



City Council Meeting October 4, 2021

Work Session – 5:00 p.m.

Council Meeting - 7:00 p.m.

**Executive Session (If needed) - Immediately after City Council Meeting
(Held in Council Chambers)**

This meeting is taking place with social distancing precautions in place.

To Provide Public Comment:

- Written comments may be submitted to the City Recorder (Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, OR 97070).
- Digital comments (email) may be submitted to cityrecorder@ci.wilsonville.or.us.
- Individuals may participate online through the Zoom videoconferencing platform.
- Contact City Recorder at (503) 570-1506 cityrecorder@ci.wilsonville.or.us to register.

You can watch the City Council Meeting here:

YouTube: [youtube.com/c/CityofWilsonvilleOR](https://www.youtube.com/c/CityofWilsonvilleOR)

Zoom: <https://us02web.zoom.us/j/81536056468>

City of Wilsonville

City Council Meeting

October 4, 2021



**AMENDED
AGENDA**

**WILSONVILLE CITY COUNCIL MEETING
OCTOBER 4, 2021
7:00 P.M.**

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

Mayor Julie Fitzgerald

Council President Kristin Akervall
Councilor Charlotte Lehan

Councilor Joann Linville
Councilor Ben West

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.

**Executive Session, Work Session, and City Council meetings
will be held in the Council Chambers, City Hall, 1st Floor**

- | | | |
|------------------|--|-----------|
| 5:00 P.M. | REVIEW OF AGENDA AND ITEMS ON CONSENT | [5 min.] |
| 5:05 P.M. | COUNCILORS' CONCERNS | [5 min.] |
| 5:05 P.M. | PRE-COUNCIL WORK SESSION | |
| | A. The Leo Company PSA Renewal (Ottenad) | [5 min.] |
| | B. Street Tree Inventory (Nodzinski/Huerta/Kerber/Pauly) | [30 min.] |
| | C. Municipal Parking Lot Slurry Seal Project (Montalvo) | [5 min.] |
| | D. LED Street Light Conversion Update (Montalvo) | [10 min.] |
| | E. ARPA Funding Conversation (Cosgrove/Katko) | [45 min.] |
| | F. Wilsonville Town Center Streetscape Plan (Bradford) | [15 min.] |
| 7:00 P.M. | ADJOURN | |

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, October 4, 2021 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on September 21, 2021. 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 there with except where a time limit for filing has been fixed.

7:00 P.M. CALL TO ORDER

- A. Roll Call
- B. Pledge of Allegiance
- C. Motion to approve the following order of the agenda.

7:05 P.M. MAYOR'S BUSINESS

- A. Upcoming Meetings

7:10 P.M. COMMUNICATIONS

- A. None.

7:10 P.M. CITIZEN INPUT AND 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.

7:20 P.M. COUNCILOR COMMENTS, LIAISON REPORTS AND MEETING ANNOUNCEMENTS

- A. Council President Akervall
- B. Councilor Lehan
- C. Councilor West
- D. Councilor Linville

7:40 P.M. CONSENT AGENDA

A. **Resolution No. 2914**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Professional Services Agreement With The Leo Company, LLC, For Government Relations And Emergency Preparedness Training Consulting Services. (Ottenad)

B. **Resolution No. 2925**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Construction Contract With R.C. Contracting, LLC To Construct The Municipal Parking Lots Slurry Seal Project. (Montalvo)

- C. Minutes of the September 20, 2021 City Council meeting. (Veliz)

7:45 P.M. NEW BUSINESS

- A. None.

7:45 P.M. CONTINUING BUSINESS

- A. None.

7:45 P.M. PUBLIC HEARING

A. **Ordinance No. 850** – *1st Reading (Legislative)*

An Ordinance Of The City Of Wilsonville Adopting The Wilsonville Town Center Streetscape Plan As An Appendix To The Wilsonville Town Center Plan, A Sub-Element Of The Comprehensive Plan. (Bradford)

B. **Ordinance No. 851** – *1st Reading (Legislative)*

An Ordinance Of The City Of Wilsonville Amending The Text Of The Wilsonville Comprehensive Plan, Text Of The Development Code, The Frog Pond West Master Plan, And The Villebois Village Master Plan; Adopting A Legislative Zone Map Amendment To Rezone Residential Properties In The Old Town Neighborhood To The Newly Established Old Town Residential Zone; And Declaring Development In Planned Development Residential Zones As Legal Non-Conforming To Increase The Allowance Of Middle Housing In Wilsonville. (Pauly)

C. **Ordinance No. 852** – *1st Reading (Quasi-Judicial)*

An Ordinance Of The City Of Wilsonville Approving A Zone Map Amendment From Public Facility (PF) Zone To The Village (V) Zone On Approximately 1.40 Acres In The Villebois Village Center, Adjacent To The Piazza At Villebois To The Northeast And Northwest; The Land Is More Particularly Described As Tax Lot 2800 And Adjacent Right-Of-Way, Section 15AC, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon. Costa Pacific Communities, Applicant. (Luxhoj)

8:30 P.M. CITY MANAGER’S BUSINESS

8:35 P.M. LEGAL BUSINESS

8:40 P.M. ADJOURN

**EXECUTIVE SESSION (IF NEEDED)
WILL IMMEDIATELY FOLLOW THE CITY COUNCIL MEETING**

EXECUTIVE SESSION

- A. Pursuant to: ORS 192.660 (2)(e) Real Property Transactions
ORS 192.660(2)(h) Legal Counsel / Litigation

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 cityrecorder@ci.wilsonville.or.us.



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: October 4, 2021		Subject: American Rescue Plan Act (ARPA) Funding Discussion	
		Staff Member: Keith Katko, Finance Director and Bryan Cosgrove, City Manager	
		Department: Administration and Finance	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd 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 Comments: N/A	
Staff Recommendation: N/A			
Recommended Language for Motion: N/A			
Project / Issue Relates To:			
<input type="checkbox"/> Council Goals/Priorities:	<input type="checkbox"/> Adopted Master Plan(s):	<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

Staff is seeking Council direction on the best use of the City's \$5.4 million dollars in American Rescue Plan Act funding (ARPA).

EXECUTIVE SUMMARY:

The City will receive \$5.4 million dollars over the next two years from the recently passed American Rescue Plan Act. The City received its first installment in the amount of \$2,765,773.92 on August 24, 2021, and will receive the final payment next fiscal year. ARPA funds must be obligated by December 31, 2024 and the funds must be fully spent by December 31, 2026. Staff has reviewed the interim final rules from the United States Department of Recovery. The rules allow recipients to use funding in six broad categories. Staff is recommending Council allocate the City's ARPA funding in the following three federally approved categories:

- Public Health
- Addressing Negative Economic Impacts for residents and businesses
 - Food bank, rental assistance, other financial insecurities
 - Loans and grants to small businesses
- Loans and grants to small businesses Investment in Water, Sewer, or Broadband

In addition to the Safe Harbor areas provided by the federal government, The Executive Team developed criteria for Council to use as a filtering tool. The draft criteria are as follows:

Funding Criteria:

- Support one or more Council goals
- Biggest benefit, for the most people/geographic equity
- Biggest bang for the buck/Return on Investment
- Ease of administration
- Behavioral health and assistance for those economically disadvantaged
- Projects and programs that leverage other government resources

Recommended Projects:

1. Extended Janitorial Services (Public Health)

During the FY 21/22 budget process, the city added two (2) janitorial positions to increase cleaning and sanitation required for the public health response to the pandemic. The positions assist the Park and Recreation team to allow parks facility staff use their time to focus on the increased park maintenance required by the increase in users due to the pandemic, and an expanding park portfolio. (The estimated cost over three years is \$330,000.)

2. Mental Health Services (Public Health)

Contract with Clackamas County Mental Health to provide one full-time mental health behaviorist for the city. This position would deploy with the Police Department where mental health is a component of any call for service, provide annual training to staff on best practices for dealing with individuals in crisis, serve as a crisis counselor during traumatic events that may occur in the community, and serve as a cohort with the City's Code Compliance Specialist when interacting with homeless individuals who may be in need of mental health resources. The details of this position are currently under discussion and the final scope of services are not fully fleshed out. (The estimated cost for this three-year pilot program is between \$500-\$600k).

Additional Projects for City Council Consideration: Supp

1. Community Garden

The local community garden at Memorial Park is popular and provides community members an opportunity to grow their own produce. Some community members do not have a yard or the needed sunlight or soil to grow their own food. The city has heard an interest from community members to add another garden on the west side of the City. This project would satisfy a former Council goal. The recent parks bond task force identified the potential cost to be around \$100,000.

2. Affordable Housing Initiatives

- City-led efforts to further affordable and equitable housing
 - i. Implementation of Equitable Housing Strategic Plan (EHSP) Action 1E to establish the City's housing program and subsequent EHSP implementation actions (either through limited duration staff or consultant assistance). As noted in the EHSP, this would include a point person to serve as a resource for community members and interested housing stakeholders. This position would help to implement Strategic Plan implementation actions, particularly those involving collection and expenditure of revenues from implementation of a Construction Excise Tax (CET) and other funding sources. This position would also connect prospective homeowners, renters, and people experiencing homelessness with the array of resources available through other partners, and create and maintain an online One Stop Shop that would include a directory of housing-related resources on the City's website for community members, key stakeholders, and interested developers.
 - ii. Use funds as seed money to fund future City-led affordable housing efforts. Coupled with funds from a CET (once adopted), this would allow for quicker future funding of City-led EHSP implementation actions. It could also be used by that date for low-interest loans. Down payment assistance that when the house re-sells, comes back to the City. The fund reimburses and recycles helping more people over time. In that sense, money may be able to be allocated by December 31, 2024 and then re-used again later and subsidized with other funding options.
- Partnerships with non-profits to further affordable and equitable housing
 - iii. Provide funds to nonprofit partners such as Habitat for Humanity or Proud Ground to provide homeownership opportunities. As noted in EHSP Action 2E, there may be opportunities to partner with nonprofits like these to support construction of affordable homeownership projects using incentives such as waiving or funding the cost of SDCs. Alternatively, investment in down payment assistance may be an option, as this incentive would not be limited to new housing stock. The EHSP notes that investment needed to help homebuyers purchase an existing home in the Portland region is about 20% of home value, which may be higher in Wilsonville because the city's housing stock is newer and more expensive.

- iv. Provide funds to a nonprofit such as Wilsonville Community Sharing to fund rental assistance to households seeking housing or need assistance to remain in their current housing. While not identified as a strategy in the EHSP, there may be households several months behind in rent payments that will be due at some point upon expiration of the current eviction moratorium.

3. Broadband Build-Out –Fiber Projects

- Boeckman Road Fiber – This project would install conduit along Boeckman Road from the Toyota Dealership, under I5 and continuing east to Canyon Creek Road. The project would then pull a 288 strand fiber from the corner of Barber and Kinsman, north through existing conduit to Boeckman and then east to Canyon Creek Road.

This is a project that we have been trying to partner with various entities over the last five years without success. This project would allow the City to complete the physical ring of fiber connecting all key facilities adding resiliency to the City’s network. There is a lot of interest from surrounding communities to add pathway under I-5 for their own build outs that we could potentially partner with.

Estimated Cost: \$750,000 (with no partners. Less with partners.)

- Boberg Road Fiber – This project would install a new conduit and fiber line from the Toyota Dealership south along Boberg to the SMART and new Public Works sites. A back bone 288 strand fiber would be pulled through the conduit. Assuming other fiber projects are completed, this would add resiliency to SMART and Public Works sites and reduce dependence on conduit swap agreements.

Estimated Cost: \$150,000

- Kinsman Road Fiber – This project would run a new conduit and fiber line down Kinsman road. City fiber currently runs through a conduit that is used under a conduit swap agreement with Zayo Communications. This conduit will need to be realigned when the intersection at Wilsonville Road and Kinsman is rebuilt to accommodate larger truck traffic. This line could be rebuilt to avoid downtime when that project occurs and reduce our dependence on the swap agreement. Building this line would strengthen the City’s fiber redundancy.

Estimated Cost: \$200,000

- Barber Road Fiber – This project would run a new conduit and fiber line along Barber from Kinsman to the railroad tracks. City fiber currently runs through a conduit that we use under a conduit swap agreement with Zayo Communications. Building this run would allow access to the WES building and any future development of the WES Station.

Estimated Cost: \$75,000

- Miscellaneous Fiber Runs – Several other projects could be considered to connect City Assets. A potential run along Canyon Creek Road could connect City Reservoirs into the system. A run along 95th could connect several traffic lights and provide a connection for future assets in the Northwest section of Wilsonville. Other potential projects could appear related to other ARPA projects within the City.
- The Wilsonville City Council could explore expanding Wi-Fi projects to other parks within the City assuming that they meet the needed requirements. A small park would have between 4 and 10 access points, depending on coverage desired, at \$2,500 each.

4. Support for Local Businesses

5. Additional Resources for Ec-Dev Program such as a Business Outreach Coordinator or Workforce Development Specialist.

6. Elligsen Potable Water Well Rehabilitation Project

The community would be reliant on back-up water wells if the City's water treatment plant were to go out of service during an emergency. The City recently evaluated the condition of the Elligsen potable well and performed rehabilitation work on the casing and liner to ensure ongoing emergency use. The results of the Elligsen well evaluation concluded the well has certain inherent characteristics that compromise its function and cannot be addressed, such as the casing alignment. Furthermore, during rehabilitation activities and after numerous attempts to disinfect the well casing, surficial bacteria was discovered within the well casing water which according to the City's consultant, strongly signifies a failure of the well's seal.

To ensure this well continues to be a reliable backup water source a new well hole will need to be drilled along with the installation of new pumps, electrical equipment and well housing. The Elligsen well is critical to the City's emergency backup water source supply as the City this well is able to pump directly into the Level B reservoirs for storage.

Estimated cost for construction is \$1.73 million plus another \$370,000 for design and construction monitoring for a total of \$2.1 million.

7. Day Rd Sewer Line

Install the sewer line improvements to make the Coffee Creek Development area. This will make this area more attractive to developers to continue to invest in Wilsonville.

CIP-31 Coffee Creek - Day Road Gravity - New Pipe 2,060 LF 18"Ø; 900 LF 12"Ø
\$580,000 in oversize costs.

From Grahams Ferry Road to Boones Ferry Road \$2,790,000 - UGB 0-5 Years Coffee Creek development

8. System Development Charges Buy-Down for Affordable Housing Project
SMART Central is being evaluated as a potential Transit Oriented Development (TOD) project. One way to make the project more affordable is to Buy-Down the Systems Development Charges (SDC) required for a multifamily development.

Option 1: Combined Total for water and sewer: \$766,586.00

Option 2: 50% of Water and Sewer: \$383,293.00

Total for Sewer: \$453,291.00

- Sewer SDC per Multi Family Dwelling \$4,430.00 X 100 = \$443,000.00
- Sewer Permit Fee per Dwelling Unit \$96.00 X 100 = \$9,600.00
- Commercial Sewer Permit Fee (1) \$691.00

Total for Water: \$313,295.00

- 4" Domestic Water Meter = \$261,116.00 (SDC \$257,516.00 and Meter Installation \$3,600.00)
- 1.5" Irrigation Meter = \$52,179.00 (SDC \$51,503.00 and Meter Installation \$676.00)

9. Eviction Assistance

10. Enhanced Food and Utility Assistance for Wilsonville Community Sharing (WCS)

Provide additional funds to WCS. These funds could be used to provide additional food assistance to community members in need or additional utility assistance. The structure is already in place at WCS to distribute these resources.

11. Reserve for Unanticipated Need

Do not allocate all of the funds at this time and hold a portion of the money in reserves for an unanticipated expense. The reserve funds could be used should an unforeseen need occur, which meets the ARPA criteria.

EXPECTED RESULTS:

City Council to identify the project(s) that should be funded using ARPA money.

TIMELINE:

The ARPA funds must be obligated by December 31, 2024 and the funds must be fully spent by December 31, 2026.

CURRENT YEAR BUDGET IMPACTS:

The City will receive \$5.4 million dollars in two instalments or tranches. The City has received \$2,765,773.92 and expects to receive the remaining tranche next fiscal year. A supplemental budget is scheduled for October 18, 2021 to allow the City to use the ARPA funds that have been received. Subsequent budgets will reflect the ARPA fund revenues and expenditures through 2026 or whenever the funds are spent, whichever is sooner. The money must be obligated by December 31, 2024 and the funds must be fully spent by December 31, 2026.

FINANCIAL REVIEW:

Reviewed by: KAK Date: 9/27/2021

LEGAL REVIEW:

Reviewed by: BAJ Date: 9/27/2021

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:

All of the proposed projects provide benefits to the community in different ways.

ALTERNATIVES:

Identify other projects to fund using ARPA money

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

N/A

CITY COUNCIL ROLLING SCHEDULE
Board and Commission Meetings 2021
Items known as of 10/01/21

October

Date	Day	Time	Event	Location
10/11	Monday	6:30 p.m.	DRB Panel A	Council Chambers
10/12	Tuesday	6:00 p.m.	Diversity, Equity and Inclusion (DEI) Committee	Willamette River Room
10/13	Wednesday	6:00 p.m.	Planning Commission	Council Chambers
10/14	Thursday	6:00 p.m.	Parks and Recreation Advisory Board	Parks and Recreation Administration Building
10/18	Monday	7:00 p.m.	City Council Meeting	Council Chambers
10/25	Monday	6:30 p.m.	DRB Panel B	Council Chambers
10/27	Wednesday	6:30 p.m.	Library Board	Library

November

Date	Day	Time	Event	Location
11/1	Monday	7:00 p.m.	City Council Meeting	Council Chambers
11/8	Monday	6:30 p.m.	DRB Panel A	Council Chambers
11/9	Tuesday	6:00 p.m.	Diversity, Equity and Inclusion (DEI) Committee	Willamette River Room
11/10	Wednesday	6:00 p.m.	Planning Commission	Council Chambers
11/15	Monday	7:00 p.m.	City Council Meeting	Council Chambers
11/22	Monday	6:30 p.m.	DRB Panel B	Council Chambers

Community Events:

- 10/11** Library closed for Staff In-Service
10/12 Quilters from 9:00 a.m. to 11:45 a.m. at the Tauchman House
10/19 Quilters from 9:00 a.m. to 11:45 a.m. at the Tauchman House
10/20 Bingo from 12:45 p.m. to 1:45 p.m. at the Community Center
10/23 Bulky Waste Day from 9:00 a.m. to 1:00 p.m. at Republic Services
10/26 Quilters from 9:00 a.m. to 11:45 a.m. at the Tauchman House
10/26 Bus on Shoulder Kick Off
11/2 Quilters from 9:00 a.m. to 11:45 a.m. at the Tauchman House
11/6 Paper Shredding Event from 9:00 a.m. to 2:00 p.m. at City Hall
11/8 Be Seen. Be SMART. Safety Campaign from 6:00 a.m. to 8:30 a.m. and 3:30 p.m. to 6:00 p.m. at the Wilsonville Transit Center
11/9 Quilters from 9:00 a.m. to 11:45 a.m. at the Tauchman House
11/11 City Offices closed in observance of Veterans Day
11/17 Bingo from 12:45 p.m. to 1:45 p.m. at the Community Center
11/20 Leaf Drop Off Day from 9:00 a.m. to 2:00 p.m. at City Hall
11/25 -11/26 City Offices closed in observance of the Thanksgiving Holiday

All dates and times are tentative; check the City's online calendar for schedule changes at www.ci.wilsonville.or.us.



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: October 4, 2021	Subject: Resolution No. 2914 Government Relations and Emergency Preparedness Training Services with The Leo Company, LLC Staff Member: Mark Ottenad, Public/Government Affairs Director Department: Administration	
Action Required	Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: N/A	
Staff Recommendation: Staff recommends Council adopt the Consent Agenda.		
Recommended Language for Motion: I move to approve the Consent Agenda.		
Project / Issue Relates To:		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Whether to approve an expanded three-year Government Relations and Emergency Preparedness Training Services Contract for the Leo Company.

EXECUTIVE SUMMARY:

The Leo Company has worked as the City's government relations consultant for over 20 years, having developed a deep understanding of the City of Wilsonville's strategic interests and legislative priorities. In addition to providing regional, state and federal legislative lobbying services, the Leo Company coordinates the City's local-government relations program for the French Prairie Forum, a monthly inter jurisdictional meeting of North Willamette Valley local governments, and under the proposed contract provides a wider array of emergency preparedness training services. Staff reports that the Leo Company has always given excellent timely service, and has been at the same rate for the past three years, the term of the current and proposed contracts. The contract lays out the numerous responsibilities that The Leo Company will be expected to take on for City and provides in part for an annual Consumer Price Index (CPI) increase. This role has also expanded significantly over the last few years as the City continues to grow. Political knowledge and personal relationships with other lobbyists have become increasingly important in order for the City to provide excellent representation to its citizens. Given the past year of wildfires, ice storm and pandemic, the City Council has made resident emergency preparedness a priority. Greg Leo holds a Federal Emergency Management Administration (FEMA) Community Emergency Response Team (CERT) trainer certification

EXPECTED RESULTS:

The Leo Company will continue to work as the City's public and government affairs consultant and provides emergency preparedness training for residents.

TIMELINE:

The Leo Company's current contract expires on October 15, 2021. The term of this contract shall be for a period of three (3) years from the "Effective Date" of October 18, 2021.

CURRENT YEAR BUDGET IMPACTS:

Funding exists in the budget.

FINANCIAL REVIEW / COMMENT:

Reviewed by: KAK Date: 9/27/2021

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 9/27/2021

COMMUNITY INVOLVEMENT PROCESS:

Contract will be approved in a public meeting.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

Ongoing professional assistance to the City at the local, state and federal level.

ALTERNATIVES:

Do not have a government affairs consultant or negotiate different contract terms.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

1. Resolution No. 2914
 - A. Professional Services Agreement for Government Relations and Emergency Preparedness Training Services

RESOLUTION NO. 2914

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH THE LEO COMPANY, LLC, FOR GOVERNMENT RELATIONS AND EMERGENCY PREPAREDNESS TRAINING CONSULTING SERVICES.

WHEREAS, the City of Wilsonville has planned and budgeted for the continuation of government relations services by The Leo Company; and

WHEREAS, the City has retained The Leo Company as its lobbyist for approximately 20 years; and

WHEREAS, during that extensive period of time, The Leo Company has gained deep and extensive knowledge concerning the City of Wilsonville as well as the strategic interests, unique needs and requirements of the City, which cannot be duplicated by any other consultant; and

WHEREAS, the City seeks to provide additional emergency preparedness training opportunities for residents; and

WHEREAS, the Leo Company principle holds Federal Emergency Management Administration (FEMA) Community Emergency Response Team (CERT) trainer certification;

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

1. City Council authorizes the City Manager to execute on behalf of the City of Wilsonville a three-year Professional Services Agreement with The Leo Company, LLC in substantially similar form to **Exhibit A** attached hereto, which enumerates services to be provided throughout the term of the Contract.
4. This Resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 4th day of October, 2021, and filed with the Wilsonville City Recorder this date.

Julie Fitzgerald, Mayor

ATTEST:

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Lehan

Councilor West

Councilor Linville

EXHIBIT:

- A. Professional Services Agreement with The Leo Company, LLC, for Government Relations and Emergency Preparedness Training Services

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT
(Government Relations and Emergency Preparedness Training Services)**

This Professional Services Agreement (“Agreement”) for Consulting Services (“Services”) is made and entered into on this day of October __, 2021, by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **The Leo Company, LLC**, an Oregon limited liability company (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Term

The term of this Agreement shall be for a period of three (3) years from the “Effective Date” of October 18, 2021.

Section 2. Consultant’s Services

2.1. Consultant shall diligently perform the government relations consulting Services, primarily focusing on State Legislative affairs, which may also include federal and local legislative affairs as required by issue of concern, to advance the interests of the City of Wilsonville, according to the requirements identified in the Scope of Services for the Project, attached hereto as **Exhibit A** and incorporated by referenced herein.

2.2. Consultant shall diligently perform the emergency preparedness training consulting Services, primarily focusing on community and personal emergency preparedness training to advance the interests of the City of Wilsonville, according to the requirements identified in the Scope of Services for the Project, attached hereto as **Exhibit B** and incorporated by referenced herein.

2.3. The existence of this Agreement between the City and Consultant shall not be construed as the City’s promise or assurance that Consultant will be retained for future services beyond the Scope of Services described herein.

Consultant shall maintain the confidentiality of any information which Consultant may have access to by reason of this Agreement. Consultant warrants that Consultant's employees, if any, assigned to work on the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 3. Compensation

3.1. Except as otherwise set forth in this **Section 3**, the City agrees to pay Consultant the monthly retainer fee of FIVE-THOUSAND, TWO-HUNDRED FIFTY dollars (\$5,250) per month for performance of the Services outlined in **Exhibit A** ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

3.2. Starting with anniversary date of the Effective Date at the start of the second and third years of Agreement for services outlined in **Exhibit A**, a standard inflationary rate using the consumer price index of CPI-U West Size A, 12-month percent change to September of current year from September of prior year, will be applied to prior year's Compensation Amount to determine new monthly Compensation Amount for the second year and third year of Agreement.

3.3. Except as otherwise set forth in this **Section 3**, the City agrees to pay Consultant for services provided in **Exhibit B** at the rate of FIVE-HUNDRED DOLLARS (\$500) per community training session for maximum of three (3) community training sessions per fiscal year inclusive of all needed training materials, not to exceed ONE-THOUSAND, FIVE-HUNDRED DOLLARS (\$1,500) per fiscal year.

3.4. Except as otherwise set forth in this **Section 3**, the City agrees to pay Consultant at the rate of ONE-HUNDRED, FIFTY DOLLARS (\$150) per hour, not to exceed FIVE THOUSAND DOLLARS (\$5,000) per fiscal year, for services rendered above and beyond the scopes of this Agreement and that will require an express written Addendum to be executed between the City and Consultant. Examples of such services required by City that Consultant can provide include crisis communications assistance advice and counsel concerning media relations, public communications and other matters identified by the City Manager or the Director of Public and Government Affairs or designee.

3.5. Consultant will be paid on a monthly basis for Services within 10 days of submitting invoice and activity report for each month.

3.6. Consultant's Compensation Amount is all inclusive and includes, but is not limited to, all work-related costs, normal local travel expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, and all other indirect and overhead charges. Overnight travel and event attendance fees made on behalf of the City, including airfare, meals, and hotel, will be paid by the City upon written approval of the travel itinerary.

Section 4. Funding

4.1 Award and continuation of this Agreement is subject to budget appropriation.

Section 5. Consultant Is Independent Contractor

5.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 3** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Services set forth in **Exhibit A and Exhibit B**.

5.2. No subcontracting or assignment of this Agreement is allowed.

5.3. No person shall be discriminated against by Consultant in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

Section 6. Indemnity

6.1. **Indemnification.** Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City Manager or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 6.2**.

6.2. **Standard of Care.** In the performance of the Services, Consultant agrees to use that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 7. Insurance

7.1. **Insurance Requirements.** Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

7.1.1. **Commercial General Liability Insurance.** Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this Agreement, 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 Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

7.1.2. **Professional Errors and Omissions Coverage.** Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

7.1.3. **Business Automobile Liability Insurance.** If Consultant will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

7.1.4. **Workers Compensation Insurance.** Consultant and all employers providing work, labor, or materials under this Agreement 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. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

7.1.5. **Insurance Carrier Rating.** Coverages provided by Consultant must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

7.1.6. **Additional Insured and Termination Endorsements.** Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess

Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, 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 the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder.

Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days’ prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

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

Section 8. Early Termination; Default

8.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

8.1.1. By mutual written consent of the parties; or

8.1.2. By the City if Consultant violates any terms of the Agreement, including failure to perform the Scope of Services in accordance with the Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a violation, the City will provide Consultant with written notice of the violation and a period of ten (10) days to cure the violation. If Consultant notifies the City that it wishes to cure the violation but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period. If the violation is not cured within the allowed cure period, the violation will become an Event of Default for which the City may immediately terminate this Agreement. The City shall be entitled to immediately terminate this Agreement, with no cure period, if Consultant fails to maintain the required insurance, Consultant fails to maintain its business license, Consultant loses its status as a recognized lobbyist, or Consultant is convicted of a crime other than a traffic infraction (collectively “Immediate Event of Default”).

8.2. In the event of termination of this Agreement due to an uncured default or any Immediate Event of Default by Consultant, the City shall be entitled to seek any remedy available to it at law or in equity for breach of contract. In addition to any other remedies the City may have,

both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including but not limited to all costs incurred by the City in procuring services from others as needed.

8.4 Consultant shall be entitled to terminate this Agreement due to a violation by the City in the performance of any of its obligations hereunder that are not cured within ten (10) days, or some longer period of time agreed to by Consultant, thereby becoming a default under this Agreement.

8.5 Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination.

Section 9. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 3** of this Agreement, or changes or modifies the Scope of Services or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. The City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 10. Access to Records

The City shall have access, upon request, to all books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 11. 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 City: City of Wilsonville
 Attn: Bryan
 Cosgrove
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Consultant: The Leo Company, LLC
 Attn: Greg Leo
 9318 Champoeg Road
 NE Aurora, OR 97002

Section 12. Miscellaneous Provisions

12.1. **Integration.** This Agreement, including all exhibits attached hereto, 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, and the terms most favorable to the City, within the City's sole discretion, will apply..

12.2. **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.

12.3. **No Assignment.** Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

12.4. **Adherence to Law.** In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A and Exhibit B**, shall be obtained and maintained throughout the term of this Agreement.

12.5. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws.

12.6. **Jurisdiction.** Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

12.7. **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. If the City is required to seek legal assistance to

enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

12.8. **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.

12.9. **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.

12.10. **Modification.** This Agreement may not be modified except by written instrument executed by Consultant and the City.

12.11. **Time of the Essence.** Time is expressly made of the essence in the performance of this Agreement.

12.12. **Calculation of Time.** Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

12.13. **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.

12.14. **Number, Gender and Captions.** In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

12.15. **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 the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

12.16. **Other Necessary Acts.** Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and

privileges hereunder.

12.17. **Interpretation.** As a further condition of this Agreement, the City and Consultant 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 the 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.

12.18. **Entire Agreement.** This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

12.19. **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.

12.20. **Authority.** Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

CITY:

THE LEO COMPANY, LLC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney
City of Wilsonville, Oregon

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EXHIBIT A**(Scope of Services: Government Relations)****The Leo Company, LLC
City of Wilsonville**

Greg & Rachel Leo, Owners of The Leo Company, LLC, propose to the City of Wilsonville the following Scope of Services, Deliverables, and Capabilities:

Under this Scope of Services, The Leo Company will:

- A1. Provide expert public and government affairs counsel and strategic advice to advance the interests of the City of Wilsonville, as determined by the City Council, at the direction of the City Manager and the Director of Public and Government Affairs;
- A2. Serve as the City of Wilsonville legislative liaison and advocate with the Oregon State Legislature, State of Oregon State Agencies, Metro, and other local governments and government associations, as directed by the City Manager and the Director of Public and Government Affairs;
- A3. Advocate the City of Wilsonville Legislative Priorities at the Oregon Legislative Assembly. Suggest strategies for implementing City of Wilsonville Legislative Priorities. Coordinate City written and oral testimony at legislative hearings under the direction of the Director of Public and Government Affairs.
- A4. Attend Legislative Sessions and committee hearings to keep a close eye on legislation that may positively or negatively impact the City and advise the City of suggested action to be taken. Assist City staff in drafting, reviewing, amending, supporting, and opposing proposed legislation and, as requested, coordinate and strategize communications, testimony language, and proposed legislative language.
- A5. Participate in legislative work groups and coalitions to monitor evolving legislation that impacts the City of Wilsonville during all Oregon Legislative Sessions during the term of this Agreement. Inform the Director of Public and Government Affairs of legislative actions, opinions, trends, and proposals which impact the interests of the City of Wilsonville. Advise staff on opportunities to leverage infrastructure funding opportunities.
- A6. Represent the City at regional and League of Oregon Cities lobby coordination meetings. Build coalitions with other local governments to effectively represent City of Wilsonville interests at the Legislature and in other governmental forums. Special emphasis on economic development, land use, and transportation policy which impacts Wilsonville economic well-being. Look for opportunities to leverage our interests through cooperation with other jurisdictions and associations.
- A7. Monitor changes in state, regional, and local government policies which influence the policies and interests of the citizens of Wilsonville, as defined by City Council Policy and City Manager directives.

- A8. Work with Clackamas and Marion Counties and the seven neighboring city governments through the French Prairie Forum to coordinate policies concerning the area south of the Willamette River. Coordinate French Prairie Forum meetings topics and schedule presenters as needed at the direction of the Director of Public and Government Affairs.
- A9. Maintain ongoing relationships with neighboring local governments in Clackamas, Washington, and Marion Counties and develop coordinated policies which benefit the citizens of Wilsonville. Seek opportunities for mutual cooperation and anticipate changes in public policy which impact economic vitality, quality of life, and intergovernmental cooperation in this region.
- A10. Assist the Director of Public and Government Affairs as requested to monitor activities, attend meetings and perform as requested other activities of the Oregon Department of Aviation pertaining to the Aurora State Airport, including activities related to legislative and judicial actions, land-use, transportation and other issues of concern to City.
- A11. Monitor news media and provide expert advice and counsel of emerging news stories to the City through normal reporting channels.
- A12. Work with the Director of Public and Government Affairs on emerging policy issues, including but not limited to tourism and outdoor recreation development, providing advice and counsel at the direction of the Director of Public and Government Affairs. Maintain good relationships with external partners.
- A13. Provide 'as requested' assistance to the Director of Public and Government Affairs to attend meetings, draft speeches and talking points, and coordinate with various officials and groups in support of the City's Public Affairs program.
- A14. Assist staff with Civics Academy and arrange a Civics Academy day or other related activities at the State Capitol or meetings with legislators as requested by Director of Public and Government Affairs or designee. Prepare legislative presentations for the Civics Academy.
- A15. Attend League of Oregon Cities (LOC) events, Kitakata Sister City events, and other events and assist with related City functions as requested by Director of Public and Government Affairs or designee.
- A16. Other duties within this Scope of Services as assigned by the City Manager, or Director of Public and Government Affairs or designee.

EXHIBIT B**(Scope of Services: Emergency Preparedness Training)****The Leo Company, LLC
City of Wilsonville**

Greg & Rachel Leo, Owners of The Leo Company, LLC, propose to the City of Wilsonville the following Scope of Services, Deliverables, and Capabilities:

Under this Scope of Services, The Leo Company will:

- B1. Have at least one company principle maintain during the course of the Agreement Federal Emergency Management Administration (FEMA) Community Emergency Response Team (CERT) trainer certification.
- B2. Conduct a maximum of three (3) community training sessions per fiscal year in conjunction with Public Works Department, Wilsonville Police Department and Tualatin Valley Fire and Rescue District, under the direction of Director of Public and Government Affairs or designee, of the CERT procedures and Oregon Office of Emergency Management's "2 Weeks Ready" program that focuses on households being equipped with at least two weeks' worth of food, water and critical supplies and covers topics including being informed, making an emergency plan and building an emergency kit.
- B3. As a component of CERT/2 Weeks Ready training, teach residents key emergency preparedness principles, including conducting welfare checks on neighbors during an emergency and understanding how to report specific community needs to city staff for response.
- B4. Communicate basic safety and emergency preparedness information, including 2 Weeks Ready from Oregon's Office of Emergency Management (OEM), Basic CERT from FEMA and other preparedness materials to city residents.
- B5. Other duties within this Scope of Services as assigned by the City Manager, or Director of Public and Government Affairs or designee.



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: October 4, 2021	Subject: Resolution No. 2925 Municipal Parking Lot Slurry Seal Project Staff Member: Martin Montalvo, Operation Manager Department: Public Works	
Action Required	Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: N/A	
Staff Recommendation: Staff recommends Council adopt the Consent Agenda.		
Recommended Language for Motion: I move to approve the Consent Agenda.		
Project / Issue Relates To:		
<input type="checkbox"/> Council Goals/Priorities:	<input type="checkbox"/> Adopted Master Plan(s):	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

To approve or reject the construction contract with C.R. Contracting, LLC, to construct the Municipal Parking Lot Slurry Seal project.

EXECUTIVE SUMMARY:

On February 12, 2021, the Portland Metro region experienced the largest ice storm of the past twenty years. This weather event knocked down thousands of trees and generated thousands of cubic yards of debris. To assist the community clean-up response of private property owners and community residents the City established a central debris management location at the WES Transit Station parking lot. The site was ideal for this endeavor and processed over 24,000 cubic yards of woody debris at the completion of the event. This emergency response effort did result in several material impacts to the WES Transit site that need to be addressed in order to assure the long-term structural stability of the parking lot.

The City established CIP 0998 - 2021 Weather Event, in order to track and fund the financial impacts associated with the ice storm. The City has submitted for FEMA funds associated with the ice storm impacts but must fund the initial repairs while awaiting final FEMA project approval. The proposed slurry seal project will repair several instances of damaged concrete and apply a surface treatment referred to as oil / emulsion slurry to seal and protect the asphalt from further damage. A budget amendment will be present to council on October 18, 2021 to allocate funds for this project as well as other ice storm related expenses.

Additionally, the Public Works Department has programmed \$110,000 within CIP 8151- Facility Parking Lot Repairs to conduct surface treatment and restriping of several public facility parking lots, listed below. The proposed slurry seal project will spread an oil emulsion, slurry seal on the existing pavement and restripe the areas.

- Public Works / Police / Community Center
- Art Tech Campus
- Boeckman Well
- River Fox Park

EXPECTED RESULTS:

By executing this personal services agreement with C.R Contracting, LLC the City will be able to mitigate the impacts to the WES Transit Station Parking Lot that resulted from the use of the site as a debris management site. Additionally, the treatments for each of the respective sites will extend the useful life span of the existing asphalt and reduce long term maintenance cost.

TIMELINE:

The substantial completion deadline for this project is December 5, 2021 with final completion being January 5, 2022.

CURRENT YEAR BUDGET IMPACTS:

Funding for project is included in the FY 21/22 budget. The respective budgets and contract cost are below:

CIP #	Project Name	Budget	Contract Cost
0998	2021 Weather Event	\$230,000	\$142,880.71
8151	Facility Parking Lot Repairs	\$110,000	\$ 64,344.67
Total Contract Cost:			\$207,225.38

FINANCIAL REVIEW:

Reviewed by: KAK Date: 9/23/2021

LEGAL REVIEW:

Reviewed by: BAJ Date: 9/27/2021

COMMUNITY INVOLVEMENT PROCESS:

Not Applicable.

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:

By completing this project, the City can extend the useful life span of the existing asphalt and reduce long-term maintenance cost for the associated project sites. Construction at the sites will require temporary construction impacts, but there are expected to be minimal in nature.

ALTERNATIVES:

Reject the construction contract as proposed and seek alternative measures to effect the needed repairs at the WES Transit Station and other related parking lots.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

1. Resolution No. 2925
 - A. Municipal Parking Lots Slurry Seal Project - Construction Contract

RESOLUTION NO. 2925

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH R.C. CONTRACTING, LLC TO CONSTRUCT THE MUNICIPAL PARKING LOTS SLURRY SEAL PROJECT.

WHEREAS, the City of Wilsonville (City), in accordance with its Emergency Debris Management Plan utilized the WES Transit Station Parking Lot as its primary debris management location for the February 2021 Ice Storm; and

WHEREAS, the City, in order to mitigate for the impacts associated with using the site as a debris management location for the recent February 2021 Ice Storm is responsible for conducting repairs to the WES Transit Station Parking Lot,; and

WHEREAS, the City owns and is also responsible for the maintenance of its other municipal parking lot, including the Police / Public Works / Community Center parking lot, the Art Tech Campus parking lot, the River Chase Park parking lot and the Boeckman Well parking lot; and

WHEREAS, the City wishes to leverage the potential cost savings and minimize the community impact by compiling these similarly related projects into a single uniform project; and

WHEREAS, the City of Wilsonville (City) wishes to assure the long term condition, usability and safety of its assets; and

WHEREAS, the City issued a formal bid for this project in accordance with the city's and state's procurement rules.

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

Section 1. The procurement process for the Project duly followed Oregon Contracting Rules, and C.R. Contracting, LLC. was determined to be the lowest responsive bidder

Section 2. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City

of Wilsonville, a construction contract with C.R. Contracting, LLC for a not-to-exceed amount of \$207,225.38.

Section 3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this 4th Day of October 2021, and filed with the Wilsonville City Recorder this date.

Julie Fitzgerald, Mayor

ATTEST:

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Lehan

Councilor West

Councilor Linville

EXHIBIT:

A. Municipal Parking Lots Slurry Seal Project - Construction Contract

CITY OF WILSONVILLE CONSTRUCTION CONTRACT

This Construction Contract (“Contract”) for the Municipal Parking Lots Slurry Seal Project (“Project”) is made and entered into on this _____ day of October 2021 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **C.R. Contracting LLC**, an Oregon limited liability company (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing Recitals and all of the following additional “Contract Documents”: Invitation to Bid or Specifications and Contract Documents for Municipal Parking Lots Slurry Seal Project, dated August 11, 2021, including Plans and Details bound separately; Contractor’s Bid submitted in response thereto; 2017 City of Wilsonville Public Works Standards; City of Wilsonville Special Provisions; Project Specific Special Provisions; Oregon Department of Transportation 2018 Oregon Standard Specifications for Construction; Special Provisions to ODOT Standards; and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than December 5, 2021, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Substantial Completion by no later than December 5, 2021, and at Final Completion by January 5, 2022. See **Section 24** for the definitions of Substantial Completion and Final Completion.

Section 3. Contractor’s Work

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Project.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor’s Project Manager will provide such written documentation.

3.3. The existence of this Contract between the City and Contractor shall not be construed as the City’s promise or assurance that Contractor will be retained for future services beyond the Work described herein.

3.4. Contractor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor’s employees assigned to perform any of the Work provided in this Contract shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

Section 4. Contract Sum, Retainage, and Payment

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor the fixed price of TWO HUNDRED SEVEN THOUSAND TWO HUNDRED TWENTY-FIVE DOLLARS AND THIRTY-EIGHT CENTS (\$207,225.38) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor. Contractor’s unit pricing is set forth in **Exhibit A**, attached hereto and incorporated by reference herein.

4.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill the City a

reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 25**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 24**.

4.4. Except as provided in **Subsection 7.2**, the Contract Sum includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees required to perform the Work on the Project.

4.5. Contractor's Contract Sum and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

4.6. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in the 2017 City of Wilsonville Public Works Standards, 2018 ODOT Standards, and in ORS 279C.570.

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 5. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

Section 6. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

Section 7. City's Rights and Responsibilities

7.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

7.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one-tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

7.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

7.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

7.5. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2020-21. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 22**.

Section 8. City's Project Manager

The City's Project Manager is Martin Montalvo. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 9. Contractor's Project Manager

Contractor's Project Manager is Russel Davis. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 10. Project Information

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 11. Duty to Inform

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

Section 12. Subcontractors and Assignments

12.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 13.3**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

12.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 13. Contractor's Responsibilities

This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Those required provisions include but are not limited to all of the following:

13.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

13.2. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 4** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

13.3. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

13.4. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with, and be subject

to, the provisions of this **Section 13** and meet the same insurance requirements of Contractor under this Contract.

13.5. Contractor must make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

13.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

13.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

13.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

13.9. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

13.10. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

13.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

13.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

13.13. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

13.14. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

13.15. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

13.16. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

13.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

13.17.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

13.17.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

13.17.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

13.18. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

13.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 13.17.1, 13.17.2, and 13.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

13.20. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

13.21. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

13.22. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

13.23. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

13.24. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

13.25. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

13.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

13.27. COVID-19 Safety Measures. Contractor must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Contractor's employees and/or subcontractors, City employees, and the public. Contractor must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Contractor is required to stop or delay work due to a COVID-19 related event, Contractor shall not be entitled to any additional payment, remobilization costs, or delay damages.

13.28. Because this Contract is funded, in part, by federal funds, Contractor must comply with all required federal provisions, as set forth in **Section 14**, below, some of which may overlap with those stated in this Section. Should a conflict exist, the stricter provision shall apply unless otherwise specifically pre-empted by federal law.

Section 14. Required Federal Provisions

This Contract is funded, in whole or in part, with federal funds. Contractor must therefore comply with all of the following, in addition to the provisions listed above:

14.1. **Buy America.** Contractor agrees to comply with 49 USC § 5323(j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in Federal Transit Administration-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 USC § 5323(j)(2)(C) and 49 CFR § 661.11. All steel must originate in the USA and not leave the USA at any point. Contractor shall have submitted the appropriate Buy America certification to the City before commencement of any Work. Contractor must have submitted to the City the appropriate Buy America certification with its Bid, as bids that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. See **Exhibit B**.

14.2. **Clean Air and Clean Water.** Contractor agrees to comply with the inspection and other requirements of the Clean Air Act, as amended (42 USC § 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (33 USC § 1251 *et seq.*). Contractor agrees it will not use any violating facilities, it will report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (EPA) “List of Violating Facilities,” and it will report any violation of use of prohibited facilities to the City. Contractor understands and agrees that the City will, in turn, report each violation, as required, to assure notification to the Federal Transit Administration and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000, financed in whole or in part with federal assistance provided by the FTA.

14.3. **Energy Conservation.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

14.4. **Recovered Materials.** Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended (42 USC § 6962), and U.S. Environmental Protection Agency, “Comprehensive Procurement Guideline for Products Containing Recovered Materials” (40 CFR Part 247).

14.5. **Lobbying Restrictions.** Contractor certifies, to the best of its knowledge and belief, that:

14.5.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

14.5.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

14.5.3. Contractor will require that the language of this certification be included in the award documents for all sub-awards, at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

14.6. **Access to Records.** The following federal access to records requirements apply to this Contract:

14.6.1. Record Retention. Contractor agrees to retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including but not limited to documents, reports, data, statistics, subcontracts, sub-agreements, leases, arrangements, other third party agreements of any type, and supporting materials related to those records.

14.6.2. Retention Period. Contractor agrees to comply with the record retention requirements in accordance 2 CFR § 200.333. Contractor will maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records will be maintained until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

14.6.3. Access to Records. Contractor agrees to provide the City, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, sufficient access to any books, documents, papers, and records of Contractor which are related to performance of this Contract for the purposes of making audits, examinations, excerpts, and transcriptions, as reasonably may be required. Contractor also agrees to permit any of the foregoing parties (at their costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed.

14.6.4. Access to the Sites of Performance. Contractor agrees to permit the FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

14.7. Contract Work Hours and Safety Standards. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor will comply with the Contract Work Hours and Safety Standards Act (40 USC §§ 3701-3708), as supplemented by the Department of Labor regulations at 29 CFR Part 5. Under 40 USC § 3702 of the Act, Contractor will compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

14.7.1. Liquidated Damages. In the event of any violation of the requirements of this Section, Contractor and any subcontractor responsible therefor will be liable for the unpaid wages. In addition, the Contractor and subcontractor will be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the requirements of this Section in the sum of ten dollars (\$10) for each calendar day on which such individual was required to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by this Section.

14.7.2. Withholding. The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in this Section.

14.7.3. Subcontracts. Contractor and all subcontractors will require the inclusion of the language of this **Section 14.7** within subcontracts of all tiers. Contractor will be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements of this Section.

14.8. Civil Rights Requirements.

Under this Contract, Contractor will, at all times, comply with the following requirements and will include these requirements in each subcontract entered into as part thereof.

14.8.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d), Section 303 of the Age Discrimination Act of 1975, as amended (42 USC § 6102), Section 202 of the Americans with Disabilities Act of 1990, as amended (42 USC § 12132), and federal transit laws at 49 USC § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age, disability, or national origin. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements the FTA may issue.

14.8.2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended (42 USC § 2000e *et seq.*), and federal transit laws at 49 USC § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" (41 CFR Chapter 60), and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965; 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements the FTA may issue.

14.8.3. Age. In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 USC §§ 621-634); U.S. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act" (29 CFR Part 1625); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); U.S. Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance" (45 CFR Part 90); and federal transit law at 49 USC § 5332, Contractor agrees to refrain from discrimination against present and prospective employees on the basis of age. In addition, Contractor agrees to comply with any implementing requirements the FTA may issue.

14.8.4. Disabilities. In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*); the Architectural Barriers Act of 1968, as amended (42 USC § 4151 *et seq.*); and federal transit law at 49 USC § 5332, Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements the FTA may issue.

14.9. **Disadvantaged Business Enterprises.**

If the City must adopt a Disadvantaged Business Enterprise (DBE) program, the parties will execute a written amendment so that this Contract becomes subject to the City's DBE program.

14.10. Program Fraud and False or Fraudulent Statements or Related Acts.

14.10.1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 USC § 3801 *et seq.*), and U.S. Department of Transportation regulations, “Program Fraud Civil Remedies” (49 CFR Part 31), apply to its actions pertaining to this Project. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted Project for which the Services are being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

14.10.2. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 USC Chapter 53, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.

14.10.3. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

14.11. Suspension and Debarment.

14.11.1. Contractor must comply with and facilitate compliance with U.S. Department of Transportation regulations, “Nonprocurement Suspension and Debarment” (2 CFR Part 1200), which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR Part 180). Contractor is required to verify that its principals, affiliates, and any subcontractors are eligible to participate in this federally funded Contract and are not presently declared by any federal department or agency to be debarred, suspended, proposed for debarment, voluntarily excluded, disqualified, or declared ineligible from participation in any federally assisted award.

14.11.2. Contractor is required to comply with Subpart C of 2 CFR Part 180, as supplemented by 2 CFR Part 1200, and must include the requirement to comply with Subpart C of 2 CFR Part 180 in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, Contractor has certified as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that Contractor knowingly rendered an

erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

14.12. Trafficking in Persons.

14.12.1. Contractor agrees that it and its employees that participate in the _____ program covered under this Contract may not:

14.12.1.1. Withholding monthly progress payments;

14.12.1.2. Engage in forms of trafficking in persons during the period of time that this Contract is in effect;

14.12.1.3. Procure a commercial sex act during the period of time that this Contract is in effect; or

14.12.1.4. Use forced labor in the performance of the Contract or any subcontracts thereunder.

14.12.2. Contractor agrees to comply, and assures the compliance of each subrecipient, with federal requirements and guidance, including:

14.12.2.1. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g); and

14.12.2.2. The terms of this Section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.

14.12.3. Contractor agrees to, and assures that each subrecipient will:

14.12.3.1. Inform the FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this clause; and

14.12.3.2. Include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, suppliers, and subcontractors at every tier, including this requirement to flow down the clause.

14.13. Safe Operation of Motor Vehicles. Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. Contractor

agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

14.14. Substance Abuse Testing. Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Oregon Department of Transportation, or the City, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program, as required under 49 CFR Part 655, and review the testing process. Contractor agrees further to certify annually its compliance with Part 655 before February 1st and to submit the Management Information System (MIS) reports before March 1st to Nicole Hendrix, Transit Management Analyst, City of Wilsonville, 29799 SW Town Center Loop East, Wilsonville, OR 97070. To certify compliance, Contractor shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the *Federal Register*.

14.15. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in any Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

14.16. Bonding Requirements. The bonding requirements for this Contract can be found in **Section 20**, below.

14.17. Violation and Breach of Contract; Termination. The clauses concerning violation and breach of this Contract and termination of this Contract can be found in **Section 22**, below.

14.18. No Obligation by the Federal Government.

14.18.1. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

14.18.2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

14.19. **Federal Transit Administration (FTA) Terms Controlling.** Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

Section 15. Davis-Bacon/BOLI Prevailing Wages and the Copeland Anti-Kickback Act

15.1. Because this Contract is federally funded, in part, the higher of Davis-Bacon or Oregon BOLI wages will apply to some or all individuals performing Work under this Contract. It is the responsibility of Contractor to be in full compliance with the higher of Davis-Bacon or BOLI requirements, and Contractor shall defend, indemnify, and hold harmless the City from any claims based on Contractor's failure or alleged failure to comply. The Davis-Bacon Act is codified at 40 USC § 3141 *et seq.* See the Davis-Bacon requirements enumerated in 29 CFR § 5.5(a), attached hereto as **Exhibit C** and incorporated by reference herein.

15.2. This Contract is also a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this Project are those published by the Bureau of Labor and Industries (BOLI), effective July 1, 2021, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can currently be found at the following website address: <http://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Services, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Services, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840. In addition, because this Contract is also covered by the federal Davis-Bacon Act (40 USC § 3141 *et seq.*), the Contractor and all subcontractors shall pay workers or others performing Services contemplated by this Contract the higher of the state or federal prevailing rate of wage, as determined by the Commissioner of the Bureau of Labor and Industries, in accordance with ORS 279C. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Contractor shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

15.3. Contractor will also comply with the Copeland "Anti-Kickback" Act (40 USC § 3145), as supplemented by Department of Labor regulations at 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed

in the construction, completion, or repair of public work to give up any part of the compensation to which he or she is otherwise entitled.

Section 16. Subcontractor Requirements

16.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

16.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

16.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in **Subsection 16.1.1** above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

16.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 16.1.1 and 16.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

16.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

16.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

16.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

Section 17. Environmental Laws

17.1. Contractor shall perform all Work in compliance with permits for the Project issued by the US Army Corp of Engineers, Oregon Department of State Lands, and Oregon Department of Environmental Quality, and shall maintain a copy of these permits on the job site at all times.

17.2. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

<u>FEDERAL AGENCIES:</u>	
Forest Service	Agriculture, Department of
Defense, Department of	Soil Conservation Service
Environmental Protection Agency	Army Corps of Engineers
Bureau of Sport Fisheries and Wildlife	Interior, Department of
Bureau of Land Management	Bureau of Outdoor Recreation
Bureau of Reclamation	Bureau of Indian Affairs
Occupational Safety and Health Administration	Labor, Department of
Coast Guard	Transportation, Department of
	Federal Highway Administration
<u>STATE AGENCIES:</u>	
Environmental Quality, Department of	Agriculture, Department of
Forestry, Department of	Fish and Wildlife, Department of
Human Resources, Department of	Geology and Mineral Industries, Department of
Soil and Water Conservation Commission	Land Conservation and Development Commission
State Land Board	National Marine Fisheries Service (NMFS)
	State Engineer
	Water Resources Board
<u>LOCAL AGENCIES:</u>	
County Courts	City Council
Port Districts	County Commissioners, Board of
County Service Districts	Metropolitan Service Districts
Water Districts	Sanitary Districts
	Fire Protection Districts

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

17.3. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

17.4. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

17.5. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

17.6. Contractor must maintain a City of Wilsonville or Metro business license at all times while performing Work under this Contract.

Section 18. Indemnity

18.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 18.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

18.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

Section 19. Insurance

19.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or Work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

19.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, 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 Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

19.1.2. Professional Errors and Omissions Coverage. Contractor agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Work hereunder with a limit of no less than **\$2,000,000** per claim. Contractor shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Contractor. Such policy shall have a retroactive date effective before the commencement of any work by Contractor on the Work covered by this Contract, and coverage will remain in force for a period of at least three (3) years after termination of the Contract.

19.1.3. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

19.1.4. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor 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 **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

19.1.5. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract 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. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

19.1.6. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

19.1.7. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, 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 the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

19.1.8. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

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

Section 20. Bonding Requirements

20.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

20.2. Maintenance/Warranty Bond. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

20.3. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

20.4. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 21. Warranty

21.1. Contractor shall provide a full warranty for all Work for a period of two (2) years from the date of Final Acceptance of all Work.

21.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of two (2) years from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The two (2) year warranty period shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair.

21.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this Section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

21.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

Section 22. Early Termination; Default

22.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

22.1.1. By mutual written consent of the parties;

22.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

22.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

22.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

22.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

22.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 28**, for which Contractor has received payment or the City has made payment.

Section 23. Suspension of Work

The City may suspend, delay, or interrupt all or any part of the Work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Work performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 24. Substantial Completion, Final Completion, and Liquidated Damages

24.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is substantially complete, and create a project corrections list ("punch list") of items to be completed before final payment will be made. Substantial Completion means that the Work is completed and the parking lots are fully functional and may be utilized, with only minor punch list items remaining that do not significantly impact public use. Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed within thirty (30) days thereof, and then a final walk-through will occur to confirm all punch list items have been completed. Final payment will occur upon completion of all punch list items ("Final Completion") as determined by final acceptance by the City ("Final Acceptance"). Substantial Completion must occur on or before December 5, 2021 or liquidated damages will apply. The parties agree that delay damages can be significant but are often difficult to quantify and costly to litigate; therefore the Contractor and the City agree that the sums set forth below in **Subsections 24.3 and 24.4** shall apply as liquidated damages for every day the Project is not completed beyond the Substantial Completion and Final Completion dates.

24.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the Work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that, as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amounts listed below for each and every day that expires after the time specified for Substantial and Final Completion.

24.3. Liquidated damages shall apply against Contractor and accrue to the City at the rate of Four Hundred Dollars (\$400) for each day that expires after the time specified for Substantial Completion of all Work until the Work reaches Substantial Completion.

24.4. If Contractor shall neglect, fail, or refuse to complete the remaining Work on the punch list by the Final Completion date of January 5, 2022, or any written extension thereof granted by the City, Contractor shall pay the City Eight Hundred Dollars (\$800) for each day that expires after the time specified above for the Work to reach Final Completion and be ready for final payment. Retainage will not be released before Final Completion is established.

24.5. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Completion. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

24.6. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to circumstances beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that would preclude any reasonable Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 25. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

Section 26. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

Section 27. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts during the term of this Contract and for a period of four (4) years after

termination of the Contract, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

Section 28. Property of the City

28.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Contractor under this Contract shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Contractor as creator of such work shall be conveyed to the City upon request without additional compensation.

28.2. Contractor shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all Work performed by Contractor pursuant to this Contract without the express written permission of Contractor.

Section 29. Notices

Any notice required or permitted under this Contract 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 City: City of Wilsonville
Attn: Martin Montalvo, Public Works Operations Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Contractor: C.R. Contracting LLC
Attn: Russel Davis, President
64435 Strickler Avenue, Suite 100
Bend, OR 97703

Section 30. Miscellaneous Provisions

30.1. Integration. This Contract 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 or any other documents, the provisions of this Contract shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

30.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

30.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

30.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

30.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

30.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

30.7. 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 Contract 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. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

30.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract 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.

30.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

30.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

30.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

30.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon,

except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

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

30.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

30.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. 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 Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

30.16. 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 Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

30.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract 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 the contract, 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.

30.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

30.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

30.20. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

30.21. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

C.R. CONTRACTING LLC

By: _____

Print Name: _____

As Its: _____

Employer I.D. No. _____

CITY:

CITY OF WILSONVILLE

By: _____

Print Name: _____

As Its: _____

APPROVED AS TO FORM:

Barbara Jacobson, City Attorney
City of Wilsonville, Oregon

Municipal Parking Lot Slurry Seal Project

BID SCHEDULE

Bid Item No.	Spec Section	Bid Items	QTY	Unit	Unit Cost	Total Cost
1.0	00210	Mobilization	1	LS	\$18,950.00	\$18,950.00
2.0	00210	Project Information Sign - Large	2	EA	\$250.00	\$500.00
3.0	00225	Temporary Work Zone Traffic Control	1	LS	\$5,500.00	\$5,500.00
4.0	00280	Erosion Control	1	LS	\$2,895.00	\$2,895.00
5.0	00290	Pollution Control Plan	1	LS	\$750.00	\$750.00
WES Parking Lot						
6.0	00310	Removal of Concrete Curb, Sidewalks, and Driveways	370	LF	\$14.86	\$5,498.20
6.1	00330	General Excavation	10	CY	\$250.00	\$2,500.00
6.2	00759	Concrete Curbs, Curb and Gutter	370	LF	\$37.50	\$13,875.00
6.3	00748	3 Inch Asphalt Concrete Pavement Repair	123	SY	\$115.00	\$14,145.00
6.4	00746	Crack Sealing Flexible Pavement (estimated)	3,000	LF	Incidental to Spec 00706	
6.5	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (WES Parking Lot)	19,154	SY	\$3.35	\$64,165.90
6.6	00860	Pavement Marking, 4 inch White Paint	8,238	LF	\$0.95	\$7,826.10
6.7	00860	Pavement Marking, 8 inch White Paint	69	LF	\$1.50	\$103.50
6.8	00860	Pavement Marking, 6 inch Double Yellow Paint	340	LF	\$1.50	\$510.00
6.9	00867	Pavement Legend, Type B-HS: ADA Parking	14	EA	\$300.00	\$4,200.00
6.10	00867	Pavement Legend, Type B-HS: "C" Compact Parking	109	EA	\$75.50	\$8,229.50
6.11	00867	Pavement Legend, Type B-HS: STOP Bar	18	SF	\$35.25	\$634.50
6.12	00867	Pavement Legend, Type B-HS: Right Turn Arrow	2	EA	\$396.50	\$793.00
6.13	00867	Pavement Legend, Type B-HS: Straight/Thru Arrow	2	EA	\$341.96	\$683.92
PD / PW Parking Lot						
7.0	00746	Crack Sealing Flexible Pavement (estimated)	4,000	LF	Incidental to Spec 00706	
7.1	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (PD/PW Parking Lot)	6,617	SY	\$4.15	\$27,460.55
7.2	00860	Pavement Marking, 4 inch White Paint	1,375	LF	\$0.95	\$1,306.25
7.3	00867	Pavement Legend, Type B-HS: ADA Parking	4	EA	\$300.00	\$1,200.00
7.4	00867	Pavement Legend, Type B-HS: Pavement Bar Continental Crosswalk	200	SF	\$29.75	\$5,950.00
River Fox Parking Lot						
8.0	00746	Crack Sealing Flexible Pavement (estimated)	200	LF	Incidental to Spec 00706	

Municipal Parking Lot Slurry Seal Project

8.1	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (River Fox Park Parking Lot)	526	SY	\$5.95	\$3,129.70
8.2	00860	Pavement Marking, 4 inch White Paint	180	LF	\$3.50	\$630.00
8.3	00867	Pavement Legend, Type B-HS: ADA Parking	1	EA	\$300.00	\$300.00
Art Tech Parking Lot						
9.0	00746	Crack Sealing Flexible Pavement (estimated)	1,000	LF	Incidental to Spec 00706	
9.1	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (Art Tech Parking Lot)	2,206	SY	\$5.06	\$11,162.36
9.2	00860	Pavement Marking, 4 inch White Paint	324	LF	\$3.00	\$972.00
9.3	00867	Pavement Legend, Type B-HS: ADA Parking	3	EA	\$300.00	\$900.00
Boeckman Well Parking Lot						
10.0	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (Boeckman Well Parking Lot)	294	SY	\$8.35	\$2,454.90

Mobilization	\$	28,595	-	00
WES Parking Lot Sub Total	\$	123,164	-	62
PD/PW Parking Lot Sub Total	\$	35,916	-	80
River Fox Parking Lot Sub Total	\$	4,059	-	70
Art Tech Sub Total	\$	13,034	-	36
Boeckman Well Parking Lot Sub Total	\$	2,454	-	90
Total	\$	207,225	-	38

Total Amount Bid (Figures): \$207,225.38

Total Bid Written in Words:

Two hundred and seven thousand two hundred twenty-five dollars and thirty-eight cents Dollars AND Cents

Company Name

C.R. Contracting, LLC

Bidder's Signature

Russell Davis

BUY AMERICA CERTIFICATION

Certification Requirement for the Procurement of Steel, Iron, or Manufactured Products

Municipal Parking Lots Slurry Seal

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS:

The bidder or offeror hereby certifies that it will comply with the requirements of 49 USC 5323(j), and the applicable regulations in 49 CFR Part 661.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS:

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j), but it may qualify for an exception to the requirement pursuant to 49 USC 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Office of the Secretary of Labor

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been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of “helper” will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A “helper” classification will be added to wage determinations pursuant to §5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term *wages* means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vaca-

tion or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term *wage determination* includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of §1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69693, Nov. 20, 2000; 65 FR 80278, Dec. 20, 2000]

§§5.3–5.4 [Reserved]

§5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and

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bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the

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first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding*. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any

further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records*. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the

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case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regu-

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lations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees*—(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when

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they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable

classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess

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of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of

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this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in

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paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any con-

tract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140,
	1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140,
	1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

EFFECTIVE DATE NOTE: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, September 20, 2021. Mayor Fitzgerald called the meeting to order at 7:00 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Fitzgerald
Council President Akervall
Councilor Lehan
Councilor West
Councilor Linville

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Barbara Jacobson, City Attorney
Kimberly Veliz, City Recorder
Zoe Mombert, Assistant to the City Manager
Zach Weigel, Capital Projects Engineering Manager

Motion to approve the order of the agenda.

Motion: Councilor Akervall moved to approve the order of the agenda. Councilor Lehan seconded the motion.

Vote: Motion carried 5-0.

SUMMARY OF VOTES

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

MAYOR'S BUSINESS

A. Upcoming Meetings

Mayor Fitzgerald reminded the next City Council meeting was scheduled for Monday, October 4, 2021.

The Mayor then recognized that now through the middle of October, was the celebration of National Hispanic Heritage Month. This year's theme, "Esperanza: A Celebration of Hispanic Heritage and Hope," honoring the legacy of Hispanic people throughout the nation's history and their significant and diverse contributions to the cultural, educational, economic and political vitality of our community.

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She then mentioned it was Emergency Preparedness Month. Furthermore, staff and Tualatin Valley Fire and Rescue (TVF&R) contributed many notes about emergency preparedness in the current Boones Ferry Messenger. The Mayor then shared photos of the kit she has prepared. The Mayor explained the first step for preparing for an emergency is to have something ready to take with you in the event of an evacuation. The Mayor shared that many of the items for her kit she either already had or bought at various Wilsonville stores. The Mayor commented that it occurred to her that you can spend a lot of money putting these kits together but you do not necessarily have to. She explained that many of the materials in her kit she already had in her camping supplies. In prepping, she also looked at supplies such as food and water needed if there was a disaster that required her family to be homebound for two weeks. She encouraged people to get to know their neighbors and to prepare a list of contacts. She also encouraged citizens to clear space in their garages for emergency preparedness items and share excess items with neighbors. The Mayor plans to highlight the topic throughout the year, as emergency preparedness is a City Council goal. She challenged Councilors to also share their emergency kits.

The Mayor reported on the following meeting and activities she attended:

- Washington County Mayors and Washington County Coordinating Committee
 - One of the primary responsibilities of the Coordinating Committee is to make transportation-funding and land-use recommendations to the Board of County Commissioners.
- Provided Legislative Testimony on Redistricting.
 - Last week testified on ZOOM before a joint public hearing of the House and Senate Committees on Redistricting.
 - Presented the Council's redistricting preferences for Congress Plan B and State Legislative Districts House/Senate Plan A.
 - The Oregon legislature scheduled to hold a special session to consider proposed redistricting maps.
 - At this time, it is difficult to predict the outcome of the special session – if the legislature will be able to reach agreement or not.
 - If not, then the Secretary of State will draw-up the state legislative districts map and special panel of judges would devise the Congressional districts map.
 - All maps are subject to appeal to the Oregon Supreme Court.
- Clackamas County Coordinating Committee (C-4) Metro Subcommittee Meeting
 - Discussed the Metro Regional Congestion Pricing Study, with the findings and recommendations scheduled for review and acceptance the following day at the Joint Policy Advisory Committee.
 - The Regional Congestion Pricing Study becomes a component that informs the next update of the 2023 Regional Transportation Plan, or RTP, which guides federal funding of transportation in the region.
 - Discussed issues with Clackamas County their planning process for implementation of the Metro Homeless Services measure that is of concern to area mayors and members of their communities.

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- CCBA Board Meeting
 - Attended last week a meeting of the board of directors of the Clackamas County Business Alliance.
- French Prairie Forum Meeting
 - Monthly informal gathering of leaders of the local governments of the North Willamette Valley.
 - Discussed the Willamette Falls Locks Commission and the Willamette Falls and Landings Heritage Area Coalition.
 - Heard about a new legislative study to look at allocations of stored Willamette River water for various uses, including agriculture, municipal and fish and wildlife.
- Neighborhoods
 - Shared since Wilsonville is so walkable she spends time walking through the various neighborhoods, parks and trails.
- Meeting with Charbonneau Country Club
 - Attended a meeting with leaders of the Charbonneau Country Club, which is the master homeowners association for all 27 Charbonneau HOAs.
 - Toured the various facilities of the neighborhood biking paths to the marina, tennis and golf areas to a new covered area for outdoor social events the new community center underway and a coming expansion to the local bakery.

Upcoming Meetings and Events

The Mayor announced the following upcoming meetings she plans to attend:

- Lake Oswego City Hall Ribbon Cutting
 - Tuesday, September 21, 2021
- New Wilsonville Business Ribbon Cutting
 - Ribbon-cutting ceremony on Wednesday, September 22, 2021 for U-Mortgage, a new Wilsonville business on Parkway Ave.
- Monthly Greater Portland Inc. Small Cities Consortium Meeting
 - GPI Economic Summit event in late September
- Clackamas County Coordinating Committee Retreat
 - 2-day retreat of the Clackamas County Coordinating Committee where transportation and housing issues will dominate the agenda.

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

B. State of the City Video

The State of the City video was played for the audience.

The following is a verbatim transcript of the video.

Mayor Fitzgerald

Wilsonville's Vision & Values

Earlier this year, the Wilsonville City Council spent two critical days establishing goals to move our community forward in the months and years ahead.

The first step of our goal-setting process was to establish a clear vision for Wilsonville, and to identify the values that would guide the work. We spent time sharing our motivations, and discussing our challenges and opportunities.

Together, we agreed on a clear aspirational vision for Wilsonville to be a clean, green and safe community for all. Our implied promise is to always be striving for this ideal on your behalf. Our pursuit of this vision is being guided by our fundamental beliefs. These are the values that inform the goals we set.

With the help of my fellow Councilors, I'm happy to introduce those values, with a few personal thoughts from each of us on how they are guiding our work.

Council President Akervall

Diversity, Equity and Inclusion

We are committed to promoting diversity, equity and inclusion in how we provide city services to our community and in our organizational operations. I want to encourage a community spirit where all people have an authentic opportunity to thrive and to feel a sense of belonging and respect

Mayor Fitzgerald

Sustainability

We are sustainable in the delivery of our city services by being good financial stewards and innovative in our approaches to providing service to the community. This is especially important to me because one of the hallmarks of the City of Wilsonville is its long history of financial strength by taking excellent care of our resources and continuing to use thoughtful inclusive planning. We have the ability to continue to meet and exceed the expectations of our citizens today and in the future.

Councilor Linville

Economic Opportunity

We are committed to strategically growing Wilsonville's economy, providing economic opportunity for all. I believe it's because it's our job to create a sound environment for growth, for investment in the people and the citizens of our community to provide infrastructure technology and pathways to jobs.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

Councilor LehanEnvironmental Stewardship

We are committed to being good stewards of our environment by modeling practices and embracing policies that preserve and protect our natural environment. For the City of Wilsonville, environmental stewardship informs everything that we do at the Council level and at the staff level in almost every department.

Councilor WestSafety

We are committed to creating a safe and livable community for all by supporting mental health, public safety, infrastructure safety, and psychological safety. Safety is to paramount responsibility as elected officials and as local government. It's our job to help make sure that we have safe livable communities where everyone feels welcome and they can live their lives without threat or worry.

Mayor FitzgeraldClosing

The vision and values resonated with each of us. With these in alignment, we are moving forward in step to make our community an even better place to live, work, visit and play.

End of verbatim transcript.

COMMUNICATIONS

- A. None.

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.

There was no public input.

COUNCILOR COMMENTS

- A. Council President Akervall

Thanked fellow Councilors for their participation in the State of the City Address video.

Councilor Akervall stated she enjoyed seeing photos of the Mayor's emergency kit. She further explained she thinks that it is helpful to breakdown the tasks for preparing for emergencies, making it a little less daunting. Councilor Akervall explained her family focuses on one item every year. The item for this year has been cellphones. Her family has been thinking about cell phone charging and portable charging devices. She encouraged those that have not already to become familiar with the emergency alert services and how to sign up to receive alerts.

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Councilor Akervall noted she attended the Walnut Grove Dedication. She commented those attending the Fall Harvest Festival on October 16, 2021 at Murase Plaza could also tour the walnut grove at that time.

Lastly, she mentioned the Library was hosting an online event in conjunction with Oregon Psychological Association on Wednesday, September 29, 2021 from 6:30 p.m. to 7 30 p.m. titled *Parenting in a Pandemic*.

B. Councilor Lehan

Councilor Lehan shared she thought the video of Council was excellent.

She then provided an update on the Walnut Dedication and complimented the Parks staff for cleaning up and tiding up the nut dryer.

Councilor Lehan reported the Willamette Falls and Landings Heritage Area Coalition is committed to getting the Locks functioning and open again.

C. Councilor West

Councilor West shared that the City's Twitter account is a useful tool to stay up-to-date on City information. He encouraged the audience to follow the City of Wilsonville Twitter account. Councilor West recalled on September 13, 2021 there was a tweet from the City about incremental steps to be taken to prepare for emergencies. He explained the tweet displayed some 15 items that when clicked brings viewers to the website where tons of tips and information is listed. He recalled that regional information is also retweeted by the City.

Councilor West reminded that Bulky Waste Day was scheduled for Saturday, October 23, 2021 from 9:00 a.m. to 1:00 p.m.

Councilor West announced the Wilsonville High School Wildcat Football parents and team were gifting the City Council some Wildcat swag. He then displayed the swag, which included a coffee tumbler, athletic t-shirt, and facemask.

D. Councilor Linville

Councilor Linville reported she plans to attend the ribbon-cutting ceremony on Wednesday, September 22, 2021 for U-Mortgage, a new business on Parkway Avenue.

She also would attend the Willamette Falls Locks Commission subcommittee meeting planned for September 22, 2021. The smaller group of the commission would be attempting to identify nominees for the Willamette Falls Locks Authority. Councilor Linville stated she had a conversation with the Mayor about potential nominees.

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Other meetings, Councilor Linville plans on attending are the Wilsonville-Metro Community Enhancement Committee meeting and the Greater Portland Inc. 2021 Economic Summit both scheduled for September 30, 2021.

Councilor Linville stated she was glad Councilor West mentioned the Bulky Waste Day as it is a favorite day for her.

Councilor Linville shared Charbonneau residents have been focusing on prepping for emergencies and the Great American Shake Out. She informed while preparing many residents had purchased six feet tall storage bins for outside their homes. Councilor Linville explained the bins hold emergency supplies and are stored outside to make them more accessible in the event that a disaster causes the home to collapse or be unsafe to enter. Councilor Linville also shared that she too has incrementally been preparing her emergency kit and has purchased a solar charger.

CONSENT AGENDA

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

A. Resolution No. 2919

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Enter Into First Amendment To Ground Lease For Raw Water Pipeline With The Willamette Water Supply System Commission.

B. Resolution No. 2921

A Resolution Of The City Of Wilsonville Approving A Construction Contract With Romtec, Inc. For The Memorial Park Central Restroom Construction Project.

C. Resolution No. 2924

A Resolution Authorizing City Staff To Purchase A 5-Yard Combination Cleaning Truck From McCoy Freightliner Of Portland.

D. Resolution No. 2927

A Resolution Of The City Of Wilsonville Adding Kimberly Graves To The City's Established Pool Of Eligible Pro Tem Judges For The City's Municipal Court.

E. Minutes of the September 9, 2021 City Council meeting.

Motion: Councilor Akervall moved to approve the Consent Agenda. Councilor West seconded the motion.

Vote: Motion carried 5-0.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

SUMMARY OF VOTES

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

NEW BUSINESS

A. None.

CONTINUING BUSINESS

A. None.

PUBLIC HEARING

A. None.

CITY MANAGER'S BUSINESS

City Manager Cosgrove shared he attended the Walnut Grove Dedication where he learned many facts about walnuts.

LEGAL BUSINESS

No Report.

ADJOURN

Mayor Fitzgerald adjourned the meeting at 7:37 p.m.

Respectfully submitted,

Kimberly Veliz, City Recorder

ATTEST:

Julie Fitzgerald, Mayor



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: October 4, 2021	Subject: Ordinance No. 850 – 1st Reading Wilsonville Town Center Streetscape Plan Staff Member: Philip Bradford, Associate Planner Department: Community Development	
Action Required	Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 st Reading Date: October 4, 2021 <input checked="" type="checkbox"/> Ordinance 2 nd Reading Date: October 18, 2021 <input 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 checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments: At the September 8, 2021 meeting, the Planning Commission held a public hearing and unanimously recommended approval to the City Council.	
Staff Recommendation: Staff recommends Council adopt Ordinance 850 on first reading.		
Recommended Language for Motion: I move to approve Ordinance No. 850 on first reading.		
Project / Issue Relates To:		
<input type="checkbox"/> Council Goals/Priorities	<input checked="" type="checkbox"/> Adopted Master Plan(s): Wilsonville Town Center Plan	<input type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Council will consider adopting the Wilsonville Town Center Streetscape Plan and implementing policies.

EXECUTIVE SUMMARY:

The Wilsonville Town Center Plan, adopted in 2019, contains goals that reflect the community's priorities for Town Center. The Town Center Plan includes a list of actions to implement these goals. One of the implementation items directs staff to develop a streetscape design plan. The intent of the Town Center Streetscape Plan project is to create a document that contains the specificity necessary to guide the future construction of the multi-modal street network identified in the Town Center Plan that achieves the well-designed public realm envisioned by the Plan. The Town Center Streetscape Plan includes sidewalk and street cross-sections that clearly define widths, amenity zones, and landscaping zones, along with selecting specific street furniture, lighting, and materials to create a distinct visual appearance for Town Center.

Starting in early 2020 staff began work on the Town Center Streetscape Plan with the consultant selection process. After entering into a professional services agreement with SERA Architects, Inc. the project team held a site visit to familiarize the team with Town Center and document the existing conditions. As a starting point in developing initial design concepts, the project team reviewed input from several plans and projects that influence the Streetscape Plan, including the I-5 Bike and Pedestrian Bridge, Signage and Wayfinding Plan, and Bike and Pedestrian Connectivity Plan. Utilizing this input, the project team created three preliminary concepts, which were Agricultural Legacy, River Environment, and Technological Innovation.

During fall 2020 and spring 2021, the project team conducted several Public Forums online and held two online engagement activities to collect community preferences for the future streetscape designs. The initial themes that emerged from community engagement were a preference for a modern and natural aesthetic, sustainable and easy to maintain street furniture, and a cohesive look across Town Center. During the second round of community engagement where the refined concepts were presented, it was clear that the community preferred the River Environment concept. However, the public placed high importance on movement areas such as sidewalks during this phase of community engagement, and feedback highlighted how the Technological Innovation theme would provide superior connectivity throughout Town Center compared to the River Environment concept. This feedback led the project team to recommend a hybrid concept, which Planning Commission and City Council supported during subsequent work sessions.

With clear direction from the Planning Commission, City Council, and the community, the project team have created a Streetscape Plan that reflects the goals of the Town Center Plan and will create an attractive public realm for the streets within Town Center. The result of this yearlong planning process is the proposed Wilsonville Town Center Streetscape Plan (Attachment 1, Exhibit A).

The Town Center Streetscape Plan will be adopted as an appendix to the Town Center Plan, which is a Supporting Document of the Comprehensive Plan. The Town Center Streetscape Plan will be Appendix J. The Streetscape Plan identifies further efforts to be completed by the City, such as creating a variety of construction detail drawings to assist developers and City capital projects in bringing the Plan's designs to life during construction. The amendment to the Town Center Plan is consistent with state, regional, and local plans and policies as documented in the Wilsonville Town Center Streetscape Plan Findings Report (Attachment 1, Exhibit B).

On September 8, 2021, the Planning Commission held a legislative hearing regarding the Town Center Streetscape Plan project. Planning Commission approved Resolution LP 21-0002 recommending approval of the Wilsonville Town Center Streetscape Plan.

EXPECTED RESULTS:

Adoption of the Wilsonville Town Center Streetscape Plan as an appendix to the Wilsonville Town Center Plan.

TIMELINE:

The Planning Commission held the first public hearing on the Town Center Streetscape Plan on September 8, 2021. The second reading will be before the City Council on October 18, 2021.

CURRENT YEAR BUDGET IMPACTS:

The adopted budget for FY2021-22 includes \$230,000 for Town Center Implementation Activities in CIP project #3004. The Streetscape Plan is estimated to cost \$50,000, with a majority of these funds previously spent in the FY2020-21 budget year.

FINANCIAL REVIEW:

Reviewed by: KAK Date: 9/23/2021

LEGAL REVIEW:

Reviewed by: BAJ Date: 9/27/2021

COMMUNITY INVOLVEMENT PROCESS:

There were numerous opportunities to participate in the project as outlined in the Public Engagement Summary in Attachment 1 Exhibit A, Appendix B. Due to social distancing guidelines stemming from the COVID-19 pandemic; the project team had to conduct community involvement activities in nontraditional ways. Utilizing the existing tools available such as *Let's Talk, Wilsonville!* and Zoom, the project team held public forums in November 2020 and February 2021, each with two meeting times in order to give the community more flexible options for participation. In addition, corresponding online survey questions were posted online for those who did not participate in the Forums. As the project enters the public hearing phase, there will be additional opportunities for citizen input.

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY: As a result of undertaking the Wilsonville Town Center Plan's implementation activities, including the Streetscape Plan, the City will begin to realize the community's vision for a more commercially vibrant, walkable, mixed-use Town Center.

ALTERNATIVES:

The City Council may recommend the Plan as is, with modifications, or continue the hearing for more information or deliberation.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

1. Attachment 1: Ordinance No. 850
 - A. [Ordinance No. 850 Exhibit A – Town Center Streetscape Plan and Appendices](#)
 - B. [Ordinance No. 850 Exhibit B – Planning Commission Record](#)

ORDINANCE NO. 850**AN ORDINANCE OF THE CITY OF WILSONVILLE ADOPTING THE WILSONVILLE TOWN CENTER STREETScape PLAN AS AN APPENDIX TO THE WILSONVILLE TOWN CENTER PLAN, A SUB-ELEMENT OF THE COMPREHENSIVE PLAN.**

WHEREAS, the 2040 Growth Concept Map of Metro's Regional Framework Plan shows the Wilsonville Town Center as a town center and defines a town center as a focal area for growth that provides services to tens of thousands within a two- to three-mile radius and typically includes one- to three-story buildings for employment and housing; and

WHEREAS, the City Council established starting the Wilsonville Town Center Plan as a 2015-2017 Council Priority Goal; and

WHEREAS, extensive community involvement shaped the Town Center Plan and over the course of the project, public input was gathered at over one-hundred public meetings and events; and

WHEREAS, in 2019 the City of Wilsonville ("City") approved Ordinance No. 835 adopting the Town Center Plan; and

WHEREAS, the Town Center Plan includes developing a Streetscape Design Plan as a priority implementation item, and contains a list of multimodal transportation-related infrastructure investments, cost estimates, and cross sections intended to support future development in Town Center; and

WHEREAS, the goal of the Town Center Streetscape Plan is to create design guidelines and specific product selections for the public realm within Town Center reflective of community preferences for a modern, natural aesthetic and provide a cohesive feel across the different land use sub-districts and street types; and

WHEREAS, the City entered a professional services agreement with SERA Architects, Inc.; and

WHEREAS, the project's engagement plan was designed to take into account social distancing measures and provide ample opportunity to provide citizen input remotely via online surveys and video conferencing tools; and

WHEREAS, community involvement for the Wilsonville Town Center Streetscape Plan began in November 2020 and included technical advisory committee meetings, online public forums, and online surveys; and

WHEREAS, the City Council held three work sessions and the Planning Commission five work sessions regarding the Wilsonville Town Center Streetscape Plan; and

WHEREAS, the Planning Commission of the City of Wilsonville has the authority to review and make recommendations to the City Council regarding legislative changes to, or adoption of new elements and sub-elements of, the Comprehensive Plan pursuant to Sections 2.322 and 4.032 of the Wilsonville Code (“WC”); and

WHEREAS, the Planning Director submitted a Staff Report and Findings, in accordance with the public hearing and notice procedures that are set forth in WC Sections 4.008, 4.012, and 4.198; and

WHEREAS, the Planning Commission, after public hearing notices were provided to approximately 180 property owners within 250 feet of Town Center, a list of interested agencies, emailed to approximately 285 people, published in the Wilsonville Spokesman, and posted in three locations throughout the City and on the City’s website, held a public hearing on September 8, 2021, to review the proposed Town Center Streetscape Plan to gather additional testimony and evidence regarding the proposed Amendments; and

WHEREAS, the Planning Commission has afforded all interested parties an opportunity to be heard on this subject and has entered all available evidence and testimony into the public record of their proceeding; and

WHEREAS, the Planning Commission has duly considered the subject, including the staff recommendations and all the exhibits and testimony introduced and offered by all interested parties; and

WHEREAS, the Planning Commission thereafter deliberated and voted unanimously to approve Resolution No. LP21-0002 recommending adoption to the City Council; and

WHEREAS, a copy of the record of the aforementioned Planning Commission action and recommendation is marked Exhibit B attached and incorporated herein; and

WHEREAS, following the Planning Commission public hearing, the Wilsonville Planning Director forwarded the recommended Wilsonville Town Center Streetscape Plan to the City Council, along with a staff report and attachments, in accordance with the public hearing and notice

procedures that are set forth in Sections 4.008, 4.011, 4.012, and 4.198 of the Wilsonville Code; and

WHEREAS, the City Council, after Public Hearing Notices were provided to a list of interested parties, property owners, and affected agencies, and posted in three locations throughout the City and on the City website, held a public hearing on October 4, 2021 to review the proposed Wilsonville Town Center Streetscape Plan, and to gather additional testimony and evidence regarding the proposal; and

WHEREAS, the City Council has afforded all interested parties an opportunity to be heard on this subject and has entered all available evidence and testimony into the public record of their proceeding; and

WHEREAS, the City Council has duly considered the subject, including the Planning Commission recommendations and all the exhibits and testimony introduced and offered by all interested parties.

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

1. FINDINGS:

The above recited findings are adopted and incorporated by reference herein as findings and conclusions of Resolution No. LP21-0002, which includes the staff report and attachments (Exhibit B). The City Council further finds and concludes that the adoption of the proposed Wilsonville Town Center Streetscape Plan is necessary to help protect the public health, safety, and welfare of the municipality by planning that will support the development of a vibrant town center within the City limits.

2. DETERMINATION:

Based on such findings, the City Council hereby adopts the Wilsonville Town Center Streetscape Plan, attached hereto and marked as Exhibit A. The City Recorder is hereby directed to prepare final formatting to make sure such style and confirming changes match the format and style of the Wilsonville Town Center Plan, as this document will become Appendix J.

3. EFFECTIVE DATE OF ORDINANCE

This Ordinance shall be declared to be in full force and effect thirty (30) days from the date of final passage and approval.

SUBMITTED to the Wilsonville City Council and read the first time at a meeting thereof on the 4th day of October 2021, and scheduled for second reading on October 18, 2021 commencing at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

Kimberly Veliz, City Recorder

ENACTED by the City Council on the 18th day of October, 2021, by the following votes:

Yes: _____ No: _____

Kimberly Veliz, City Recorder

DATED and signed by the Mayor this _____ day of October, 2021.

Julie Fitzgerald Mayor

SUMMARY OF VOTES:

- Mayor Fitzgerald
- Council President Akervall
- Councilor Lehan
- Councilor West
- Councilor Linville

EXHIBITS:

- A. Wilsonville Town Center Streetscape Plan and Appendices
- B. Planning Commission Record



CITY COUNCIL PUBLIC HEARING STAFF REPORT

Meeting Date: October 4, 2021	Subject: Ordinance No. 851 – 1st Reading Middle Housing in Wilsonville Project Staff Member: Daniel Pauly, Planning Manager Department: Community Development	
Action Required	Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: October 4, 2021 <input checked="" type="checkbox"/> Ordinance 1 st Reading Date: October 4, 2021 <input checked="" type="checkbox"/> Ordinance 2 nd Reading Date: October 18, 2021 <input 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 checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments: At their September 8, 2021 meeting, the Planning Commission unanimously recommended approval of the proposed amendments with minor changes which are reflected in the draft presented to Council.	
Staff Recommendation: Staff recommends Council adopt Ordinance No. 851 on first reading with edits to Exhibit C as outline in the memorandum dated October 1, 2021.		
Recommended Language for Motion: I move to approve Ordinance No. 851 on first reading with edits to Exhibit C as outline in the memorandum dated October 1, 2021.		
Project / Issue Relates To:		
<input checked="" type="checkbox"/> Council Goals/Priorities: Expand home ownership	<input checked="" type="checkbox"/> Adopted Master Plan(s): Frog Pond West Master Plan, Villebois Village Master Plan	<input type="checkbox"/> Not Applicable

ISSUE BEFORE CITY COUNCIL:

Consider adoption of updates to the Comprehensive Plan, Frog Pond West Master Plan, Villebois Village Master Plan, Old Town Neighborhood Plan, and Development Code, as well as a Legislative Zone Map Amendment in Old Town to the new Old Town Residential (OTR) Zone.

EXECUTIVE SUMMARY:

The City is updating local development regulations related to the allowance of middle housing. Middle housing includes housing types where a few homes are on one lot (duplex, triplex) and where homes are on separate lots that share a common wall (townhouses). The project is driven by updates to state law as well as local equitable housing policy. The desired project outcomes, as directed by City Council, are as follows:

Desired Project Outcomes:

- Support the vision of a thoughtful, inclusive built environment.
- Comply with House Bill 2001 and related administrative rules adopted by the Land Conservation and Development Commission.
- Increase the opportunity for the development of more middle housing to help meet the housing needs of our diverse community.
- Public outreach to inform middle housing design, particularly from historically marginalized communities of color.
- Create standards that have a high likelihood for use by developers/property owners and result in actual development of middle housing.
- Update infrastructure plans, as needed, to support additional middle housing production.
- Understand options for infrastructure financing related to middle housing.
- Evaluate and update parking strategies and policies to minimize parking congestion.

The City Council previously held six work session on the topic. Planning Commission had eight work sessions prior to their public hearing. The City Council has previously reviewed drafts of the proposed amendments to the Comprehensive Plan, legislative master plans, Old Town Neighborhood Plan, and Development Code. The proposed updates (Exhibits A-C of Attachment 1 and Attachment 3) incorporate feedback from the City Council as well as feedback from the Planning Commission, community, and stakeholders.

To assist in understanding the updates the project team categorized the updates. The updates are color-coded by category as depicted below.

Category 1: Direct requirement for state compliance, no significant local flexibility.

Category 2: Indirect requirement for state compliance, no significant local flexibility. These updates make middle housing development feasible or acknowledge allowance of middle housing.

Category 3: Requirement of state compliance with local flexibility.

Category 4: Not necessary for compliance or feasibility and not directly related to middle housing. Includes technical code fixes and updates to the broader residential parking policy not required by the state. These updates are included out of convenience since much of the residential code is already being amended.

In summary the proposed updates to the Comprehensive Plan, Frog Pond West Master Plan, Villebois Village Master Plan, Old Town Neighborhood Plan, Development Code, and Zone Map do the following:

- Allows duplexes and other middle housing (triplexes, quadplexes, cottage clusters, and townhouses) on land that allows single-family houses, and ensures the review process for middle housing is the same as that for single-family homes to comply with Oregon House Bill 2001 (HB 2001).

- Establishes new design standards (architecture, parking design, etc.) for single-family houses and middle housing.
- Establishes land division processes for middle housing consistent with Oregon Senate Bill 458.
- Updates the Wilsonville Zoning Map and establishes the Old Town Residential Zone for residential land in the Old Town neighborhood.
- Establishes standards and processes for planned developments in all zones to become legal non-conforming.

EXPECTED RESULTS:

Adoption of updates to the Comprehensive Plan, Villebois Village and Frog Pond West Master Plans, Old Town Neighborhood Plan, Development Code, Zone Map, and Planning Division Fee Schedule associated with the Middle Housing in Wilsonville project.

TIMELINE:

On October 18, 2021 the City Council will hold a second reading and consider the related resolutions - Resolution No. 2929 Old Town Neighborhood Plan Update (Attachment 3) and Resolution No. 2928 Planning Division Fee Schedule Update for Middle Housing Land Division (Attachment 2) - to adopt all the proposed updates related to the Middle Housing in Wilsonville Project. The updates would go into effect 30 days following.

CURRENT YEAR BUDGET IMPACTS:

The main consultant contract is for \$125,000. \$95,000 is covered by a grant from the Oregon Department of Land Conservation and Development (DLCD). The remaining amount is covered by funds budgeted in the City's FY 2020-2021 Budget. Specific outreach to the Latinx community is funded by an \$81,200 Metro grant. The remaining balance from the FY 2020-2021 budget will be rolled over into FY 2021-2022 for completion of the project.

FINANCIAL REVIEW:

Reviewed by: KAK Date: 9/23/2021

LEGAL REVIEW:

Reviewed by: BAJ Date: 9/27/2021

COMMUNITY INVOLVEMENT PROCESS:

Opportunities to engage have included community meetings, stakeholder meetings, focus groups, online surveys, and other online materials. Outreach included Latinx community focus groups supported by a Metro Community Engagement Grant. Comments have been solicited from the development community and other stakeholders. See Outreach Report, Attachment 5 for more details.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

A greater amount of middle housing in neighborhoods meeting standards with broad community support. A greater amount of middle housing will create more housing opportunities for a variety of incomes, needs, and preferences.

ALTERNATIVES:

The Council may adopt additional or modified approaches that help the City achieve compliance with House Bill 2001 and Senate Bill 458 and further the policy objectives of the City's Equitable Housing Strategic Plan. If the City does not adopt House Bill 2001 compliant standards by June 30, 2022, a state model code will come into effect for Wilsonville. If the City does not adopt Senate Bill 458 compliant standards by June 30, 2022 the City's land division standards would not comply with state law and the text of the new state statute would take precedence.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

Attachment 1: Ordinance No. 851:

[Exhibit A: Comprehensive Plan Amendments](#)

[Exhibit B: Legislative Master Plan \(Frog Pond West Master Plan and Villebois Village Master Plan\) Amendments](#)

[Exhibit C: Wilsonville Development Code Amendments](#)

[Exhibit D: Zoning Order LP21-0003](#)

[Exhibit E: Planning Commission Record \(electronic only\)](#)

[Attachment 2 Resolution No. 2928 Planning Division Fee Schedule Update for Middle Housing Land Division \(included for reference, to be formally considered separately by Council 10/18\):](#)

Exhibit A: Updated Planning Fee Schedule

[Attachment 3 Resolution No. 2929 Old Town Neighborhood Plan Update \(included for reference, to be formally considered separately by Council 10/18\):](#)

Exhibit A: Middle Housing in Wilsonville Old Town Neighborhood Plan updates

[Attachment 4 Middle Housing in Wilsonville Infrastructure Analysis Memoranda](#)

[Attachment 5 Middle Housing in Wilsonville Outreach Report](#)

Attachment 6 October 1, 2021 Memo RE Exhibit C

ORDINANCE NO. 851

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING THE TEXT OF THE WILSONVILLE COMPREHENSIVE PLAN, TEXT OF THE DEVELOPMENT CODE, THE FROG POND WEST MASTER PLAN, AND THE VILLEBOIS VILLAGE MASTER PLAN; ADOPTING A LEGISLATIVE ZONE MAP AMENDMENT TO REZONE RESIDENTIAL PROPERTIES IN THE OLD TOWN NEIGHBORHOOD TO THE NEWLY ESTABLISHED OLD TOWN RESIDENTIAL ZONE; AND DECLARING DEVELOPMENT IN PLANNED DEVELOPMENT RESIDENTIAL ZONES AS LEGAL NON-CONFORMING TO INCREASE THE ALLOWANCE OF MIDDLE HOUSING IN WILSONVILLE.

WHEREAS, House Bill 2001, adopted by the Oregon Legislature in 2019, directs cities throughout Oregon to adopt regulations allowing duplexes on each lot zoned for residential use that allows for development of detached single-family dwelling, and allowing triplexes, quadplexes, cottage clusters, and townhouses in areas zoned for residential use; and

WHEREAS, the City adopted the Equitable Housing Strategic Plan in June 2020 through Resolution No. 2820 which included Implementation Action 1B to “Incorporate Equitable Housing into Middle Housing Planning”; and

WHEREAS, the City performed an audit of current Comprehensive Plan text, legislative master plans and other similar documents, and the Planning and Land Development Ordinance (Development Code) to identify updates necessary to comply with House Bill 2001, implementing administrative rules, and the Equitable Housing Strategic Plan; and

WHEREAS, the current Comprehensive Plan text does not incorporate concepts from the City’s Equitable Housing Strategic Plan or address the requirements of House Bill 2001 and associated administrative rules; and

WHEREAS, the updated text incorporates middle housing into Comprehensive Plan text language along with new references to exemptions to density maximums as well as incorporates policy objectives and actions identified in the Equitable Housing Strategic Plan; and

WHEREAS, neither the Frog Pond West Master Plan, adopted by Ordinance No. 806, or Villebois Village Master Plan, last adopted, as amended, by Ordinance No. 724 addressed middle housing and allowance of middle housing consistent with House Bill 2001 and the related administrative rules; and

WHEREAS, adopting amendments to the Frog Pond West Master Plan and Villebois Village Master Plan, legislative master plans that are sub-elements of the Comprehensive Plan, allows middle housing as prescribed by the State and updates Wilsonville’s housing policy while

maintaining the intent of the master plans as well as the planned look and feel of the neighborhoods in the master plan areas; and

WHEREAS, the 2011 Old Town Neighborhood Plan, accepted by City Council in Resolution No. 2324, identified an implementation action of adopting a new Old Town-specific residential zone; and

WHEREAS, adopting a new Old Town Residential Zone and applying to residential properties in the Old Town Neighborhood by a legislative zone map amendment addresses middle housing compliance issues while helping implement the Old Town Neighborhood Plan; and

WHEREAS, the Development Code currently lacks adequate definitions and references to middle housing, and does not comply in a number of ways with House Bill 2001 and related administrative rules, and

WHEREAS, the updates to the Development Code addresses compliance including, but not limited to, allowance of middle housing, density calculations, and review process, as well as establishes reasonable standards for middle housing to be integrated into existing and future neighborhoods; and

WHEREAS, current regulations allow past planned development approvals to indefinitely take precedence over updated Development Code standards and zoning; and

WHEREAS, such indefinite precedence of planned development approvals leads to compliance issues with House Bill 2001 as it does not allow middle housing to be built within residential planned developments where middle housing was not previously allowed using the same process as single-family homes; and

WHEREAS, in all planned development zones within the City a substantial number of developments have been built over the last forty plus years that do not comply with current zoning standards; and

WHEREAS, the City finds it prudent as changes occur within these planned development sites for the changes to come further into compliance with current Development Code; and

WHEREAS, Senate Bill 458, adopted by the Oregon legislature in 2021, provides for division of land within middle housing development to better facilitate sale of units to individual buyers; and

WHEREAS, additional flexibility in dividing land for the purpose of platting and property transfer will provide additional for-sale housing choices at a lower price point increasing home

buying opportunities for first-time homebuyers and homebuyers with lower home purchasing budgets; and

WHEREAS, by the proposed actions the City will comply with House Bill 2001 and it's implementing administrative rules, Senate Bill 458, and the City's Equitable Housing Strategic Plan; and

WHEREAS, the City conducted public outreach to impacted groups and the community in general to gather input for updates to City code, plans, and regulations; and

WHEREAS, the City made a special effort to reach out to the Latinx community, a growing demographic in Wilsonville and historically underrepresented in public outreach, to enable the Latinx community to have a meaningful impact on the final updates; and

WHEREAS, the Planning Commission held eight work sessions and the City Council has held five work sessions to help guide and shape the recommended updates; and

WHEREAS, the Planning Commission has the authority, pursuant to Sections 2.322 and 4.032 Wilsonville Code, to review and make recommendations to the City Council regarding legislative changes to the Comprehensive Plan, it's sub-elements including legislative master plans, the Development Code, and legislative zone map amendments; and

WHEREAS, the Wilsonville Planning Director, taking into consideration input and suggested revisions provided by the Planning Commission members and the public, submitted the proposed amendments to the Wilsonville Comprehensive Plan, Frog Pond West Master Plan, Villebois Village Master Plan, Old Town Neighborhood Plan, and Development Code to the Planning Commission as well as a legislative Zone Map Amendment, along with a Staff Report, in accordance with the public hearing and notice procedures that are set forth in Sections 4.012, 4.197, and 4.198 of the Wilsonville Code; and

WHEREAS, the Planning Commission, after 13,733 Public Hearing Notices, regarding the Planning Commission and City Council hearings, were mailed, were posted in various public places in City buildings, posted on the City's website and social media accounts, published in the Wilsonville Spokesman and emailed to impacted agencies and other interested parties, held a Public Hearing on September 8, 2021, to review the proposed amendments to the Wilsonville Comprehensive Plan, Legislative Master Plans, Neighborhood Plan, and Development Code, as well as a Zone Map Amendment, and other related actions, and to gather additional testimony and evidence regarding the proposal; and

WHEREAS, the Commission afforded all interested parties an opportunity to be heard on this subject, has entered all available evidence and testimony into the public record of their proceeding, a copy of which is marked Exhibit E attached and incorporated herein, and unanimously adopted Resolution LP21-0003 recommending adoption of the proposed amendments to the City Council; and

WHEREAS, following the Planning Commission public hearing, the Wilsonville Planning Director forwarded the recommended amendments to the Wilsonville Comprehensive Plan, Frog Pond West Master Plan, Villebois Village Master Plan, Old Town Neighborhood Plan, and Development Code as well as a legislative Zone Map Amendment to the City Council, along with a staff report and attachments, in accordance with the public hearing and notice procedures set forth in Sections 4.008, 4.011, 4.012, and 4.198 of the Wilsonville Code; and

WHEREAS, the City Council, after Public Hearing Notices were provided, as described above, held a public hearing on October 4, 2021, to review the proposed amendments to the Wilsonville Comprehensive Plan, Frog Pond West Master Plan, Villebois Village Master Plan, and Development Code as well as a legislative Zone Map Amendment, and to gather additional testimony and evidence regarding the proposal; and

WHEREAS, the City Council has afforded all interested parties an opportunity to be heard on this subject and has entered all available evidence and testimony into the public record of their proceedings; and

WHEREAS, the City Council has duly considered the subject, including the Planning Commission recommendations and all the exhibits and testimony introduced and offered by all interested parties.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS

Section 1. Findings

The above-recited findings are adopted and incorporated by reference herein as findings and conclusions of Resolution No. LP21-0003, which includes the staff report and attachments (Exhibit E). The City Council further finds and concludes that the adoption of the proposed amendments to the Wilsonville Comprehensive Plan, Frog Pond West Master Plan, Villebois Village Master Plan, and Development Code as well as a legislative Zone Map are necessary to help protect the public health, safety, and welfare of the municipality

by supporting a greater variety of housing to meet a variety of housing needs within the City limits.

Section 2. Determination

Based on such findings, the City Council hereby:

- Adopts the amendments to the Wilsonville Comprehensive Plan, Frog Pond West Master Plan, Villebois Village Master Plan, and Development Code, attached hereto and marked as Exhibits A, B, and C;
- Adopts a Legislative Zone Map amendment for Old Town as prescribed by Zoning Order LP21-0003, attached hereto and marked as Exhibit D, incorporated by reference as if fully set forth herein;
- Directs the City Recorder to prepare final Comprehensive Plan, Frog Pond West Master Plan, Villebois Village Master Plan, and Development Code formatting to make sure such style and conforming changes match the format and style of the Comprehensive Plan, its sub-element legislative master plans, and the Development Code.

Section 3. Effective Date of Ordinance No. 851

This Ordinance shall be declared to be in full force and effective thirty (30) days from the date of final passage and approval.

SUBMITTED to the Wilsonville City Council and read the first time at a meeting thereof on the 4th day of October 2021, and scheduled the second reading on October 18, 2021, commencing at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

Kimberly Veliz, City Recorder

ENACTED by the City Council on the 4th day of October, 2021, by the following votes:

Yes: _____ No: _____

Kimberly Veliz, City Recorder

DATED and signed by the Mayor this _____ day of ____, 2021

Julie Fitzgerald Mayor

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Lehan

Councilor West

Councilor Linville

EXHIBITS:

- A. Ordinance No. 851 [Exhibit A: Comprehensive Plan Amendments](#)
- Ordinance No. 851 [Exhibit B: Legislative Master Plan \(Frog Pond West Master Plan and Villebois Village Master Plan\) Amendments](#)
- Ordinance No. 851 [Exhibit C: Wilsonville Development Code Amendments](#)
- Ordinance No. 851 [Exhibit D: Zoning Order LP21-0003](#)
- B. Ordinance No. 851 [Exhibit E: Planning Commission Record \(electronic only\)](#)



Memorandum

From: Daniel Pauly AICP, Planning Manager
To: City Council
Date: October 1, 2021
RE: Edits to Proposed Development Code Updates in Exhibit C of Ordinance No. 851, Middle Housing in Wilsonville

The following are typographical and clarifying edits recommended by staff after final review of the proposed updates to the Development Code related to the Middle Housing in Wilsonville Project, Exhibit C to Ordinance No. 851. For each edit, the page and code section reference in Exhibit C is provided followed by an explanation of the edit and language as revised. Staff recommends any motion to adopt Ordinance No. 851 includes the language “with edits to Exhibit C as outline in the memorandum dated October 1”, or similar wording. Removed language is shown ~~struckthrough~~, added language is **bold underlined**, moved language is *italicized double-underlined* in new location, and ~~italicized and double struckthrough~~ in location it is moved from.

Page 2, Definition of Cottage Cluster project.

Edit Description: Removed second sentence which is a redundant restatement of courtyard standards in proposed Subsection 4.113 (.14) F.

Revised language:

Cottage cluster project: A development site with one or more cottage clusters. ~~Each cottage cluster as part of a cottage cluster project must have its own common courtyard.~~

Page 28, Subsection 4.113 (.14) C.

Edit Description: Removed a stray phrase “in at least one of the following ways:” between C. and 1.

Revised language:

- C. Standards applicable to all residential structures except as noted in I. below.
 - ~~in at least one of the following ways:~~
 - 1. Facade Variety:

Page 30 Subsection 4.113 (.14) C. 2. b.

Edit Description: Reordered language for a clearer flow of the requirements and added language to be clearer how many design elements are required based on the length of a facade.

Revised language:

- b. Articulation. All public-facing facades of residential structures, other than townhouses, shall incorporate ~~the required number~~ the following design elements at a minimum interval of every 30 feet, except as noted in 2.c. below, ~~such elements shall occur at a minimum interval of 30 feet.~~ **The minimum number of the following design elements is determined by dividing the façade length by 30 and rounding up to the nearest whole number.** For townhouse articulation standards, see subsection (.14) E.4.

Page 30 Subsection 4.113 (.14) C. 2. c.

Edit Description: Added clearer reference to 30-foot interval requirement in Subsection 4.113 (.14) C. 2. b.

Revised language:

- c. For structures with two or more dwelling units, a single design element that spans at least 50% of the façade of two adjacent units can count as two articulation elements to meet the standard in subsection b. and can meet the standard for 60 feet of façade width **(two adjacent 30-foot intervals)**. Such elements may overlap horizontally with other required design elements on the façade.

Page 31 Subsection 4.113 (.14) C. 2. e.

Edit Description: Added language to clarify the standard allows window area to be “reduced to” rather than “reduced by”.

Revised language:

- e. Reductions to required windows percentage: The required percent of façade of a residential structure in the public-facing facade covered by windows or entry doors for single-family or middle housing in any zone may be reduced ~~as follows~~ **to the percentages that follow:**

Page 53 Subsection 4.113 (.14) I. 2.

Edit Description: “structure in added” should read “structure is added”. Text corrected.

Revised language:

2. Where a residential structure ~~in~~ **is** added on to, the design standards in C.-H. only apply if the footprint is expanded by 25% or more.

Page 53 Subsection 4.113 (.14) J.

Edit Description: “In additional to” should read “In addition to”. Text corrected.

An “and” is also added to the list of standards (.1 through 3.) to clarify all must be applied

Revised language:

- J. Alternative Discretionary Review: As an alternative to meeting one or more design standards of this subsection an applicant may request Site Design Review by the Development Review Board of a proposed design. In ~~additional~~ **addition** to the Site Design Review Standards, affirmative findings shall be made that the following standards are met:
 1. The request is compatible with existing surrounding development in terms of placement of buildings, scale of buildings, and architectural design;
 2. The request is due to special conditions or circumstances that make it difficult to comply with the applicable Design Standards, or the request would achieve a design that is superior to the design that could be achieved by complying with the applicable Design Standards; **and**
 3. The request continues to comply with and be consistent with State statute and rules related to Middle Housing, including being consistent with State definitions of different Middle Housing types.

Page 103 Section 4.125 Table V-1

Edit Description: Footnote 19 was not in the table. Added to the correct place next to “Front Max.”

Revised language:

Front Max.¹⁹

Page 135 Subsection 4.125 (.22)

Edit Description: Removed unnecessary redundant language “or declared by ordinance to be”. This language pertains to methods of a development plan becoming legal non-conforming, which is explained in detail in the referenced Subsection 4.140 (.10).

Revised language:

(.22) In the Village Zone, approved SAPs, PDPs, and FDPs, are considered “approved plans” and are the basis of legal conforming status of development consistent with Subsection 4.140 (.10) C. SAPs, PDPs, and FDPs can become ~~or be declared by ordinance to be~~ legal non-conforming in the same manner as other planned developments in the City as described in Subsection 4.140 (.10) C.

Page 135 Subsection 4.125 (.23) A. 1.

Edit Description: Wording “beyond one unit per lot” added to be consistent with other similar references throughout the code.

Revised language:

1. Middle housing units other than townhouses shall be exempt from maximum density requirements **beyond one unit per lot**. The maximum density for townhouses shall be the less of: (1) four times the density permitted for single-family detached dwellings, or (2) 25 dwelling units per net acre.

Page 142 Section 4.127 Table 2

Edit Description: Footnote next to “Side Min.” not updated when additional footnotes added. Footnote revised from I. to M. to reference the correct footnote from existing code standards.

Revised language:

Side Min.^I~~M~~

Page 152 Section 4.127 (.16) F.

Edit Description: Deleted language added back in. An existing provision reading “Small Lot developments over 10 acres shall include duplexes and/or attached 2-unit single family homes comprising 10% of the homes – corner locations are preferred” was, at one point, deleted due to a new draft provision extending the ten percent requirement throughout Frog Pond West. The draft provision extending the ten percent was subsequently removed from the recommended updates. When the provision to extend was removed, the existing provision for small lot subdistricts should have been added

back in. In the end, there is no change to this provision for small lot subdistricts from the existing code other than changing “attached single-family” to “townhouse” to be consistent with updated definitions.

Revised updated language:

- F. House Plan Variety. No two directly adjacent or opposite dwelling units residential structures may possess the same front or street-facing elevation. A structure containing multiple middle housing units shall be considered a single residential structure for the purpose of house plan variety. This standard is met when front or street-facing elevations differ from one another due to different materials, articulation, roof type, inclusion of a porch, fenestration, and/or number of stories. Where façades repeat on the same block face, they must have at least three intervening lots residential structures between them that meet the above standard. **Small Lot developments over 10 acres shall include duplexes and/or 2-unit townhouses comprising 10% of the homes – corner locations are preferred.**

(note: added language exists in current code)

Page 173 Subsection 4.140 (.10) D.

Edit Description: Wording “beyond one unit per lot” added to be consistent with other similar references throughout the code.

Revised language:

- D. The following are exempt from established residential density requirements **beyond one unit per lot.**

Page 196 Subsection 4.232 (.03)

Edit Description: Added additional language clarifying the intention that middle housing land divisions combined with the allowance of detached middle housing, particularly 2, 3, and 4-unit cluster housing, cannot be used to create units of land substantially similar to detached single-family lots. This additional language also helps ensure the middle housing land division language is not used to avoid existing land division standards or standards such as open space standards tied to the number of lots.

Added language:

G. The Middle Housing Land Division is not used to create separate units of land for a 2, 3, or 4-Unit Cluster Housing development on either of the following:

- 1. On land otherwise divisible through a partition or subdivision to create lots for detached single-family homes; or**

2. On lots in subdivisions or partitions recorded in the prior twenty-four month period unless the average size of the resulting land division units, determined by adding the areas of land division units and dividing by the number of land division units, is sixty percent or less of the minimum lot size in the zone.



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: October 4, 2021	Subject: Ordinance No. 852 - 1st Reading Zone Map Amendment for undeveloped lots to the northeast and northwest of the Piazza at Villebois Staff Member: Cindy Luxhoj AICP, Associate Planner Department: Community Development	
Action Required	Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: October 4, 2021 <input checked="" type="checkbox"/> Ordinance 1 st Reading Date: October 4, 2021 <input checked="" type="checkbox"/> Ordinance 2 nd Reading Date: October 18, 2021 <input 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 Comments: Development Review Board (DRB) Panel B is scheduled to review and take action on the Zone Map Amendment during a public hearing on September 27, 2021. The DRB is also scheduled to take action at that meeting on the proposed Preliminary Development Plan (PDP), Final Development Plan (FDP), and Type C Tree Plan for the property, contingent on approval of the Zone Map Amendment.	
Staff Recommendation: Staff recommends Council adopt Ordinance No. 852 on first reading.		
Recommended Language for Motion: I move to approve Ordinance No. 852 on first reading.		
Project / Issue Relates To:		
<input type="checkbox"/> Council Goals/Priorities:	<input checked="" type="checkbox"/> Adopted Master Plan(s): Villebois Village Master Plan	<input type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Approve, modify, or deny Ordinance No. 852 to rezone approximately 1.40 acres in the Villebois Village Center, adjacent to the Piazza at Villebois to the northeast and northwest, from Public Facility (PF) to Village (V), enabling development of two mixed-use buildings as part of the

Villebois Village Center Mixed Use project. This area around the Piazza at Villebois is the very core of Villebois calling for the tallest buildings and most intense uses. The description of the Village Center in the Villebois Village Master Plan describes the higher density development around the piazza as “*multi-family and mixed-use development such as ground level retail or office and “flex-space”*” uses with office or multi-family residential units above.

EXECUTIVE SUMMARY:

The Village Center is the former site of the Dammasch State Hospital and has kept Public Facility (PF) zoning from this previous use until Preliminary Development Plans (PDPs) are proposed. The subject 1.40 acres is the final land in the Village Center and all of Villebois to have the Zone changed to Village (V) concurrent with development proposals. The proposed Zone Map Amendment to Village (V) has long been planned and is the only rezoning option for the land consistent with the City’s Comprehensive Plan and the Villebois Village Master Plan.

The proposed development of the Villebois Village Center Mixed-Use Apartments consists of three buildings and a surface parking area surrounding the central Piazza on three sides. The fourth side of the Piazza is already occupied by the Domaine at Villebois, a mixed-use apartment development. Buildings A and B of the proposed development are on the 1.40 acres proposed for rezoning. The third building, Building C located southwest of the Piazza across SW Barber Street, is on land previously zoned Village (V) by Ordinance No. 641 in 2007. Associated parking included in the proposed development at the southeast corner of Villebois Drive and Barber Street is on land previously zoned Village (V) by Ordinance No. 612 in 2006.

At time of the City Council packet publication, the land use applications were pending action by the Development Review Board (DRB) Panel B. Staff will provide a summary to the City Council of the actions taken at the public hearing on September 27 for consideration of Ordinance No. 852.

EXPECTED RESULTS:

Adoption of Ordinance No. 852 will rezone approximately 1.40 acres in the Villebois Village Center, immediately adjacent to the Piazza at Villebois to the northeast and northwest, from Public Facility (PF) to Village (V), enabling development of the property consistent with the Villebois Village Master Plan.

TIMELINE:

The Zone Map Amendment will be in effect 30-days after ordinance adoption on second reading. The 120-day deadline for making a final decision on this land use application is October 23, 2021, which drives the scheduled hearing dates before City Council.

CURRENT YEAR BUDGET IMPACTS:

The applicant paid established application fees for this proposal.

FINANCIAL REVIEW:

Reviewed by: KAK Date: 9/23/2021

LEGAL REVIEW:

Reviewed by: BAJ Date: 9/27/2021

COMMUNITY INVOLVEMENT PROCESS:

Staff sent the required public hearing notices and held the required public hearings. Staff made materials regarding the application readily available to the public.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

The Zone Map Amendment enables the subject property to be developed consistent with the Comprehensive Plan and the Villebois Village Master Plan. Development of the subject land as residential mixed-use with market-rate apartments and retail uses will provide additional housing choices, a vibrant village center, and continued development of Villebois as planned.

ALTERNATIVES:

The alternatives are to approve or deny the zone map amendment request, or to continue the hearing if Council wants to wait for the appeal/call-up period to end and the applicant agrees to extend the 120-day statutory timeline for review. In the event the Development Review Board does not take action on making a recommendation on September 27 and continues their hearing, the City Council may choose to:

- Continue the hearing on the Zone Map Amendment to November 15, 2021 with consent of the applicant to extend the 120-day statutory timeline for review in order to accommodate time for the DRB to hold a continued hearing on October 25; or
- Approve the Zone Map Amendment consistent with the Comprehensive Plan and Villebois Village Master Plan with or without a provision for the Zone Map Amendment to expire in six-months without an approved development plan. A provision for the six-month expiration is standard in Coffee Creek where the Council typically approves Zone Map Amendments prior to development approval.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

Attachment 1 – Ordinance No. 852:

- Exhibit A – Zoning Order DB21-0008 Including Legal Description and Sketch Depicting Zone Map Amendment
- Exhibit B – Zone Map Amendment Compliance Findings
- Exhibit C –Development Review Board Panel B Resolution No. 393-A Recommending Approval of Zone Map Amendment

ORDINANCE NO. 852

AN ORDINANCE OF THE CITY OF WILSONVILLE APPROVING A ZONE MAP AMENDMENT FROM PUBLIC FACILITY (PF) ZONE TO THE VILLAGE (V) ZONE ON APPROXIMATELY 1.40 ACRES IN THE VILLEBOIS VILLAGE CENTER, ADJACENT TO THE PIAZZA AT VILLEBOIS TO THE NORTHEAST AND NORTHWEST; THE LAND IS MORE PARTICULARLY DESCRIBED AS TAX LOT 2800 AND ADJACENT RIGHT-OF-WAY, SECTION 15AC, TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON. COSTA PACIFIC COMMUNITIES, APPLICANT.

WHEREAS, certain real property is within the Villebois Village Master Plan boundary; and

WHEREAS, the City of Wilsonville desires to have the properties zoned consistent with the Wilsonville Comprehensive Plan Map designation of “Residential-Village” rather than maintain the current zoning designations as has been done for the rest of the land as it developed within the Villebois Village Master Plan area; and

WHEREAS, the City of Wilsonville Planning Staff analyzed the Zone Map Amendment request and prepared a staff report for the Development Review Board, finding that the application met the requirements for a Zone Map Amendment and recommending approval of the Zone Map Amendment, which staff report was presented to the Development Review Board on September 27, 2021; and

WHEREAS, Development Review Board Panel 'B' held a public hearing on the application for a Zone Map Amendment, among other requests, on September 27, 2021, and after taking public testimony and giving full consideration to the matter, adopted Resolution No. 393-A which recommends City Council approval of the Zone Map Amendment request (Case File DB21-0008) and adopts the staff report with findings and recommendation, all as placed on the record at the hearing; and

WHEREAS, on October 4, 2021, the Wilsonville City Council held a public hearing regarding the above described matter, wherein the City Council considered the full public record on the Zone Map Amendment Case File made before the Development Review Board, including the Development Review Board and City Council staff reports; took public testimony; and, upon deliberation, concluded that the proposed Zone Map Amendment meets the applicable approval criteria under the City of Wilsonville Development Code.

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

Section 1. The City Council adopts, as findings and conclusions, the forgoing Recitals and the Zone Map Amendment Findings in Exhibit B, as if fully set forth herein.

Section 2. The official City of Wilsonville Zone Map is hereby amended by Zoning Order DB21-0008, attached hereto as Exhibit A, from the Public Facility (PF) Zone to the Village (V) Zone.

SUBMITTED to the Wilsonville City Council and read the first time at a meeting thereof on the 4th day of October 2021, and scheduled the second reading on October 18, 2021 commencing at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

Kimberly Veliz, City Recorder

ENACTED by the City Council on the 4th day of October, 2021, by the following votes:

Yes: _____ No: _____

Kimberly Veliz, City Recorder

DATED and signed by the Mayor this _____ day of ___, 2021

Julie Fitzgerald Mayor

SUMMARY OF VOTES:

- Mayor Fitzgerald
- Council President Akervall
- Councilor Lehan
- Councilor West
- Councilor Linville

ORDINANCE NO. 852

EXHIBITS:

- A. Ordinance No. 852 Exhibit A – Zoning Order DB21-0008 including legal description and sketch depicting zone map amendment
- B. Ordinance No. 852 Exhibit B – Compliance findings
- C. Ordinance No. 852 Exhibit C – DRB Resolution No. 393-A recommending approval of Zone Map Amendment

**BEFORE THE CITY COUNCIL OF
THE CITY OF WILSONVILLE,
OREGON**

In the Matter of the Application of)
Costa Pacific Communities, for a Rezoning)
of Land and Amendment of the) **ZONING ORDER DB21-0008**
City of Wilsonville Zoning Map)
Incorporated in Section 4.102 of the)
Wilsonville Code.)

The above-entitled matter is before the Council to consider the application of DB21-0008, for a Zone Map Amendment and an Order, amending the official Zoning Map as incorporated in Section 4.102 of the Wilsonville Code.

The Council finds that the subject property (“Property”), legally described and shown on the attached legal description and sketch, has heretofore appeared on the City of Wilsonville zoning map as Public Facility (PF).

The Council having heard and considered all matters relevant to the application for a Zone Map Amendment, including the Development Review Board Panel ‘B’ record and recommendation, finds that the application should be approved.

THEREFORE IT IS HEREBY ORDERED that the Property, consisting of approximately 1.4 acres in the Villebois Village Center, adjacent to the Piazza at Villebois to the northeast and northwest, comprising Tax Lot 2800, of Section 15AC and adjacent right-of way, as more particularly shown and described in the attached legal description and sketch, is hereby rezoned to Village (V), subject to conditions detailed in this Order’s adopting Ordinance. The foregoing rezoning is hereby declared an amendment to the Wilsonville Zoning Map (Section 4.102 WC) and shall appear as such from and after entry of this Order.

Dated: This 18th day of October, 2021.

Julie Fitzgerald, MAYOR

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney

Ordinance No. 852 Exhibit A

ATTEST:

Kimberly Veliz, City Recorder

Attachment: Legal Description and Sketch Depicting Land/Territory to be Rezoned

**LEGAL DESCRIPTION**

Zone Change

Lot 76

Map 3S1W15AC Tax Lot 2800

Lot 76, plat of "Villebois Village Center No. 3", Clackamas County Plat Records, in the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, State of Oregon, more particularly described as follows:

BEGINNING at the most southerly corner of Lot 11, plat of "Berkshire No. 2", Clackamas County Plat Records;

thence along the southeasterly line of said lot and its extension, North 47°02' 56" East, a distance of 225.50 feet to a point on the centerline of SW Valencia Lane;

thence along said centerline, South 42°56' 37" East, a distance of 169.09 feet;

thence leaving said centerline, North 47°03' 23" East, a distance of 91.00 feet;

thence along the southwesterly line of Tract A, plat of "Siena", Clackamas County Plat Records, and its extension, South 42°56' 37" East, a distance of 193.00 feet to a point on the northerly Right-of-Way line of SW Villebois Drive North;

thence along said northerly Right-of-Way line, South 47°03' 23" West, a distance of 80.69 feet to an angle point;

thence continuing along said Right-of-Way line, South 47°03' 24" West, a distance of 71.31 feet to the most easterly corner of Tract O, plat of "Villebois Village Center", Clackamas County Plat Records;

thence along the northeasterly line of said Tract O and Parcel 5, Partition Plat No. 2013-051, Clackamas County Plat Records, North 42°56' 36" West, a distance of 162.50 feet to an angle point;

thence continuing along the northeasterly line of said Parcel 5, North 47°03' 24" East, a distance of 15.00 feet to an angle point;

thence continuing along said northeasterly line, North 42°56' 36" West, a distance of 63.00 feet to the most northerly corner of said Parcel 5;

thence along the northwesterly line of said Parcel 5, South 47°03' 24" West, a distance of 179.50 feet to the most westerly Southwest corner of said Parcel 5;

Ordinance No. 852 Exhibit A

Page 2 of 2



thence along the northeasterly Right-of-Way line of SW Barber Street, North 42° 56' 36" West, a distance of 136.56 feet to the POINT OF BEGINNING.

Containing 1.40 acres, more or less.

Basis of bearings being plat of "Villebois Village Center No. 3", Clackamas County Plat Records.

Property Vested in:

RCS - Villebois Development, LLC

Map 3S1W15AC Tax Lot 2800

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 9, 2002
TRAVIS C. JANSEN
57751

RENEWS: 6/30/2021

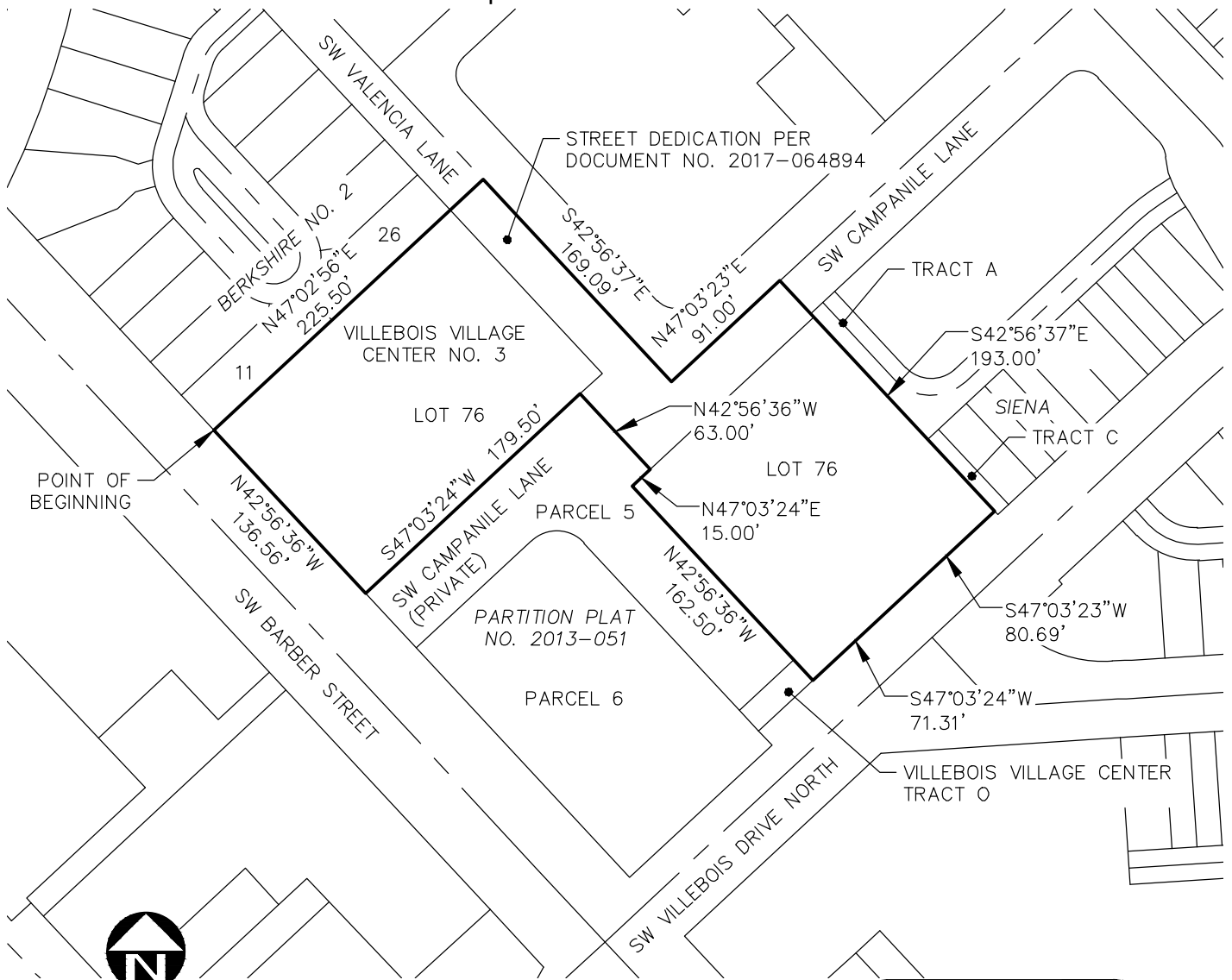


SKETCH TO ACCOMPANY LEGAL DESCRIPTION

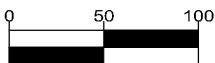
Zone Change

Lot 76

Map 3S1W15AC Tax Lot 2800



SCALE



1 INCH = 100 FEET

Property Vested in:
RCS - VILLEBOIS DEVELOPMENT, LLC
Map 3S1W15AC Tax Lot 2800

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 9, 2002
TRAVIS C. JANSEN
57751

RENEWALS: 6/30/2021



Ordinance No. 852 Exhibit B
Zone Map Amendment Compliance Findings

Villebois Village Center Mixed Use
Special Area Plan (SAP) Central
PDPs 12C Lot 76

City Council
Quasi-Judicial Public Hearing

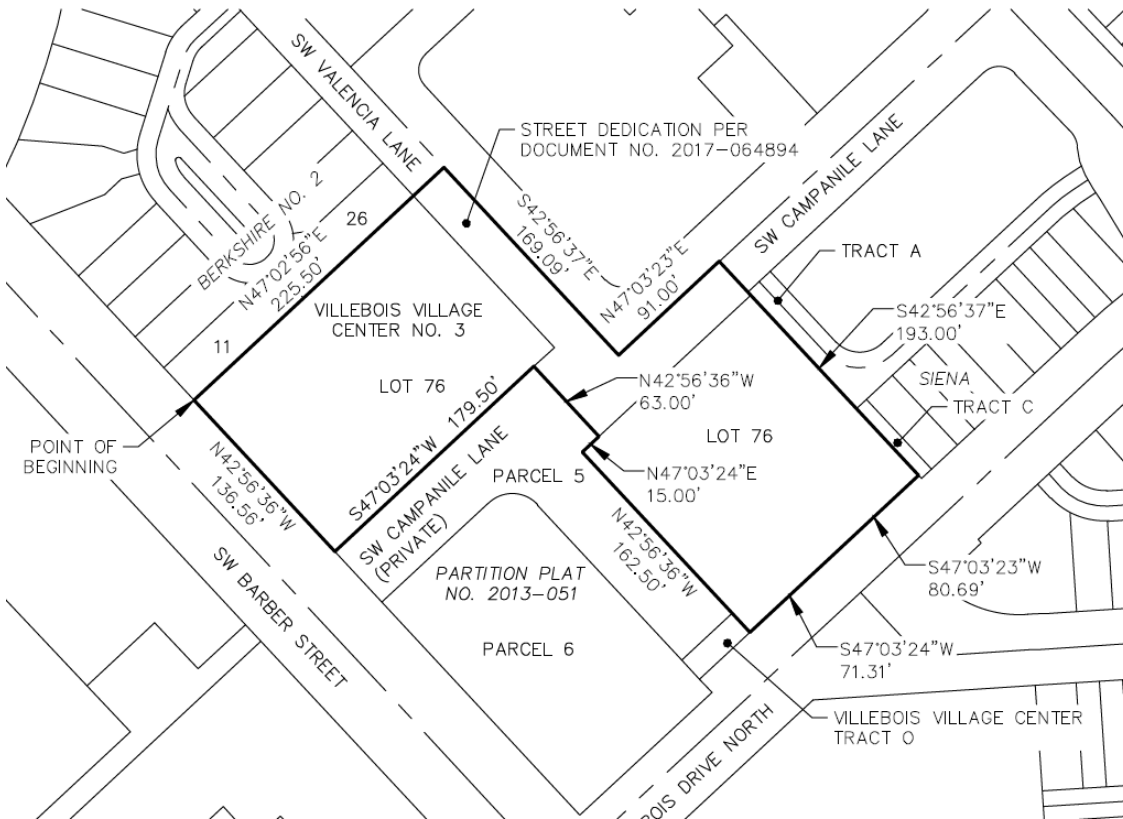
Hearing Date:	October 4, 2021
Date of Report:	September 27, 2021

Application Nos.:	DB21-0008 Zone Map Amendment
Request/Summary:	The request before the City Council is a Zone Map Amendment for approximately 1.40 acres.
Location:	Villebois Village Center. The property described as Tax Lot 2800 and adjacent right-of-way, Section 15AC, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon.
Owner:	RCS Villebois Development LLC (Contact: Rudy Kadlub)
Applicant:	Costa Pacific Communities (Contact: Rudy Kadlub)
Applicant's Rep.:	Pacific Community Design, Inc. (Contact: Stacy Connery AICP)
Comprehensive Plan Designation:	Residential-Village
Zone Map Classification:	Current: Public Facility (PF) Proposed: Village (V)
Staff Reviewers:	Cindy Luxhoj AICP, Associate Planner
DRB/Staff Recommendation:	<u>Adopt</u> the requested Zone Map Amendment

Applicable Review Criteria:

Development Code:	
Section 4.110	Zones
Section 4.127	Residential Neighborhood (RN) Zone
Section 4.197	Zone Changes
Comprehensive Plan and Sub-elements:	
Citizen Involvement	
Urban Growth Management	
Public Facilities and Services	
Land Use and Development	
Plan Map	
Area of Special Concern L	
Transportation Systems Plan	
Villebois Village Master Plan	
Regional and State Law and Planning Documents	
Statewide Planning Goals	

Vicinity Map:



Summary:

Zone Map Amendment (DB21-0008)

As shown by the outlined area in the figure on Page 2, the request is to change the zoning for SAP Central PDP 12C Lot 76 (Tax Lot 2800) from Public Facility (PF) to Village (V). The site is designated Residential-Village on the Comprehensive Plan Map. Approval of the zone change is consistent with the Comprehensive Plan Map designation and enables development of the property consistent with the Villebois Village Master Plan.

Findings:

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

General Information

Application Procedures-In General Section 4.008

The application is being processed in accordance with the applicable general procedures of this Section.

Who May Initiate Application Section 4.009

The application has been submitted on behalf of the property owner, RCS Villebois Development LLC, and is signed by an authorized representative, Rudy Kadlub.

Request: DB21-0008 Zone Map Amendment

As described in the Findings below, the applicable criteria for this request are met or will be met by Conditions of Approval.

Comprehensive Plan

Residential Development Implementation Measure 4.1.4.

- A1.** The subject site is part of the Villebois Village Master Plan, which is comprised of a variety of housing opportunities of varying densities. There are many different housing types within the Villebois community, ranging from multifamily to larger lots. Villebois includes opportunities for affordable, senior, and community housing. Compliance with this Implementation Measure was addressed with the Villebois Village Master Plan. The land use plan for the subject area is consistent with the Villebois Village Master Plan.

Development in Residential Village Applicable Plans and Code

Implementation Measure 4.1.6.a. and c.

- A2.** The review of the proposed development includes reviewing and applying applicable portions of the Villebois Village Concept Plan, Villebois Village Master Plan, SAP Central, the Comprehensive Plan, and the Development Code. Rezoning the property to Village (V) will allow application of the Village Zone standards created to implement these plans, policies, and codes.

Contents of Villebois Village Master Plan

Implementation Measure 4.1.6.b.

- A3.** The concurrent proposal for a PDP implements the procedures as outlined by the Villebois Village Master Plan, as previously approved.

Applying Village Zone to Residential Village Comprehensive Plan Designation

Implementation Measure 4.1.6.c.

- A4.** The request is to apply the Village Zone to an area designated as Residential Village in the Comprehensive Plan.

Wide Range of Uses in Village Zone

Implementation Measure 4.1.6.d.

- A5.** The subject property is made up of two sites with a combined area of approximately 1.19 acres within the Villebois Village Center. The plan for the subject property includes two mixed use buildings, one for each site. Both buildings will have retail space, common areas, and residential units on their first floors with residential units on the top three floors. The proposed residential land use and housing types in this area are consistent with those portrayed in the Villebois Village Master Plan, which this regulation is intended to implement.

Development Code

Zoning Concurrent with Planned Development Approval

Section 4.029

- A6.** The applicant is applying for a zone change concurrent with a PDP for the subject property in conformance with the Code.

Base Zoning Designations

Subsection 4.110 (.01) H.

- A7.** The requested zoning designation of Village (V) is among the base zones identified in this subsection.

Village Zone Purpose

Subsection 4.125 (.01)

- A8.** Consistent with the Village Zone purpose, the proposal is for land designated Residential-Village on the Comprehensive Plan map and within the Villebois Village Master Plan area to receive the zoning designation of Village (V).

Village Zone Permitted Uses

Subsection 4.125 (.02)

- A9.** The proposed mixed-use buildings are consistent with the uses permitted in Village Zone and Villebois Village Master Plan.

Zone Change Concurrent with PDP Approval

Subsection 4.125 (.18) B. 2.

- A10.** The requested zone map amendment is concurrent with a request for PDP approval.

Zone Change Procedures

Subsection 4.197 (.02) A.

- A11.** The applicant submitted the request for a zone map amendment as set forth in the applicable code sections.

Conformance with Comprehensive Plan Map, etc.

Subsection 4.197 (.02) B.

- A12.** The subject area is designated Residential Village on the Comprehensive Plan Map. Therefore, application of the Village Zone is consistent with the Comprehensive Plan.

Residential Designated Lands-Housing Variety

Subsection 4.197 (.02) C.

- A13.** Implementation Measures 4.1.4. b, d, e, q, and x require a variety of housing. The proposed zone map amendment allows for furthering of these implementation measures by permitting development of the diverse housing types called for in the Villebois Village Master Plan, with which development on the subject property must conform.

Public Facility Concurrency

Subsection 4.197 (.02) D.

- A14.** The PDP compliance report, plan sheets, and supporting utility and drainage report demonstrate that the existing primary public facilities are available and can be provided in conjunction with the project. The Traffic Impact Analysis confirms traffic concurrency.

Impact on SROZ Areas

Subsection 4.197 (.02) E.

- A15.** No SROZ is within the area to be rezoned.

Development within 2 Years

Subsection 4.197 (.02) F.

A16. As stated in the application materials, the applicant is committed to a schedule demonstrating that development of the subject property is reasonably expected to commence within two (2) years of the initial approval of the zone change. In the event the applicant or their successors do not commence development within two (2) years, allowing related land use approvals to expire, the zone change will remain in effect.

Development Standards and Conditions of Approval

Subsection 4.197 (.02) G.

A17. As can be found in the findings for the accompanying requests, the applicable development standards will be met either as proposed or as a condition of approval.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 393-A**

A RESOLUTION ADOPTING FINDINGS RECOMMENDING APPROVAL TO CITY COUNCIL OF A ZONE MAP AMENDMENT FROM PUBLIC FACILITY (PF) TO VILLAGE (V) FOR THE SUBJECT SITES LOCATED ON TAX LOT 2800 AND ADJOINING RIGHT OF WAY OF SECTION 15AC, TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF WILSONVILLE, CLACKAMAS COUNTY, OREGON. PACIFIC COMMUNITY DESIGN, INC. – REPRESENTATIVE FOR COSTA PACIFIC COMMUNITIES – APPLICANT AND RCS DEVELOPMENT LLC – OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned request, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared a staff report on the above-captioned subject, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel B at a scheduled meeting conducted on September 27, 2021, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, on September 27, 2021, the Development Review Board recommended approval to City Council of the Zone Map Amendment (DB21-0008) from Public Facility (PF) to Village (V) for the subject site, and

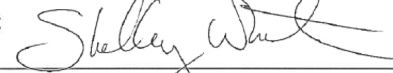
WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the portion of the staff report dated September 20, 2021, attached hereto as Exhibit A1, with findings and recommendations contained therein, pertaining to the Zone Map Amendment request (DB21-0008) and forwards the recommendation for approval to City Council for their consideration.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 27th day of September, 2021, and filed with the Planning Administrative Assistant on Sept. 30, 2021. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the Council in accordance with WC Sec 4.022(.03).



Sammy Nada, Chair, Panel B
Wilsonville Development Review Board

Attest: 

Shelley White, Planning Administrative Assistant