages, as directed by the agency assessing such damage claim. Notwithstanding the foregoing, Lessor will not be responsible for, and does not indemnify Lessee for any actions of Lessee or any other third party (excluding Lessor's own employees, agents, contractors, or suppliers) that cause environmental damage or a violation of any Environmental Law within the Project Area.

## **12. TERMINATION, ABANDONMENT, AND SITE RESTORATION.**

12.1. If Lessor believes that Lessee has abandoned its use of the Lease Area, Lessor shall provide written notice, articulating the reason for its belief thereof, to Lessee through the designated contact person maintained by Lessee under this Lease, said notice to be sent by certified mail and facsimile. Unless Lessee has responded within thirty (30) calendar days after such notice has been sent, by providing Lessor with a written response articulating the reasons why abandonment has not occurred, then Lessor may proceed to record an affidavit providing notice of abandonment and termination of this Lease with the Clackamas County Recorder's office. If Lessee does provide a written statement disputing Lessor's finding of abandonment, the dispute resolution process of **Section 15** will apply. In the event the Lease is terminated early for any reason, all Rent that has been paid will remain the sole property of Lessor. See also **Subsection 13.2.1**.

12.2. Within thirty (30) days following termination of this Lease, Lessee may request a meeting with Lessor to discuss removal plans for the pipeline or to propose other options to removal, with the clear understanding that whether or not to require removal of the pipeline and consider other options shall be within the sole discretion of Lessor. Lessor's decision will be final and is not subject to mediation. Within ninety (90) days following termination of this Lease, Lessor will provide written notice to Lessee as to whether Lessor will require removal of the pipeline, in whole or in part. If removal is required, Lessor and Lessee will meet within thirty (30) days from the date of notice by Lessor for removal to arrange a removal plan that minimizes disruption to Lessor's city streets. If Lessor elects to have the pipe removed, Lessee shall promptly remove the pipe and all related appurtenances from or in the Project Area. Upon any removal, Lessee shall reclaim the Project Area to elevations and surface composition the same as prior to such removal, or as needed or caused by filling the pipeline, with Lessee being required to provide necessary fill and topsoil, landscape materials, and asphalt or concrete, as applicable, including any base rock or drainage facilities and utilities in order to sufficiently reclaim the Project Area to pre-existing or

better condition. Lessee shall separately compensate Lessor for any losses and damages to the Project Area incurred by reason of any defective or deficient reclamation and removal. Lessee shall also be liable for and shall indemnify Lessor against any claims for damage, destruction, or injury to any third party as a result of Lessee's removal and reclamation work, or filling the pipeline in, on or about the Lease Area. Removal work plan is subject to Lessee review and written approval.

**13. LESSEE DEFAULT.**

13.1. **Event of Default.** The following will constitute an "Event of Default" if not cured within the applicable cure period as set forth below:

13.1.1. Default in Rent. Failure of Lessee to pay any Rent or other charge within ten (10) Business Days after written notice from Lessor shall be an Event of Default.

13.1.2. Lapse of or Change in Insurance Coverage. Should Lessee allow any provided insurance policies to lapse or to be materially changed without Lessor's prior written consent, such lapse or material change will be an Event of Default if not cured within three (3) Business Days of lapse of coverage or any material change in coverage.

13.1.3. Default in Other Covenants. Failure of Lessee or any of its contractors, subcontractors, suppliers, agents, or employees to comply with any term or condition or to fulfill any obligation of this Lease (other than the payment of Rent or other charges) within thirty (30) days after written notice by Lessor specifying the nature of the Default with reasonable particularity will be an Event of Default. If the Default is of such a nature that it cannot be completely remedied within the thirty (30) day period, Lessee will be in compliance with this provision if Lessee begins correction of the Default within the thirty (30) day period and, thereafter, proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Notwithstanding the foregoing, if Lessee violates the same provision of this Lease more than two (2) times in any rolling twelve (12) month period, measured from the date notice of the violation is given by Lessee, then the violation will constitute an immediate Event of Default for which no further notice or cure period need be granted by Lessor; provided however, if there is a third violation of the same Lease provision that occurs within the same twelve (12) month period that is of a truly de minimis and inadvertent nature and Lessee promptly cures it within thirty (30) days or less, Lessor will not declare an immediate Default.

13.1.4. Insolvency. Any of the following will be an Event of Default: An assignment by Lessee or any one of them for the benefit of creditors; filing by Lessee of a voluntary petition of bankruptcy; adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within ninety (90) days after filing; or attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ninety (90) days. Provided, however, if one or more Lessee remains solvent and is in full compliance with this Lease, and all Rent has been paid, insolvency by one of the Lessees will not be an

Event of Default under this Lease as long as the remaining Lessees continue to fully and timely perform.

13.2. **Remedies on Default.** If an Event of Default occurs, Lessor, at Lessor's sole option, may terminate this Lease by notice, in writing, in accordance with **Section 18**. The notice may be given before or within any of the above-referenced cure periods or grace periods for Default and may be included in a notice of failure of compliance, but the termination will be effective only on the expiration of the above-referenced cure periods or grace periods.

13.2.1. Termination. If this Lease is terminated, Lessor will be entitled to recover promptly, without waiting until the due date, any past due Rent together with future Rent that would otherwise become due and owing up to and through the date fixed for expiration of the Lease Term; any damages suffered by Lessor as a result of the Event of Default, including, without limitation, all obligations of Lessee; and the reasonable costs of reentry, including, without limitation, the cost of any cleanup, site restoration, and removal of Lessee's pipeline and other Lessee property, or any other expense occasioned by Lessee's failure to quit the Lease Area upon termination and to leave it in the condition required at the expiration of this Lease; and any attorney fees, court costs, and fees. Following termination, reentry, or abandonment, Lessor may relet the Lease Area if Lessor deems appropriate, without any obligation to return any Rent, which shall be deemed forfeited and not damages to be mitigated. Lessor will have no obligation to mitigate damages, except as required by Oregon law at the time of termination, and will have no obligation to return any Rent. Notwithstanding the foregoing, however, if such default occurs prior to payment of the final Lump Sum, as described in **Subsection 5.1.2**, Lessee will not be required to make that final Lump Sum payment as long as Lessee fully restores the Project Area to good clean condition, in regard to its pre-existing condition, including removal of any pipe or other Lessee improvements, and such restoration takes place within twelve (12) months of the termination of the Lease. Until the Project Area is fully restored, Rent will continue to accrue and be due and owing, and if not fully restored on or before July 1, 2026, then the full Lump Sum will be due and owing, nonrefundable, and not prorated.

13.2.2. Reentry After Termination. If the Lease is terminated or abandoned for any reason, Lessee's liability for damages will survive the termination, and the rights and obligations of the Parties will be as follows:

(a) Lessee will vacate the Project Area immediately; remove its pipeline and any personal property of Lessee, including its pipeline (the pipeline may be left in place only if agreed to, in writing, in Lessor's sole discretion, as provided in **Section 12**), that Lessee is required to remove and restore at the end of the Lease Term; and perform any cleanup, alterations, or other work necessary to leave the Lease Area in the condition required at the end of the term.

(b) Lessor may reenter, take possession of the Project Area, and remove any persons or personal property by legal action or by self-help with the use of reasonable force and without liability for damages.

13.2.3. Damages. Damages will be limited to forfeiture of all Rent paid, or due and owing, as provided in **Section 13.2.1**, plus other actual damages, but excluding consequential or punitive damages.

13.2.4. Right to Sue More than Once. In an Event of Default, Lessor may elect to continue this Lease and to sue periodically to recover damages, and no action for damages will bar a later action for damages subsequently accruing.

13.2.5. Equitable Relief. Lessor may seek injunctive relief or an order of specific performance from any court of competent jurisdiction, requiring that Lessee perform its obligations under this Lease.

13.3. **No Waiver of Default**. No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of partial Rent during the continuance of any breach, will constitute a waiver of the breach or of the agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, will be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

13.4. **Remedies Cumulative and Nonexclusive**. Each right and remedy of Lessor contained in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease, or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Lessor of any such rights or remedies will not preclude the simultaneous or later exercise by Lessor of any other such rights or remedies. All such rights and remedies are nonexclusive.

13.5. **Curing Lessee's Default**. If Lessee fails to perform any of Lessee's obligations under this Lease, Lessor, without waiving the failure, may (but will not be obligated to) perform the same for the account of and at the expense of Lessee (using Lessee's Security Deposit or Lessor's own funds, when required), after the expiration of the applicable cure period set forth in **Subsection 13.1.3**, or sooner in the case of an emergency. Lessor will not be liable to Lessee for any claim for damages resulting from such action by Lessor. Lessee agrees to reimburse Lessor, on demand, for any amounts Lessor spends in curing Lessee's Default. Any sums to be so reimbursed will bear interest at the Delinquency Rate.

13.6. **Administrative Costs**. If Lessor gives Lessee one written notice of a violation of a specific provision of this Lease, and Lessee violates the same provision again during the subsequent twelve (12) month period, then in addition to all other rights and remedies set forth herein, Lessee agrees to reimburse Lessor for Lessor's actual administrative costs incurred in connection with any such subsequent violation. Failure by Lessee to pay the costs will be deemed an immediate Event of Default subject to all remedies set forth in this **Section 13**. Such subsequent violation will trigger reinstatement of the Security Deposit, as described in **Section 13.7**.

13.7. **Reestablishment of Security Deposit.** In the event of any of the following violations of the Lease, Lessee will be required to reinstate the Security Deposit described in **Section 5.5**: (a) two or more violations of the same Lease provision within any given one (1) year period); (b) a lapse in the required insurance coverage not cured within three (3) Business Days; (c) a violation of any Environmental Law or Hazardous Substance Release that results in a fine or citation; or (d) any Event of Default not cured within the applicable cure period, or agreed upon extension thereof, after which Lessor elects to allow the Lease to continue.

#### 14. **LESSOR DEFAULT.**

##### 14.1. **Breach by Lessor.**

14.1.1. **Notice of Breach.** Lessor will not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this **Subsection 14.1.1**, a reasonable time will in no event be less than thirty (30) days after receipt by Lessor of written notice from Lessee specifying what obligation of Lessor has not been performed; however, a Lessor Event of Default will not occur if Lessor's performance is commenced within the thirty (30) day period and thereafter diligently pursued to completion.

14.1.2. **Insolvency.** In the event of an assignment by Lessor for the benefit of creditors; filing by Lessor of a voluntary petition of bankruptcy; adjudication that Lessor is bankrupt or the appointment of a receiver of the properties of Lessor; the filing of an involuntary petition of bankruptcy and failure of Lessor to secure a dismissal of the petition within ninety (90) days after filing; or attachment of or the levying of execution on the leasehold interest and failure of Lessor to secure discharge of the attachment or release of the levy of execution within ninety (90) days, Lessee may terminate this Lease or, to the greatest extent allowed by law, seek to enforce its terms against any trustee.

14.1.3. **No Self-Help.** In the event that Lessor fails to cure any breach within the applicable cure period, Lessee will be entitled to seek any of the remedies provided in **Subsection 14.1.4**, but will not be entitled to take self-help action.

14.1.4. **Remedies in the Event of a Lessor Default.** If an uncured Event of Default is committed by Lessor, Lessee will be entitled to any remedies available at law or in equity for breach of lease; however, damages will be limited to actual damages, excluding consequential and punitive damages.

14.2. **No Waiver of Default.** No failure by Lessee to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no payment of Rent during the continuance of any breach, will constitute a waiver of the breach or of the agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessor, and no breach by Lessor, will be waived, altered, or modified except by a written instrument executed by Lessee. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and

condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

14.3. **Remedies Cumulative and Nonexclusive.** Each right and remedy of Lessee contained in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease, or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Lessee of any such rights or remedies will not preclude the simultaneous or later exercise by Lessee of any other such rights or remedies. All such rights and remedies are nonexclusive.

**15. DISPUTE RESOLUTION.**

15.1. **Mediation.** Should any dispute arise between the Parties to this Lease, the Parties agree to meet informally to negotiate the problem, upon notice from one Party to the other specifying the dispute that needs to be resolved. If such informal negotiation fails, the Parties will mediate the dispute using a professional mediator, and the Parties will split the cost of the mediator. A Party desiring mediation shall provide the other Party with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The Parties will cooperate in good faith to select the mediator within seven (7) days of either Party requesting mediation, and may adopt any procedural format that seems appropriate for the particular dispute. Mediation should be scheduled within fourteen (14) days of selection of the mediator, or as soon as possible, based on availability. In the event the Parties cannot agree on a mediator, the Parties will ask any circuit court judge to appoint a mediator. The mediator will then set the ground rules for the mediation. In the event a written settlement agreement cannot be reached by the Parties within thirty (30) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon, in writing, by the Parties, then the Parties may either agree to binding arbitration or, if all Parties do not agree, then either Party may seek legal relief through the circuit court in Clackamas County, or U.S. District Court if jurisdiction is available.

15.2. **Arbitration.** If the Parties agree to arbitration, selection of the arbitrator, time frame for arbitration, and ground rules for arbitration will be agreed upon at that time. Any arbitrator or arbitrators selected must have a minimum of ten (10) years' of municipal law experience, unless the Parties mutually agree, in writing, otherwise.

15.3. **Injunctive Relief and Specific Performance.** Notwithstanding **Section 15.1** or **15.2**, even if the Parties agree to mediation or arbitration, either Party may still request immediate equitable remedies of either specific performance or injunctive relief to occur while mediation or arbitration is pending or ongoing. The Parties will otherwise agree to abate the court case pending resolution.

**16. LIABILITY, INDEMNITIES, AND REIMBURSEMENT.**

16.1. **Liability.** Lessee shall be strictly liable for all claims for damages, losses, or injury to person or property caused by or arising out of Lessee's use or occupancy of the Project Area, except to the extent any such claim arises from the direct negligence or willful misconduct of

Lessor, including Lessor's contractors, agents, or employees acting on Lessor's behalf. See also **Section 11** pertaining to Lessee's environmental liability and indemnities.

16.2. **Lessee's General Indemnity.** Lessee agrees to defend (using legal counsel reasonably acceptable to Lessor, taking into account insurance defense requirements), indemnify, reimburse, and hold harmless Lessor from and against any and all claims, demands, damages to person or property, including Lessor's own property, causes of action for injury or death, fines, penalties, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), liabilities, losses, proceedings, and/or suits that may be imposed on or claimed against Lessor, in whole or in part, directly or indirectly, arising from or in any way connected with (a) any act, omission, or negligence by Lessee or its partners, officers, directors, members, managers, agents, employees, invitees, contractors, subcontractors, and suppliers; (b) any use, occupation, management, or control of the Project Area by Lessee, including, but not limited to, the sudden or accidental release of raw water that causes damage to person or property; (c) any condition created in or about the Project Area by Lessee, including any accident, injury, or damage occurring on or about the Project Area during this Lease, unless caused by Lessor or a third party unrelated to Lessee; (d) any breach, violation, or nonperformance of any of Lessee's obligations under this Lease; or (e) any damage caused on or to the Project Area during Lessee's use or occupancy thereof, unless caused by Lessor or a third party unrelated to Lessee. As used throughout this **Section 16**, "Lessee" includes all of Lessee's partners, officers, directors, members, managers, agents, employees, invitees, contractors, consultants, and suppliers. To the greatest extent allowed by law, this indemnity shall apply to any claim, however caused, or regardless of the legal grounds and basis, in which Lessor is named.

16.3. **Lessor Indemnity of Lessee.** Lessor agrees to defend (using legal counsel reasonably acceptable to Lessee, taking into account insurance defense requirements), indemnify, reimburse, and hold harmless Lessee from and against any and all claims, demands, damages to person or property, including Lessee's own property, causes of action for injury or death, fines, penalties, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), liabilities, losses, proceedings, and/or suits that may be imposed on or claimed against Lessee as a result of Lessor's own direct negligence or willful misconduct within the Project Area. Lessor will not be liable to Lessee for any act or omission of any third party to whom Lessor may have also granted access to the Project Area.

16.4. **Survival.** This **Section 16** will survive the termination of this Lease with respect to all matters arising or occurring before surrender of the Lease Area by Lessee, including, but not limited to, pipe removal and property restoration.

16.5. **Scope of Indemnity.** For purpose of this **Section 16**, references to "Lessor" are deemed to include its respective officers, directors, employees, agents, invitees, consultants, and contractors.

## 17. **CONDEMNATION.**

If the Lease Area or any interest therein is taken as a result of the exercise of the right of eminent domain or under threat thereof (a "Taking"), this Lease will terminate with regard to the portion that

is taken by condemnation authority. If Lessee determines that the portion of the Lease Area taken does not feasibly permit the continuation of the operation of the pipeline, this Lease will terminate. The termination will be effective as of the date of the Taking. Any condemnation award relating to the land will be the property of Lessor. Lessee will not be entitled to any proceeds of any such real property award, except Lessee will be entitled to any compensation attributed by the condemning authority to Lessee's relocation expense, pipeline and related appurtenances, prepaid Rent, or loss or interruption of business.

**18. NOTICES AND EMERGENCY CONTACT NUMBERS.**

18.1. **Notices.** All notices required under this Lease will be deemed to be properly served when hand-delivered or on the third Business Day after mailing via certified mail, return receipt requested, to the last address previously furnished by the Parties hereto in accordance with the requirements of this **Section 18**. Until hereafter changed by the Parties by notice, in writing, sent in accordance with this **Section 18**, notices must be sent to the following addresses:

To Wilsonville:           City of Wilsonville  
                                  Attn: Finance Director  
                                  29799 SW Town Center Loop East  
                                  Wilsonville, OR 97070

with copy to: Wilsonville City Attorney  
                                  29799 SW Town Center Loop East  
                                  Wilsonville, OR 97070

To Hillsboro:            City of Hillsboro  
                                  Attn: Water Director  
                                  150 East Main Street  
                                  Hillsboro, OR 97123

with copy to: City Attorney  
                                  150 East Main Street  
                                  Hillsboro, OR 97123

To TVWD:                Tualatin Valley Water District  
                                  Attn: Chief Executive Officer  
                                  1850 SW 170<sup>th</sup> Avenue  
                                  Beaverton, OR 97003

with copy to: District Counsel  
                                  1850 SW 170<sup>th</sup> Avenue  
                                  Beaverton, OR 97003

The addresses to which notices are to be delivered may be changed by giving notice of the change in address in accordance with this Notice provision.



18.2. **Emergency Contact Numbers.** Lessor's 24-hour emergency contact number is 1-866-252-3614. Lessee's 24-hour emergency contact number is [REDACTED]. The emergency number may be changed by giving notice as provided above.

**19. CHANGES IN LAW.**

The Parties acknowledge that Lessor has no obligation to allow Lessee to place a pipe through Wilsonville without Lessor's agreement. Accordingly, the Parties have agreed to this Agreement and have affirmatively relied upon it in allowing the pipe to be placed in the Lease Area for ninety-nine (99) years for the agreed upon Rent and other consideration contained herein. The Parties agree that this Lease is fair, reasonable, and mutually advantageous to the Parties at the time it is entered into and shall be binding for the duration of its Term, regardless of future changes in law or circumstance, unless modification is mutually agreed to, in writing, by the Parties. Neither Party will attempt to change any law in order to void the terms of this Lease.

**20. GENERAL PROVISIONS.**

20.1. **Covenants, Conditions, and Restrictions.** This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, loans, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record as of the date of this Lease regarding the Lease Area and to any applicable land use or zoning laws or regulations.

20.2. **Assignments Without Release.** This Lease shall be binding upon, inure to the benefit of, and be applicable to Lessor and Lessee and their respective heirs, personal representatives, successors, and assigns. Lessee shall not assign this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that if all Rent due has been paid, Lessee may assign this Lease to an intergovernmental entity organized under ORS 190 as a municipal water provider for the purpose of constructing and operating the pipeline and related public water facilities. In the event of any assignment by Lessee or any successive lessee, the assignment will be without release and Lessee shall remain fully responsible for all obligations, responsibilities, and liabilities of Lessee under this Lease (including, but not limited to, requirements as to indemnity and insurance).

20.3. **Nonwaiver.** The waiver by either Party of strict performance of any provision of this Lease will not be a waiver of or prejudice the Party's right to require strict performance of the same provision in the future or of any other provision.

20.4. **Attorney Fees.** If any suit, action, or other proceeding (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing Party will be entitled to recover attorney, paralegal, accountant, and other expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees also applies to any administrative proceeding, petition for review, trial, and appeal. Whenever this Lease requires one Party to defend the other Party, the defense will

be by legal counsel acceptable to the Party to be defended, understanding that claims are often covered by insurance, with the insurance carrier designating the defense counsel.

20.5. **Time of Essence.** Time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Lease.

20.6. **No Warranties or Guarantees.** Lessor makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Lease Area, or suitability of the Lease Area for Lessee's use. Lessor will not be responsible for any loss, damage, or costs that may be incurred by Lessee by reason of any such condition. In no event will any Lessor approval, consent, acquiescence, or authorization given to Lessee be construed as Lessor's representation or warranty that such matter being approved, consented to, authorized, or acquiesced is appropriate, suitable, practical, safe, or in compliance with any applicable state or federal law, and Lessee will remain solely responsible and liable for any action taken by Lessee.

20.7. **Governing Law.** This Lease is governed by and will be construed according to the laws of the State of Oregon, without regard to its choice-of-law provisions. Any action or suit to enforce or construe any provision of this Lease by either Party will be brought in the Circuit Court of the State of Oregon for Clackamas County or in United States Federal Court for the District of Oregon if there are jurisdiction and grounds.

20.8. **Survival.** Any covenant or condition (including, but not limited to, environmental obligations and all indemnification agreements) set forth in this Lease, the full performance of which is not specifically required before the expiration or earlier termination of this Lease, and any covenant or condition that by its terms is to survive, will survive the expiration or earlier termination of this Lease and will remain fully enforceable thereafter.

20.9. **Partial Invalidity.** If any provision of this Lease is held to be unenforceable or invalid, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties to the extent possible. In any event, all the other provisions of this Lease will be deemed valid and enforceable to the fullest extent.

20.10. **Modification.** This Lease may not be modified except in writing, signed by all Parties.

20.11. **Successors.** The rights, liabilities, and remedies provided in this Lease will extend to the heirs, legal representatives and, as far as the terms of this Lease permit, successors and assigns of the Parties. The words "Lessor," "Lessee," and their accompanying verbs or pronouns, whenever used in the Lease, apply equally to all persons, firms, or corporations that may be or become Parties to this Lease.

20.12. **Calculation of Time.** Unless referred to in this Lease as Business Days, all periods of time referred to in this Lease include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period extends to include the next day that is not a Saturday, Sunday, or Legal Holiday. "Legal Holiday" means any

holiday observed by the federal government. "Business Day" means any day Monday through Friday, excluding Legal Holidays when Lessor's City Hall is closed for business.

20.13. **Exhibits Incorporated by Reference.** All exhibits attached to this Lease are incorporated by reference as if fully set forth herein.

20.14. **Interpretation of Lease; Status of Parties.** This Lease is the result of arm's length negotiations between Lessor and Lessee and will not be construed against Lessor by reason of its preparation of this Lease. Nothing contained in this Lease will be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship, between the Parties hereto.

20.15. **Force Majeure.** The time for performance of any of Lessee's or Lessor's obligations hereunder will be extended for a period equal to any hindrance, delay, or suspension in the performance of that Party's obligations beyond the Party's reasonable control, and directly impacting the Party's ability to perform, caused by any of the following events: unusually severe acts of nature, including floods, earthquakes, hurricanes, and other extraordinary weather conditions; civil riots, war, terrorism, or invasion; any delay occurring in receiving approvals or consents from any governmental authority, including DEQ or other agency review of environmental reports (as long as an application for the approval or consent was timely filed and thereafter diligently pursued); major fire or other major unforeseen casualty; labor strike that precludes the Party's performance of the work in progress; or extraordinary and unanticipated shortages of materials (each a "Force Majeure Event"). Lack of funds or willful or negligent acts of a Party will not constitute a Force Majeure Event. Further, it will be a condition to any extension of the time for a Party's performance hereunder that the Party notify the other Party within five (5) Business Days, or as soon thereafter as reasonably practicable, following the occurrence of the Force Majeure Event and diligently pursue the delayed performance as soon as is reasonably possible.

20.16. **Prior Agreements Superseded.** This Lease supersedes any prior verbal or written agreement between the Parties with respect to the Lease Area and any Project Area, except the *Cooperative Improvement (Utility) Agreement* between the State of Oregon, the City of Wilsonville, Tualatin Valley Water District, and the City of Hillsboro, dated April 22, 2016; the *Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership*, dated July 6, 2000, by and between the City of Wilsonville and Tualatin Valley Water District, as it may be amended; and the *Accord Agreement*, dated June 19, 2001.

20.17. **Capacity to Execute; Mutual Representations.** Lessor and Lessee each warrant and represent to one another that this Lease constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, each Party represents that its governing process has been followed in order to authorize the execution, delivery, and performance of this Lease by it. The individuals executing this Lease each warrant that they have full authority to execute this Lease on behalf of the entity for whom they purport to be acting.

20.18. **Entire Agreement.** This Lease, together with all exhibits attached hereto and plans and as-builts expressly referenced in this Lease, and by this reference incorporated herein,

constitutes the entire agreement between Lessor and Lessee with respect to the leasing of the Lease Area.

20.19. **Counterparts.** This Lease may be executed in one or more counterparts.

20.20. **Memorandum of Lease.** Lessee may record a Memorandum of Lease in the form attached hereto as **Exhibit F**.

IN WITNESS WHEREOF, this Lease is executed as of the \_\_\_ day of \_\_\_\_\_, 2017.

CITY OF WILSONVILLE, by and through  
its elected officials

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Bryan Cosgrove, City Manager

By: \_\_\_\_\_  
Barbara A. Jacobson, City Attorney

STATE OF OREGON            )  
  ) ss.  
County of Clackamas        )

This instrument was acknowledged before me on \_\_\_\_\_, 2017,  
by Bryan Cosgrove, as City Manager of the City of Wilsonville.

\_\_\_\_\_  
Notary Public – State of Oregon

CITY OF HILLSBORO, by and through  
its elected officials

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Michael Brown, City Manager

By: \_\_\_\_\_  
Christopher Crean, City Attorney

STATE OF OREGON        )  
  ) ss.  
County of Washington    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017,  
by Michael Brown, as City Manager of the City of Hillsboro.

\_\_\_\_\_  
Notary Public – State of Oregon

TUALATIN VALLEY WATER DISTRICT,  
by and through its elected officials

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Richard Schmidt, Board President

By: \_\_\_\_\_  
Clark Balfour, Counsel

STATE OF OREGON        )  
  ) ss.  
County of Washington    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017,  
by Richard Schmidt, as Board President of the Tualatin Valley Water District.

\_\_\_\_\_  
Notary Public – State of Oregon

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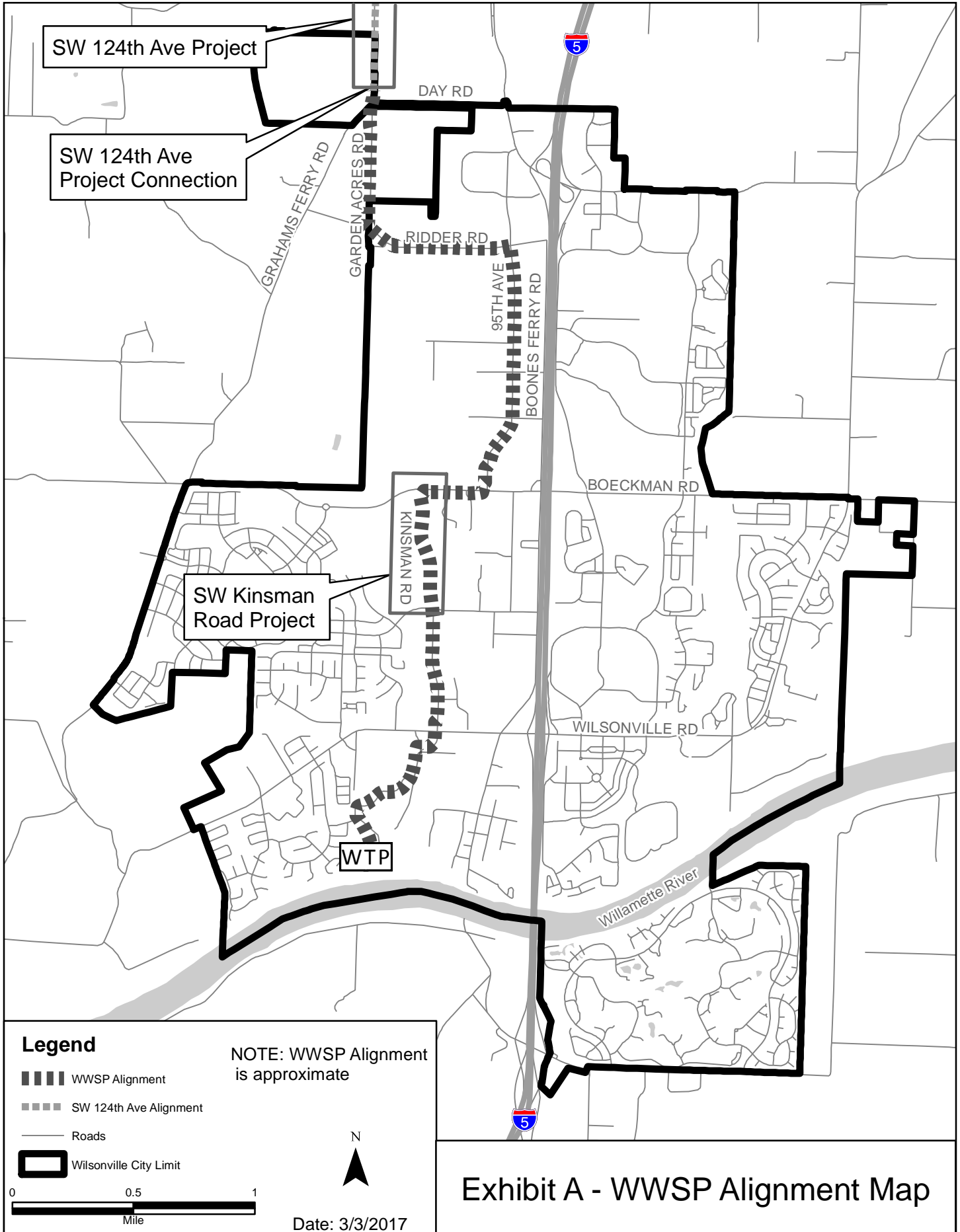


Exhibit A - WWSP Alignment Map

Exhibit C  
2016 Public Works Plan Submittal Requirements  
and Other Engineering Requirements  
Revised for Willamette Water Supply Program Plan Submittals

Note: These requirements are typical and can be expected to change from time to time – the requirements at the time of plan submittal will apply

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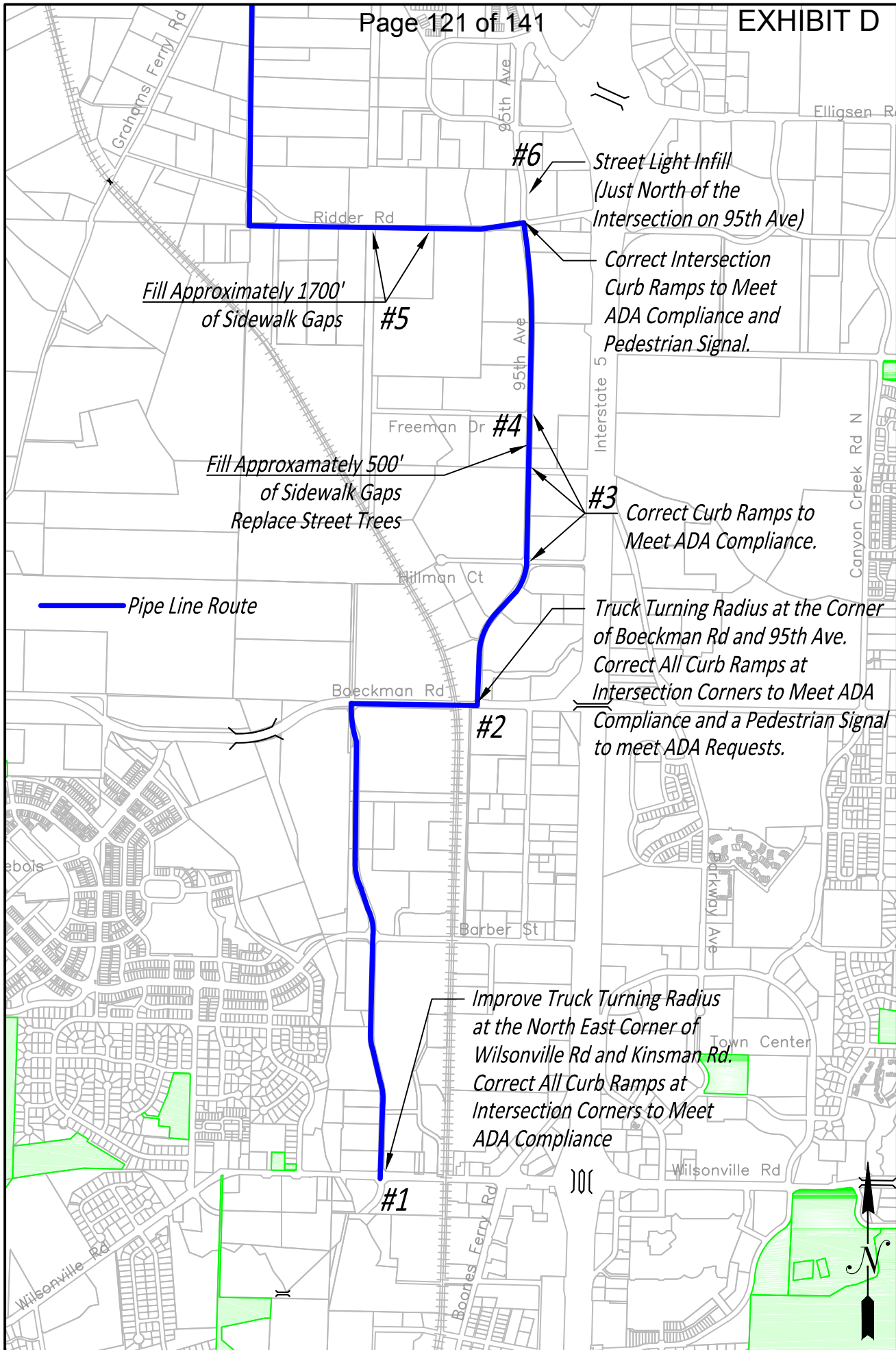
1. All construction or improvements to public works facilities or within the public right-of-way shall be in conformance with the City of Wilsonville Public Works Standards - 2015.
2. Lessee shall submit insurance requirements to the City of Wilsonville as set forth in the Ground Lease.
3. No construction of, or connection to, any existing or proposed utility/improvements will be permitted until all plans are approved by City Staff, all fees have been paid, all necessary permits, rights-of-way and easements have been obtained and City Staff is notified a minimum of 24 hours in advance.
4. All utility/improvement plans submitted for review shall be based upon a 22”x 34” format and shall be prepared in accordance with City of Wilsonville Public Works Standards.
5. Plans submitted for review shall meet the following general criteria:
  - a. Design of any utility improvements in the right-of-way shall be approved at the time of the issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.
  - b. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities, shall be shown in a lighter, grey print. Proposed improvements shall be shown in bolder, black print.
  - c. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
  - d. All proposed on and off-site public/private utility improvements shall comply with State of Oregon and City of Wilsonville requirements and any other applicable codes.
  - e. Design plans shall identify existing and proposed locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes, and any other public or private utility within the general construction area.
  - f. As per City of Wilsonville Ordinance No. 615, all new utilities and ancillary equipment, including but not limited to pipelines, gas, telephone, cable, fiber-optic, and electric improvements, shall be installed underground. Existing overhead utilities shall be undergrounded unless otherwise agreed to, in writing, by the City.
  - g. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
  - h. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
  - i. Existing/proposed rights-of-way, easements, and adjacent driveways shall be identified.
  - j. All engineering plans shall be printed to PDF, combined to a single file, stamped and digitally signed by a Professional Engineer registered in the State of Oregon.
  - k. All plans submitted for review shall be in the form of a digitally signed PDF and three printed sets.



6. Submit plans in the following general format and order (as applicable) for all public works construction, including utilities in the right-of-way:
    - a. Cover sheet.
    - b. City of Wilsonville construction note sheet.
    - c. General construction note sheet.
    - d. Existing conditions plan.
    - e. Erosion control and tree protection plan.
    - f. Site plan; include property line boundaries, water quality pond boundaries, sidewalk improvements, rights-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
    - g. Grading plan, with one-foot contours.
    - h. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
    - i. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
    - j. Street plans.
    - k. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference.
    - l. Water and sanitary sewer plans; number all lines, manholes, and cleanouts for easier reference.
    - m. Detailed plan for stormwater detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although stormwater detention facilities are typically privately maintained, they will be inspected by engineering, and the plans must be part of the Public Works Permit set.
    - n. Detailed plan for water quality facility (both plan and profile views). Note that although stormwater quality facilities are typically privately maintained, they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set.
    - o. Composite franchise utility plan.
    - p. City of Wilsonville detail drawings.
    - q. Illumination plan.
    - r. Striping and signage plan.
    - s. Landscape plan.
  7. Lessee shall install, operate, and maintain adequate erosion control measures in conformance with the standards adopted by City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements, until such time as approved permanent vegetative materials have been installed.
  8. Lessee shall work with the City's Natural Resources department before disturbing any soil on the respective site. If five or more acres of the site will be disturbed, Lessee shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If one to less than five acres of the site will be disturbed, a 1200-CN permit from the City of Wilsonville is required.
-

9. Lessee shall be in conformance with all stormwater and flow control requirements for the proposed development per City of Wilsonville Public Works Standards.
10. A stormwater analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
11. Lessee shall be in conformance with all water quality requirements for the proposed development per City of Wilsonville Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project, Lessee shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
12. Stormwater quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
13. All survey monuments on the subject site, or that may be subject to disturbance within the construction area, and the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated, or destroyed as a result of any construction, Lessee shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to City Staff.
14. Sidewalks, crosswalks, and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
15. A City approved energy dissipation device shall be installed at all proposed storm system outfalls. Storm outfall facilities shall be designed and constructed in conformance with City of Wilsonville Public Works Standards.
16. Lessee shall provide a 'stamped' engineering plan and supporting information that shows the proposed street light locations meet the appropriate AASHTO lighting standards for all proposed streets and pedestrian alleyways.
17. All required pavement markings, in conformance with the Transportation Systems Plan and the Bike and Pedestrian Master Plan, shall be completed in conjunction with any conditioned street improvements.
18. Street and traffic signs shall have a high-intensity prismatic finish meeting ASTM 4956 Spec Type 4 standards.
19. Lessee shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.

20. Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP), or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
21. For any new public easements created with the project, Lessee shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate easement document (on City approved forms).
22. Mylar Record Drawings: At the completion of the installation of any required public improvements or utilities in the right-of-way, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally approved by City Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. mylar, an electronic copy in AutoCAD - current version, and a digitally signed PDF.



29900 SW KINSMAN RD

KINSMAN ROAD

PROPOSED DRIVEWAY

PROPOSED RIGHT-OF-WAY

PROPOSED STORMWATER PLANTER

PROPOSED SIDEWALK

9815 SW WILSONVILLE RD  
(FRED MEYER FUEL CENTER)

PROPOSED BIKE LANE

EXIST.  
RIGHT-OF-WAY

PROPOSED SIGNAL POLE

PROPOSED ISLAND

WILSONVILLE ROAD



File: N:\e\p\2015\315005-10-Wilsonville-ADA-Ramp-Replacement\CAD\LOT\Exhibit\5005-EXH-RightTurnLane.dwg TAB: EXH  
Plotted: 6/2/16 at 9:56am By: Jordan

# Right Turn Lane - Concept Plan

Kinsman Road & Wilsonville Road  
City of Wilsonville, Oregon



*After recording, return to:*  
Tualatin Valley Water District  
Attn: Chief Executive  
1850 SW 170<sup>th</sup> Avenue  
Beaverton, OR 97003

**MEMORANDUM OF GROUND LEASE FOR RAW WATER PIPELINE**

This Memorandum of Ground Lease (“Memorandum”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (“Lessor”), the **City of Hillsboro**, a duly chartered home rule municipal government of the State of Oregon, and the **Tualatin Valley Water District**, a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (hereinafter jointly and severally referred to as “Lessee”), as follows:

1. Ground Lease Area Legal Description. The Lease Area is described on **Exhibit A**, attached hereto and incorporated by reference herein.
2. Ground Lease Purpose. The allowed use is for the installation, operation, maintenance, repair, and replacement for a raw water transmission pipeline, as more particularly described in the Lease.
3. Ground Lease Term. The term of this Lease is commenced on \_\_\_\_\_, 2017 and shall terminate on June 30, 2115, unless terminated earlier in accordance with the terms of the Ground Lease.
4. Other Ground Lease Terms. The sole purpose of this Memorandum is to provide constructive notice of the existence of this Ground Lease. In the event of a conflict between the terms of the Ground Lease and this Memorandum, the terms of the Ground Lease shall control. The entire Ground Lease may be made available by contacting any of the parties thereto whose contact information is as follows:

To Wilsonville:           City of Wilsonville  
                                  Attn: Finance Director  
                                  29799 SW Town Center Loop East  
                                  Wilsonville, OR 97070

To Hillsboro: City of Hillsboro  
Attn: Water Director  
150 East Main Street  
Hillsboro, OR 97123

To TVWD: Tualatin Valley Water District  
Attn: Chief Executive  
1850 SW 170<sup>th</sup> Avenue  
Beaverton, OR 97003

IN WITNESS WHEREOF, the parties have respectively executed this Memorandum effective as of the date first above written. This Memorandum may be executed in counterpart.

CITY OF WILSONVILLE, by and through  
its elected officials

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Bryan Cosgrove, City Manager

By: \_\_\_\_\_  
Barbara A. Jacobson, City Attorney

STATE OF OREGON        )  
                                  ) ss.  
County of Clackamas    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017,  
by Bryan Cosgrove, as City Manager of the City of Wilsonville.

\_\_\_\_\_  
Notary Public – State of Oregon

CITY OF HILLSBORO, by and through  
its elected officials

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Michael Brown, City Manager

By: \_\_\_\_\_  
Christopher Crean, City Attorney

STATE OF OREGON        )  
                                  ) ss.  
County of Washington    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017,  
by Michael Brown, as City Manager of the City of Hillsboro.

\_\_\_\_\_  
Notary Public – State of Oregon



TUALATIN VALLEY WATER DISTRICT,  
by and through its elected officials

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Richard Schmidt, Board President

By: \_\_\_\_\_  
Clark Balfour, Counsel

STATE OF OREGON        )  
                                  ) ss.  
County of Washington    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017,  
by Richard Schmidt, as Board President of the Tualatin Valley Water District.

\_\_\_\_\_  
Notary Public – State of Oregon

FIRST AMENDMENT TO AGREEMENT REGARDING WATER TREATMENT PLANT  
DESIGN, CONSTRUCTION, OPERATION, AND PROPERTY OWNERSHIP

This First Amendment to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership is entered into by **Tualatin Valley Water District**, a domestic water supply district organized under ORS Chapter 264 (TVWD), and the **City of Wilsonville**, a municipal corporation of the State of Oregon (Wilsonville), and is effective this \_\_\_\_ day of \_\_\_\_\_, 2017. TVWD and Wilsonville may also be referred to as Party or Parties.

RECITALS

- A. On or about July 6, 2000, the Parties entered into the Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership (“Agreement”) regarding the Property and Supply Facilities as defined in the Agreement.
- B. On or about June 19, 2001, the Parties entered into an Accord Agreement to supplement the terms of the Agreement.
- C. Pursuant to the Agreement and the Accord Agreement, the Parties caused the Property to be improved and the Supply Facilities constructed, with Wilsonville immediately taking water from the Supply Facilities and anticipating that TVWD alone, or with the Willamette River Water Coalition, an ORS Chapter 190 intergovernmental entity, would expand part or all of the Supply Facilities and take drinking water from the Supply Facilities.
- D. Section 6 of the Agreement, *Operation and Management of the Supply Facilities; Future Agreement*, provides for designation of a Managing Owner and duties. Section 6.1 provides for a transfer of the Managing Owner position from Wilsonville to TVWD if the Willamette River Water Treatment Plant (WRWTP) usage by Wilsonville is less than fifty percent (50%) of the total usage. Wilsonville has continuously been the designated Managing Owner, managing the Supply Facilities since the Supply Facilities were constructed.
- E. TVWD, along with the City of Hillsboro and potentially other units of local government, plans to build a new Willamette Water Supply System Water Treatment Plant (WWSS WTP) at a location other than the Property, so TVWD will most likely not obtain finished drinking water from the WRWTP. TVWD, Wilsonville, Sherwood, Hillsboro, and other potential partners in the WWSS WTP or the WRWTP will jointly share in the expansion, use, operation, and maintenance of upgraded intake facilities, as more particularly described below, located on the Property, all according to the Willamette Intake Facilities Intergovernmental Agreement currently under negotiation.
- F. TVWD and Wilsonville have negotiated a Ground Lease that provides for the location, design, construction, operation, maintenance, repair, and replacement of a raw water transmission line from the Property through, under, and along Wilsonville rights-of-way to the ultimate future northern boundary of Wilsonville. One of the elements of consideration by TVWD for the Ground Lease is to amend the Agreement to vest Wilsonville as the permanent Managing Owner of the WRWTP.

- G. TVWD and Wilsonville also desire to make other amendments to the Agreement as set forth below.

AGREEMENT

In consideration of the execution of a mutually acceptable Ground Lease for use of the Wilsonville rights-of-way by TVWD, the City of Hillsboro, and other municipal entities for water system facilities, and incorporating by reference the Recitals as if fully set forth herein, TVWD and Wilsonville hereby amend the Agreement as follows:

1. Definitions. The following two Definitions are added to Section 1: "Willamette Intake Facilities" means the fish screens, the intake pipe, the caisson (aka wet well), the pump station building, electric panel, conduit and wiring, and other appurtenances up to the System Separation Point, as defined in the Willamette Intake Facilities Intergovernmental Agreement. "Willamette River Treatment Plant ("Plant") Assets" means the Real Property and Supply Facilities that are the subject of this First Amendment.

2. Section 2.2.8 is hereby removed and replaced in its entirety with the following:

"2.2.8 The cost of maintenance, repair, and replacement of all Plant Assets, excluding the Intake Facilities, shall be proportioned to each owner on the basis of capacity used, as set forth in Section 4 of the Agreement. With respect to the Intake Facilities, the cost of maintenance, repair, and replacement will be allocated in accordance with the Willamette Intake Facilities Intergovernmental Agreement, which will provide that allocation will be based on ownership interest, irrespective of capacity used, effective July 1, 2017. This requirement will be included in the Willamette Intake Facilities Intergovernmental Agreement ("IGA"). If this provision is not included in the IGA, TVWD agrees to pay the pro rata share of all parties, excluding Wilsonville and Sherwood. Notwithstanding the foregoing and for clarification, routine operating and maintenance costs directly associated with the production of water for consumption, while Wilsonville and Sherwood (as a successor in interest to TVWD) are the only users, will continue to be allocated in accordance with the proportionate use of each user, including TVWD's current and future successors and assigns."

3. A new Section 2.2.11 is added to include the following:

"2.2.11 Right-of-Way Dedication: The Parties will execute a right-of-way dedication to the City of Wilsonville for an extension of Kinsman Road through a portion of the Property, yet to be determined, for the future Boones Ferry Road to Brown Road east-west connector road and the Kinsman Road extension to the connector road. This dedication will be beneficial to the Parties and will be without charge."

4. A new Section 2.2.12 is added to include the following:

"2.2.12 New Raw Water Pipeline Easement: Wilsonville hereby agrees to grant an easement to TVWD, Hillsboro, and other named municipalities for the new Willamette Intake Facilities and the routing of a new 66-inch diameter Raw Water Pipeline from the System Separation Point westerly along the Willamette River and then northerly along

and through the Property, including location and placement of a structure for electrical and other water system equipment and appurtenances on Area 1, as shown on Exhibit A, attached hereto and incorporated by reference herein, and all as more particularly described in the Willamette Water Supply System Intake Facility Agreement ("Intake Agreement"), to be executed contemporaneously herewith between TVWD and Wilsonville. In consideration of the granting of this easement, TVWD will transfer the ownership of 5 MGD of its capacity in the existing Raw Water Pipeline to Wilsonville."

- 5. Section 6.1 of the Agreement is replaced in its entirety with a new Section 6.1, to read as follows:

"6.1 Managing Owner

Wilsonville is hereby designated as Managing Owner, with authority to manage, operate, repair, and replace the Plant Assets that comprise the Willamette River Water Treatment Plant, excluding the Willamette Intake Facilities. Wilsonville will also be responsible for operations and management of the Willamette Intake Facilities ("Intake Facilities") until the Intake Facilities are upgraded and the parties to the Willamette Intake Facilities Intergovernmental Agreement, other than Wilsonville and Sherwood, begin to draw water through the Intake Facilities. A Managing Agent for the Intake Facilities will be named pursuant to the Willamette Intake Facilities Intergovernmental Agreement. If Wilsonville elects, in its sole discretion, to resign as Managing Owner of the Willamette River Water Treatment Plant, it will give all other then-current owners notice thereof, and all owners, including Wilsonville, will mutually agree to a new Managing Owner."

- 6. This First Amendment is expressly conditioned and contingent upon the execution of a Ground Lease between the Parties for the raw water pipeline and right-of-way usage. If that Ground Lease is not executed, this First Amendment shall be void without further action of the Parties.
- 7. Except as expressly modified herein, the terms and conditions of the Agreement and Accord Agreement, referenced in Recitals A and B, remain in full force and effect.

TUALATIN VALLEY WATER DISTRICT

CITY OF WILSONVILLE

By: \_\_\_\_\_  
MARK KNUDSON, P.E.  
Chief Executive Officer

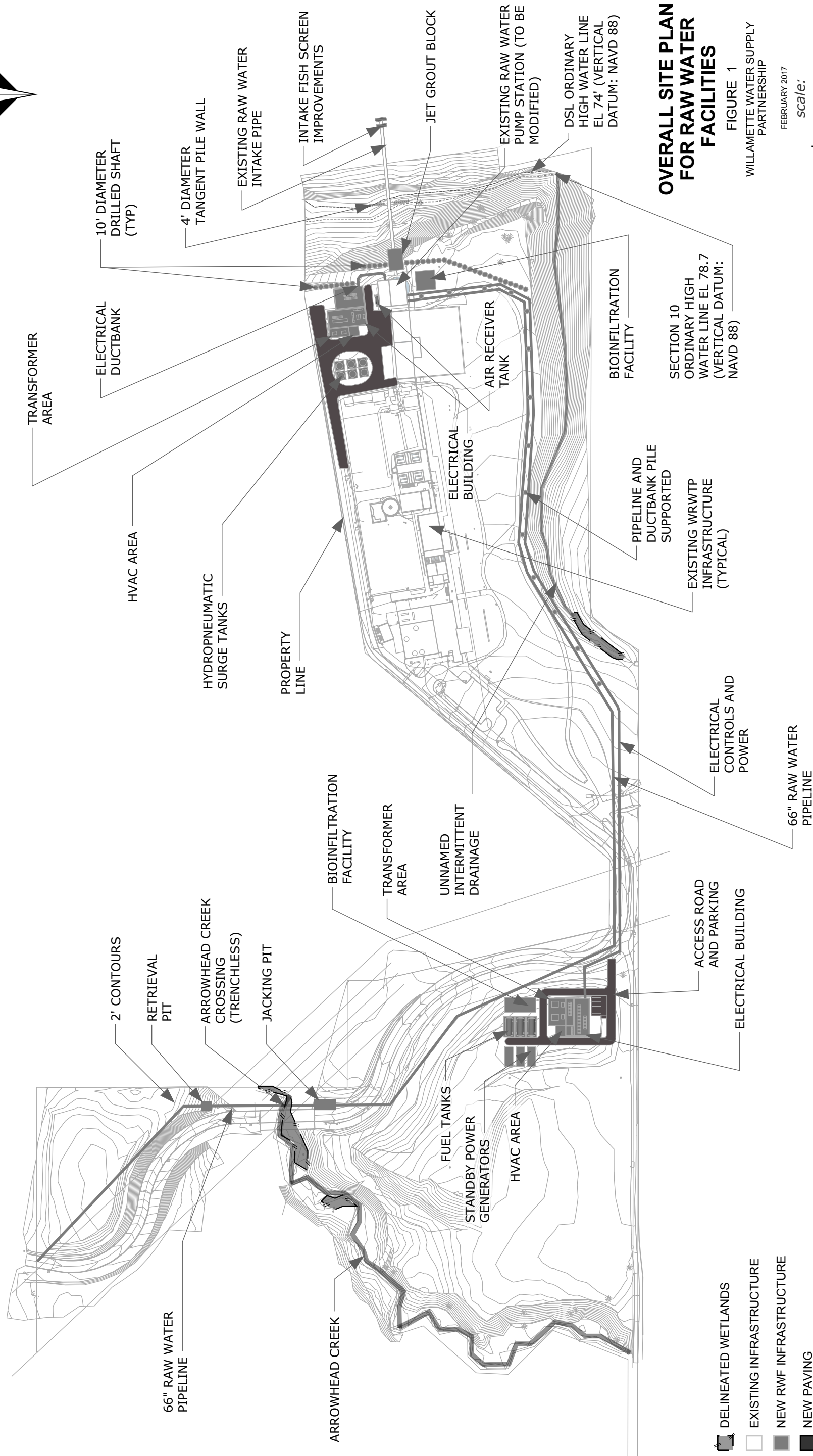
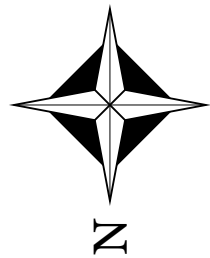
By: \_\_\_\_\_  
BRYAN COSGROVE  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clark Balfour, District Counsel

\_\_\_\_\_  
Barbara Jacobson, City Attorney



**OVERALL SITE PLAN FOR RAW WATER FACILITIES**

FIGURE 1  
WILLAMETTE WATER SUPPLY PARTNERSHIP

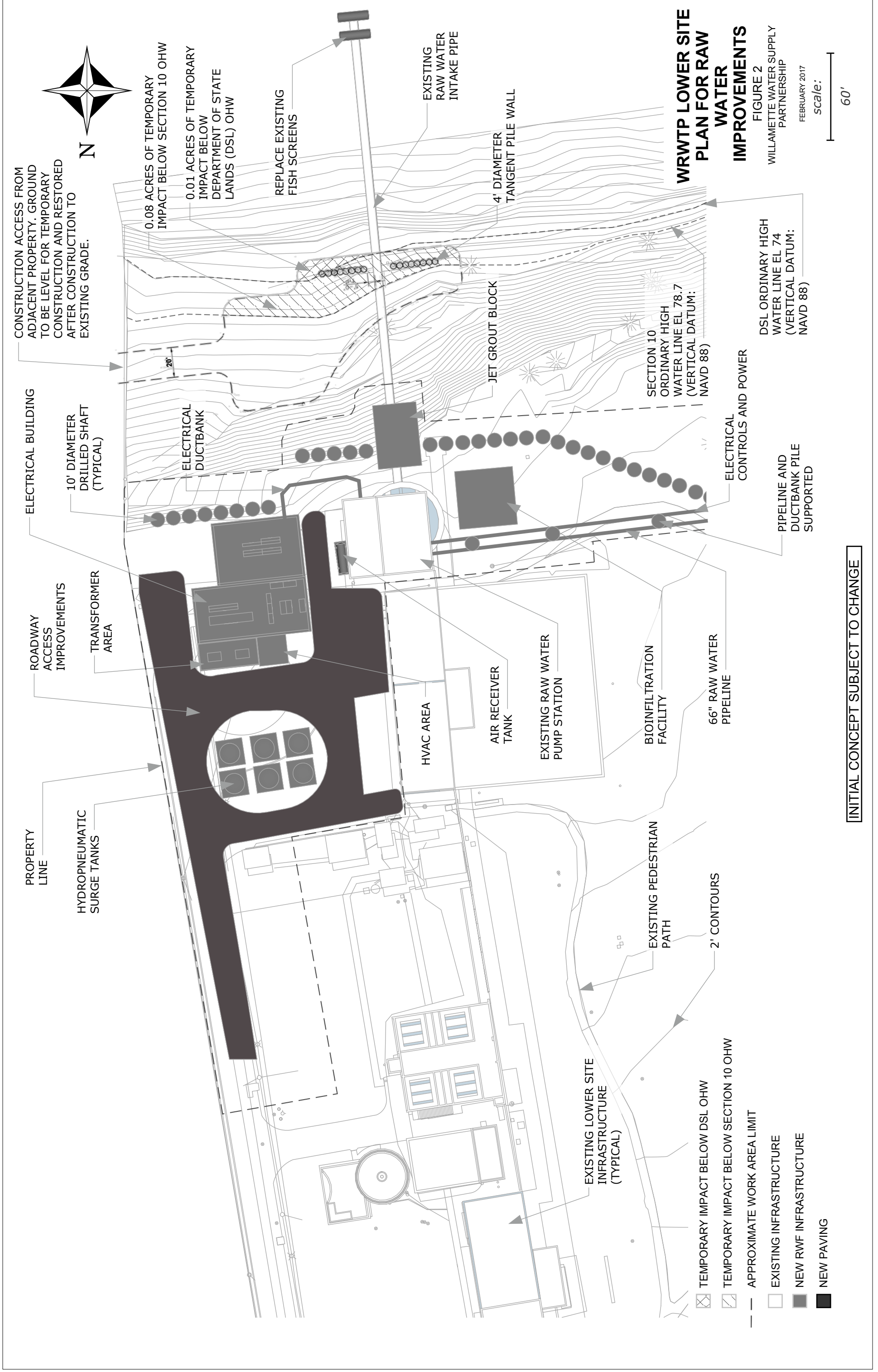
FEBRUARY 2017

Scale: 1" = 200'

INITIAL CONCEPT SUBJECT TO CHANGE

- DELINEATED WETLANDS
- EXISTING INFRASTRUCTURE
- NEW RWF INFRASTRUCTURE
- NEW PAVING

RWF 1.0

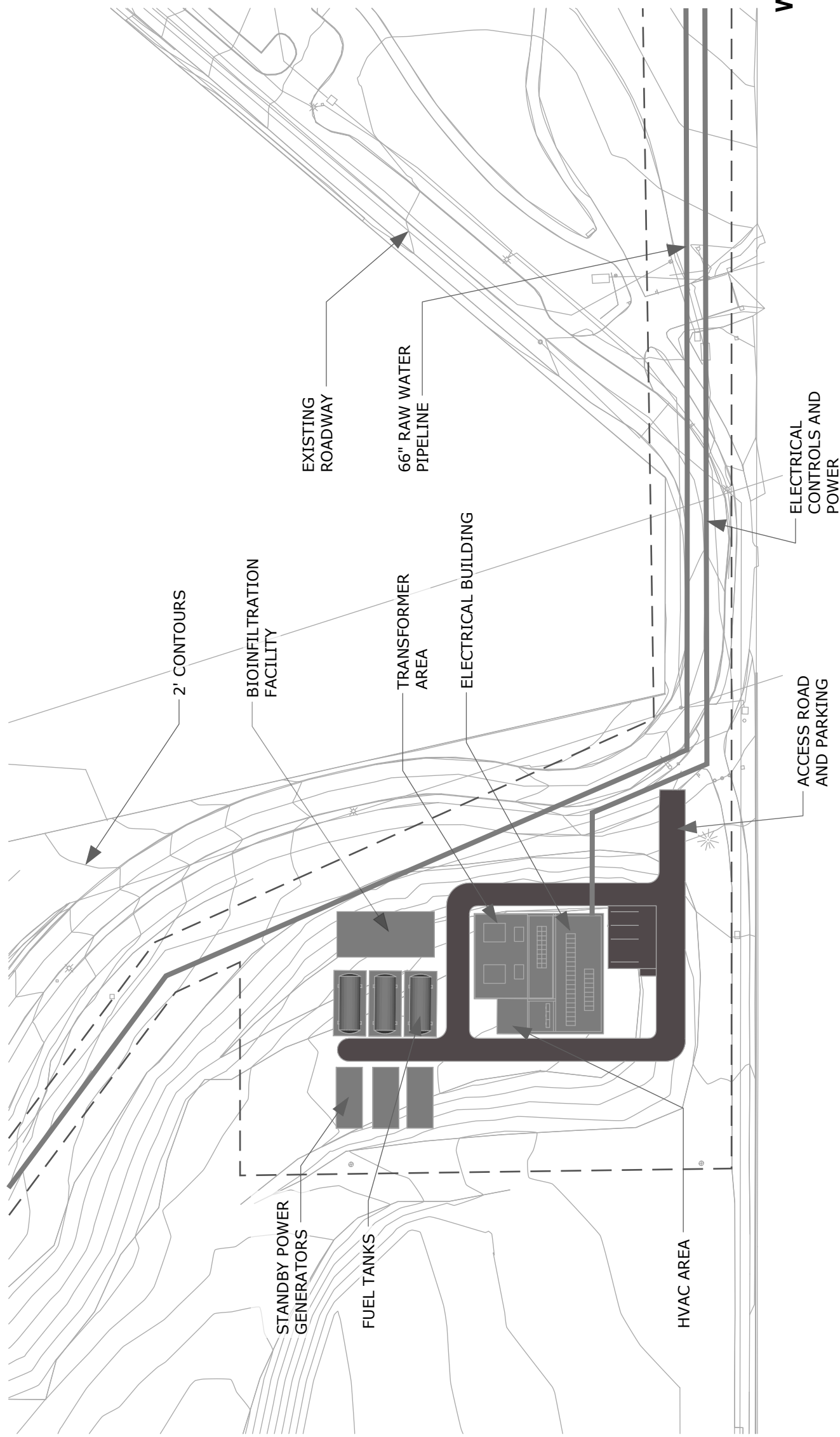
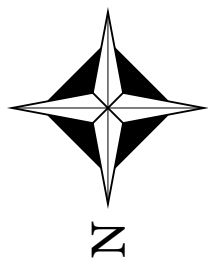


**WRWTP LOWER SITE  
PLAN FOR RAW  
WATER  
IMPROVEMENTS**

FIGURE 2  
WILLAMETTE WATER SUPPLY  
PARTNERSHIP  
FEBRUARY 2017

Scale: 60'

INITIAL CONCEPT SUBJECT TO CHANGE



- APPROXIMATE WORK AREA LIMIT
- EXISTING INFRASTRUCTURE
- NEW RWF INFRASTRUCTURE
- NEW PAVING

**WRWTP UPPER SITE  
PLAN FOR RAW  
WATER  
IMPROVEMENT**

FIGURE 3

WILLAMETTE WATER SUPPLY  
PARTNERSHIP

FEBRUARY 2017

Scale:

80'

**INITIAL CONCEPT SUBJECT TO CHANGE**

**CITY OF WILSONVILLE AND  
TUALATIN VALLEY WATER DISTRICT  
WILLAMETTE WATER SUPPLY SYSTEM  
INTAKE FACILITY AGREEMENT**

This Willamette Water Supply System (“WWSS”) Intake Facility Agreement (“Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2017 (“Effective Date”) by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (“Wilsonville”), and **Tualatin Valley Water District**, a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (“TVWD”). Wilsonville and TVWD are sometimes referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS:**

WHEREAS, Wilsonville and TVWD are the original and current owners in the Wilsonville Willamette River Water Treatment Plant (“WRWTP”) land and facilities (“Facilities”), including current Willamette Intake Facilities (“WIF”) (noting TVWD has transferred a portion of its capacity rights, but not ownership of the land or Facilities, to Sherwood); and

WHEREAS, Wilsonville has been primarily responsible for managing, maintaining, and paying all associated costs for the Facilities since inception, except for a contribution from Sherwood (as a user and partial capacity successor in interest to TVWD) over the past few years; and

WHEREAS, TVWD wishes to sell a portion of its interest in the WIF to other municipal partners (“WIF Partners”) through a Willamette Intake Facilities Intergovernmental Agreement (“WIF IGA”) and, in conjunction therewith, desires to upgrade the WIF; and

WHEREAS, Wilsonville is satisfied with the function of the WIF, as it currently exists, but is willing to cooperate with TVWD so that TVWD can sell and upgrade the assets to the WIF Partners and, in conjunction therewith, is also willing to become a WIF Partner along with TVWD and the others;

NOW, THEREFORE, incorporating all of the above Recitals as if fully set forth below, the Parties agree as follows:

**AGREEMENT:**

**1. Willamette Intake Facilities Description:** The WIF include the following assets, owned by Wilsonville and TVWD in the following percentages:

- |                                       |                                   |
|---------------------------------------|-----------------------------------|
| • Existing Fish Screening - 70 MGD:   | Wilsonville - 28.6%; TVWD - 71.4% |
| • Intake Pipe - 120 MGD:              | Wilsonville - 16.7%; TVWD - 83.3% |
| • Caisson (aka Wet Well) - 120 MGD:   | Wilsonville - 16.7%; TVWD - 83.3% |
| • Pump Station Building - 120 MGD:    | Wilsonville - 16.7%; TVWD - 83.3% |
| • Electrical Wire & Conduit - 70 MGD: | Wilsonville - 16.7%; TVWD - 83.3% |

**2. Capacity Increase:** In order to sell shares of capacity ownership in the WIF to other WIF Partners, TVWD proposes to replace the existing fish screen with a new increased capacity screen that could handle and be permitted for 150 MGD. Therefore, for purposes of this



Agreement, all numbers are based on a 150 MGD capacity. In the event capacity is decreased, Wilsonville would pay (or be reimbursed if payment has already been made) its proportionate decreased share of the actual costs of that incremental decrease in capacity, in accordance with the terms and formulas set forth below.

- 3. Additional 5 MGD Share of the Existing Raw Water Pipeline:** Currently the raw water pipeline (“RWP”) to the WRWTP, with a current capacity of 70 MGD, is owned by Wilsonville, with a 28.6% share, and TVWD, with a 71.4% share. In consideration of TVWD transferring ownership of 5 MGD of their capacity in the existing WRWTP RWP to Wilsonville, Wilsonville, along with TVWD, will grant to TVWD, Hillsboro, and other municipal partners, including an assignee intergovernmental entity created by them, a Construction, Maintenance, and Access Easement within a defined surveyed area (“Easement Area”) for the purpose of constructing, operating, maintaining, repairing, replacing, and accessing the new WWSS RWP and WIF. The Easement will be located to the west of the WRWTP and then north through the Water Treatment Plant Park. Installation of required structures, equipment, and appurtenances to the RWP will be allowed within the Easement Area, on the upper WRWTP site, north of the access road, as shown on the drawing entitled Overall Site Plan for Raw Water Facilities, Figures 1-3, February 2017 (*please note, subject to change by agreement of the Parties*), attached hereto as **Exhibit A** and incorporated by reference herein. No structures, equipment, or appurtenances will be allowed to be located aboveground on the lower site, which is currently used as a park area, other than the stormwater facilities in the location shown on **Exhibit A**, or other minor equipment approved by Wilsonville that is flush with the ground so as to not create any hazard to the public using the park area, or as otherwise approved, in writing, by Wilsonville. The Easement Area, excluding the area for the underground RWP, is anticipated not to exceed two (2) acres, unless agreed to, in writing, by Wilsonville. The final size will be approved as part of the plan review. Final drawings depicting all structures, equipment, and appurtenances to be located within the Easement Area must be reviewed and approved by Wilsonville prior to finalization of the Easement. As used herein, reference to structures, equipment, and appurtenances does not include a power substation. If one is needed, Wilsonville and TVWD will negotiate concerning the terms and conditions of its location with PGE pursuant to a separate agreement. Seismic improvements for the new WWSS RWP will be included at no cost to Wilsonville, all as set forth in the First Amendment (dated \_\_\_\_\_, 2017) to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership, dated July 6, 2000.
- 4. Plant Management, Maintenance, and Repair:** Wilsonville has continuously managed and overseen the operations and maintenance of the WIF since the assets were placed into service in 2002. In the spirit of compromise and as additional consideration for this Agreement, Wilsonville agrees to forego collection of past costs and expenditures made by Wilsonville in operating and maintaining the WIF, and TVWD agrees that all future repair and replacement expenditures (including those set forth in Paragraph 5 below) will be shared by Wilsonville and TVWD in accordance with their percentage ownership, not use. Routine operational expenses required for daily use of the system will continue to be paid by the users, in accordance with their percentage of usage. TVWD may pass a portion of this obligation on to the other WIF Partners, at its option, but if not agreed to by the other WIF Partners, TVWD will remain liable for its share, as more particularly set forth below.

**5. Future, Near-Term Intake Maintenance and Repair Costs:** Once the WIF IGA is signed by the WIF Partners, the WIF will become co-owned and governed by the terms of that WIF IGA. In the meantime, all future near-term costs associated with the maintenance and repair of the existing WIF will be shared by Wilsonville and TVWD, in accordance with their percentage ownership. In general, future WIF maintenance costs will be budgeted and paid according to the terms of the WIF IGA. For Fiscal Year 17/18, it is anticipated it will be necessary to repair the intake pipe, modify the caisson sparge system, and repair grouted pipe joints, as needed. The estimated cost of these near-term repairs is approximately One Hundred Four Thousand Dollars (\$104,000). TVWD's share of near-term intake pipe repair costs based on ownership is  $\$104,000 * 1.05 * 0.833 = \$90,963$  (this number is inclusive of Sherwood's 5 MGD). The foregoing number will be reduced by the amount of this number, if any, allocated to the removal of sediment from the pipeline, resulting from water use. This amount may be allocated by TVWD to the other WIF Partners pursuant to the terms of the WIF IGA, or will be paid by TVWD if the WIF Partners do not agree to pay or TVWD simply elects to pay. In any case, however, if the WIF IGA is not finalized prior to the need for this expenditure, TVWD agrees to pay its share, as set forth above, when such near-term repairs have been completed by Wilsonville. Wilsonville agrees to evaluate possible scheduling options for these near-term improvements and consider possible inclusion of the near-term improvements as part of other WIF improvement projects contemplated by the WIF Partners, with the goal of achieving cost savings for Wilsonville, TVWD, and the WIF Partners, as long as waiting for the IGA Agreement to be reached does not jeopardize operation or cause damage to the WIF.

**6. Cost of New Screen and Permitting for New Screen:** Wilsonville, along with TVWD, paid for the existing intake screen, which has a design capacity of 70 MGD. This screen has been in service for approximately fifteen (15) years and is projected to meet Wilsonville's capacity requirements for at least an additional sixty (60) years. Although Wilsonville has no reason to invest in a new screen at this point in time, in the spirit of cooperation and toward the goal of obtaining more capacity for all the WIF Partners, Wilsonville agrees to pay a portion of the proportional cost share of the permitting and actual new screen cost in exchange for an additional 5 MGD capacity. Wilsonville's final cost share for the additional 5 MGD capacity will be based on the **lesser** of the actual costs and capacity of the new screen, installation, and permitting or One Hundred Twenty-Five Thousand Dollars (\$125,000). In all cases, Wilsonville's cost cannot exceed and will be capped at \$125,000. No additional fees or charges may be added to this amount.

**7. Miscellaneous Provisions:**

7.1. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one Party may indicate by written notice to the other Party.

To Wilsonville:      City of Wilsonville  
                                  Attn: Finance Director  
                                  29799 SW Town Center Loop East  
                                  Wilsonville, OR 97070

with copy to: Wilsonville City Attorney  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

To TVWD: Tualatin Valley Water District  
Attn: Chief Executive Officer  
1850 SW 170<sup>th</sup> Avenue  
Beaverton, OR 97003

with copy to: District Counsel  
1850 SW 170<sup>th</sup> Avenue  
Beaverton, OR 97003

The addresses to which notices are to be delivered may be changed by giving notice of the change in address in accordance with this Notice provision.

- 7.2. Modification. Any modification of the provisions of this Agreement shall not be enforceable or binding unless reduced to writing and signed by both Parties.
- 7.3. Integration. This Agreement contains the entire and integrated agreement between the Parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.
- 7.4. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.
- 7.5. No Assignment. Neither Party may assign this Agreement, nor the performance of any obligations hereunder, unless agreed to in advance and in writing by the other Party.
- 7.6. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. Venue for any dispute will be in Clackamas County Circuit Court.
- 7.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing Party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.
- 7.8. Nonwaiver. Failure by either Party at any time to require performance by the other Party of any of the provisions of this Agreement shall in no way affect the Party's rights hereunder to enforce the same, nor shall any waiver by the Party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

- 7.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the Parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.
- 7.10. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.
- 7.11. 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.
- 7.12. 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 where this Agreement gives Wilsonville “sole discretion” or Wilsonville is allowed to make a decision in its “sole judgment.”
- 7.13. 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 Party the full and complete enjoyment of rights and privileges hereunder.
- 7.14. Interpretation. As a further condition of this Agreement, Wilsonville and TVWD acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each Party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any Party. In the event that any Party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.
- 7.15. Entire Agreement. This Agreement, all documents attached to this Agreement, and all laws and regulations incorporated by reference herein, represent the entire agreement between the Parties.
- 7.16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.
- 7.17. Authority. Each Party signing this Agreement hereby warrants actual authority to bind their respective Party.
- 7.18. Related Essential Agreements. This Agreement will be executed simultaneously with the Ground Lease and the First Amendment to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first above written.

CITY OF WILSONVILLE, by and through  
its elected officials

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Bryan Cosgrove, City Manager

By: \_\_\_\_\_  
Barbara A. Jacobson, City Attorney

STATE OF OREGON        )  
                                  ) ss.  
County of Clackamas    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017,  
by Bryan Cosgrove, as City Manager of the City of Wilsonville.

\_\_\_\_\_  
Notary Public – State of Oregon

TUALATIN VALLEY WATER DISTRICT,  
by and through its elected officials

APPROVED AS TO LEGAL FORM:

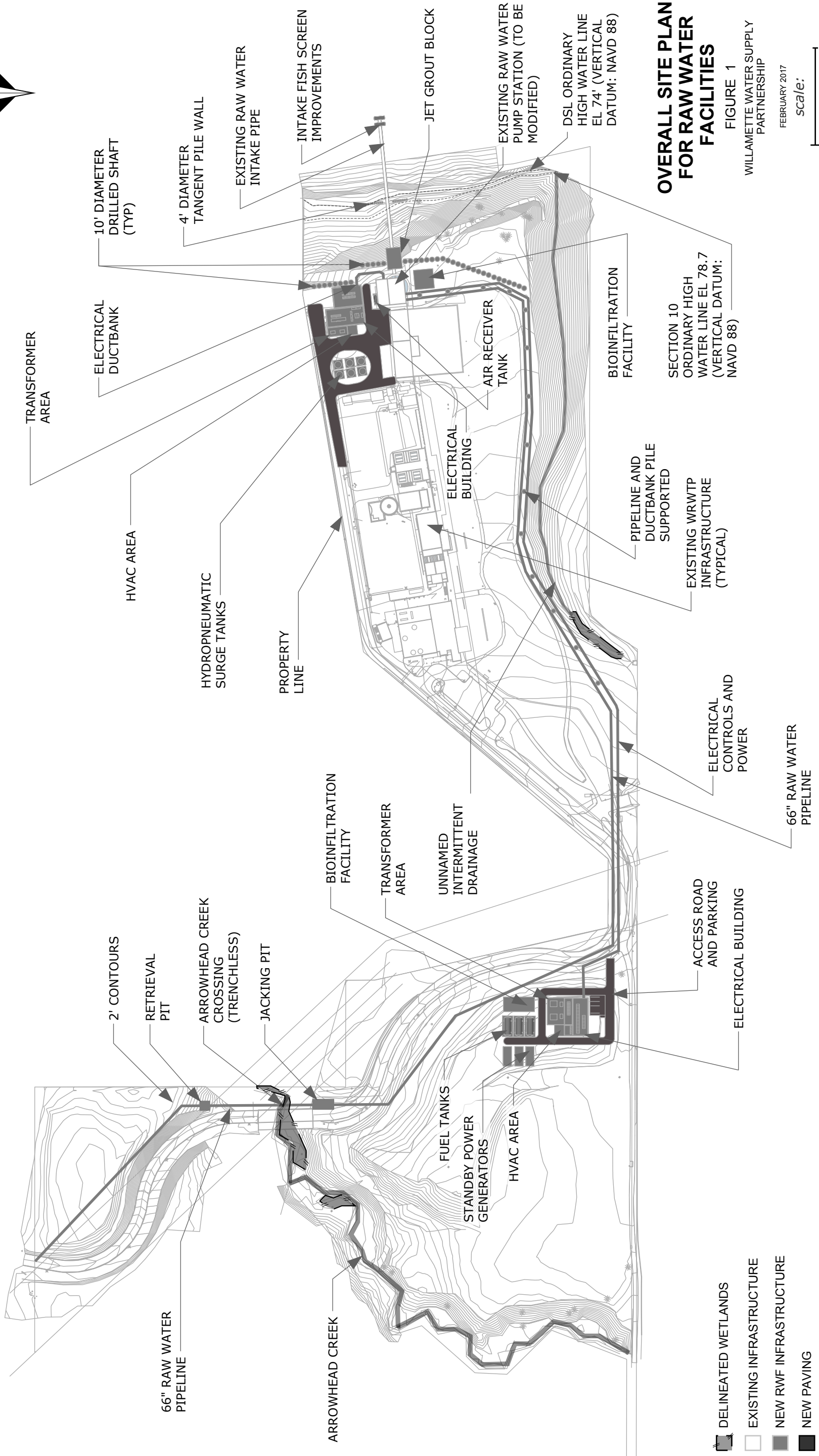
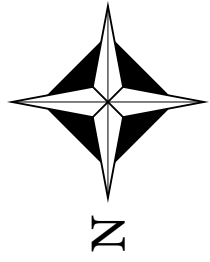
By: \_\_\_\_\_  
Mark Knudson, P.E.,  
Chief Executive Officer

By: \_\_\_\_\_  
Clark Balfour, Counsel

STATE OF OREGON        )  
                                  ) ss.  
County of Washington    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017,  
by Mark Knudson, P.E., as Chief Executive Officer of the Tualatin Valley Water District.

\_\_\_\_\_  
Notary Public – State of Oregon



**OVERALL SITE PLAN  
FOR RAW WATER  
FACILITIES**

FIGURE 1  
WILLAMETTE WATER SUPPLY  
PARTNERSHIP

FEBRUARY 2017

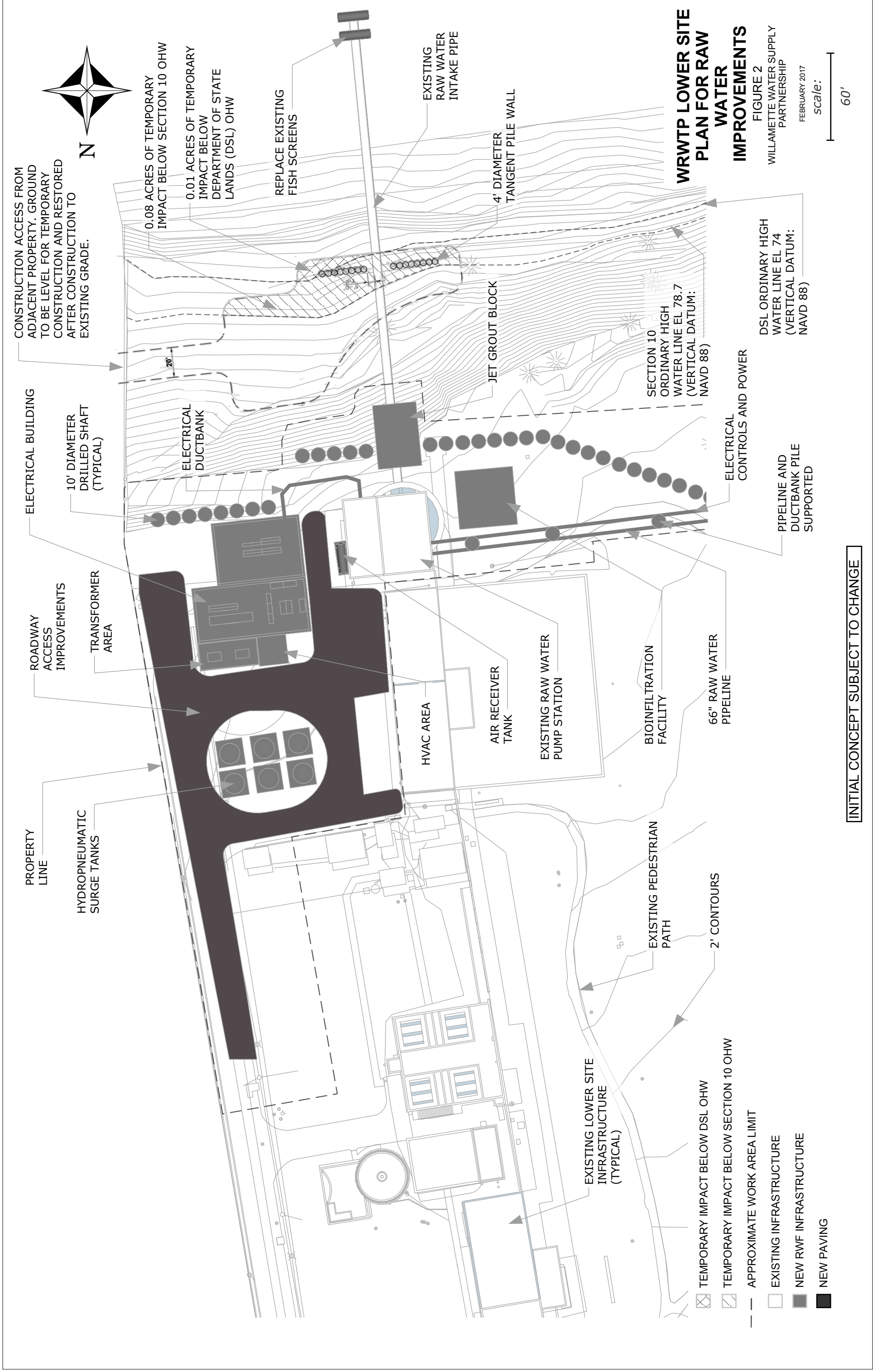
Scale:

200'

- DELINEATED WETLANDS
- EXISTING INFRASTRUCTURE
- NEW RWF INFRASTRUCTURE
- NEW PAVING

**INITIAL CONCEPT SUBJECT TO CHANGE**

RWF 1.0



INITIAL CONCEPT SUBJECT TO CHANGE

**WRWTP LOWER SITE  
PLAN FOR RAW  
WATER  
IMPROVEMENTS**

FIGURE 2  
WILLAMETTE WATER SUPPLY  
PARTNERSHIP  
FEBRUARY 2017

Scale: 60'

0.08 ACRES OF TEMPORARY  
IMPACT BELOW SECTION 10 OHW

0.01 ACRES OF TEMPORARY  
IMPACT BELOW  
DEPARTMENT OF STATE  
LANDS (DSL) OHW

REPLACE EXISTING  
FISH SCREENS

EXISTING  
RAW WATER  
INTAKE PIPE

4' DIAMETER  
TANGENT PILE WALL

SECTION 10  
ORDINARY HIGH  
WATER LINE EL. 78.7  
(VERTICAL DATUM:  
NAVD 88)

DSL ORDINARY HIGH  
WATER LINE EL. 74  
(VERTICAL DATUM:  
NAVD 88)

CONSTRUCTION ACCESS FROM  
ADJACENT PROPERTY. GROUND  
TO BE LEVEL FOR TEMPORARY  
CONSTRUCTION AND RESTORED  
AFTER CONSTRUCTION TO  
EXISTING GRADE.

ELECTRICAL BUILDING  
10' DIAMETER  
DRILLED SHAFT  
(TYPICAL)

ELECTRICAL  
DUCTBANK

JET GROUT BLOCK

ELECTRICAL  
CONTROLS AND POWER

PIPELINE AND  
DUCTBANK PILE  
SUPPORTED

ROADWAY  
ACCESS  
IMPROVEMENTS

TRANSFORMER  
AREA

HVAC AREA

AIR RECEIVER  
TANK

EXISTING RAW WATER  
PUMP STATION

BIOINFILTRATION  
FACILITY

66" RAW WATER  
PIPELINE

PROPERTY  
LINE

HYDROPNEUMATIC  
SURGE TANKS

EXISTING PEDESTRIAN  
PATH

2' CONTOURS

EXISTING LOWER SITE  
INFRASTRUCTURE  
(TYPICAL)

TEMPORARY IMPACT BELOW DSL OHW

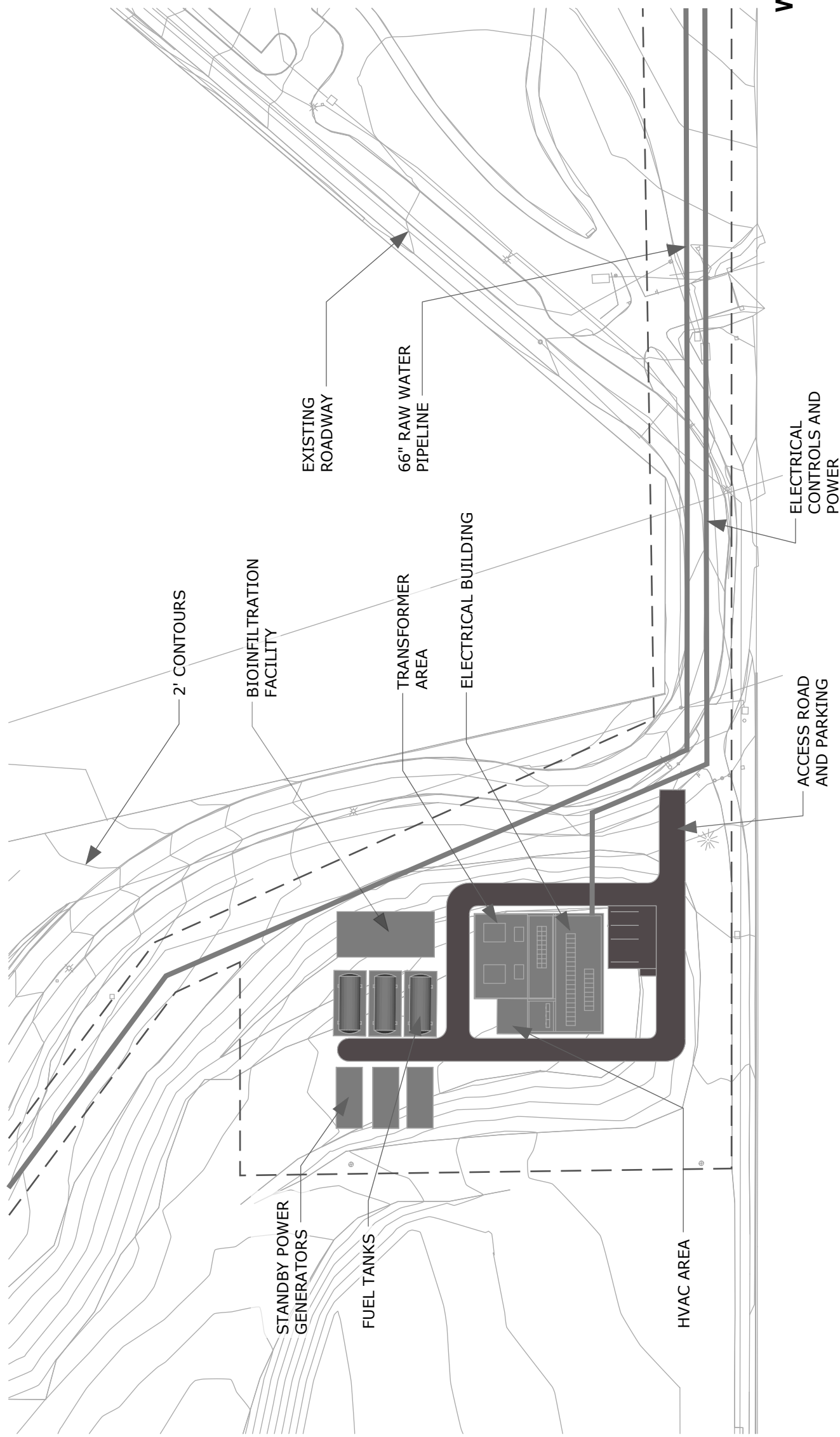
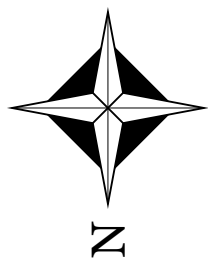
TEMPORARY IMPACT BELOW SECTION 10 OHW

APPROXIMATE WORK AREA LIMIT

EXISTING INFRASTRUCTURE

NEW RWF INFRASTRUCTURE

NEW PAVING



- APPROXIMATE WORK AREA LIMIT
- EXISTING INFRASTRUCTURE
- NEW RWF INFRASTRUCTURE
- NEW PAVING

**WRWTP UPPER SITE  
PLAN FOR RAW  
WATER  
IMPROVEMENT**

FIGURE 3

WILLAMETTE WATER SUPPLY  
PARTNERSHIP

FEBRUARY 2017

Scale:

80'

INITIAL CONCEPT SUBJECT TO CHANGE