

AGENDA

WILSONVILLE CITY COUNCIL MEETING MARCH 4, 2013 7:00 P.M.

CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON

Mayor Tim Knapp

Council President Scott Starr
Councilor Susie Stevens

Councilor Richard Goddard
Councilor Julie Fitzgerald

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.

Please Note:
There Is No Work Session This Evening.
The Council Meeting Will Begin At 7 P.M.

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 March 4, 2013 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on February 19, 2012. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

7:00 P.M. CALL TO ORDER

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

7:05 P.M. MAYOR'S BUSINESS

- A. Upcoming Meetings

7:10 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

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

7:15 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

- A. Council President Starr – Park & Recreation Advisory Board, Chamber/City Leadership; and Economic Development Task Force
- B. Councilor Goddard – Library Board, Chamber Board, and Clackamas County Business Alliance
- C. Councilor Fitzgerald – Planning Commission; Committee for Citizen Input; and Library Board
- D. Councilor Stevens – Development Review Panels A and B; Wilsonville Seniors

7:25 P.M. CONSENT AGENDA

- A. ✓ **Resolution No. 2403**
A Resolution Of The City Of Wilsonville Approving Agreement Regarding SDC Credits For Costa Circle Extension And Roundabout Between The City Of Wilsonville And Polygon At Villebois III, L.L.C. (staff – Kohlhoff)

Motion: JF 2nd. SS Vote: 3-0

7:30 P.M. NEW BUSINESS

- A. ✓ **Resolution No. 2402**
A Resolution Of The City Of Wilsonville Authorizing An Intergovernmental Agreement Between The Cities Of Sherwood And Wilsonville Regarding Transmission Segment 3B: Construction, Ownership And Operation Thereof; And Regarding Payment Terms And Schedules For Deposits By Sherwood To Wilsonville For Advance Funding Of Construction Costs; And Regarding An Agreed Methodology To Determine Final Project Costs Attributable To Each Party; And Regarding Reimbursement By Wilsonville To Sherwood For Wilsonville's Share Of Project Costs. (staff –Mende/Kohlhoff)

*Motion SS
2nd: JF
Vote: 3-0*

7:50 P.M. CITY MANAGER'S BUSINESS – *school dist UGB + pmn.*

7:55 P.M. LEGAL BUSINESS *open
COW = supporters.*

8:00 P.M. ADJOURN

AN URBAN RENEWAL AGENCY MEETING WILL FOLLOW

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

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Executive Session is held in the Willamette River Room, City Hall, 2nd Floor

- 5:00 P.M. EXECUTIVE SESSION** [15 min.]
A. Pursuant to ORS 192.660(2)(f) Exempt Public Records and ORS 192.660(2)(h) Litigation
- 5:15 P.M. COUNCILORS' CONCERNS** [5 min.]
- 5:20 P.M. PRE-COUNCIL WORK SESSION**
- A. SDC Credits for Costa Circle Extension & Roundabout (staff – Kohlhoff)
- 6:50 P.M. ADJOURN**
-

CITY COUNCIL MEETING

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7:55 P.M. LEGAL BUSINESS

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King, Sandy

From: Kraushaar, Nancy
Sent: Tuesday, March 05, 2013 4:32 PM
To: King, Sandy
Cc: Cosgrove, Bryan
Subject: Grahams Ferry Road Street Lighting
Attachments: Grahams Ferry Road Street Light Memo 2013-02-26 NJK.pdf

Sandy: Can you please forward this email to the City Council? Thank you. –Nancy

Mayor Knapp and City Councilors:

As per last night's meeting, I am attaching the February 26, 2013 memo prepared by Steve Adams, Deputy City Engineer. The memo summarizes the review we completed in response to last November's citizen concern about the street lighting on Grahams Ferry Road adjacent to Villebois.

The memo provides information about the City's lighting standards, what street light options are available through PGE, photos of alternatives, and their costs for installation and maintenance. Key points of the memo are summarized below.

Background:

- Eleven 35-foot tall, aluminum, cobra head street lights were installed last year on Grahams Ferry Road adjacent to Villebois that meet the City's requirement to meet AASHTO lighting standards.
- Citizen concerns about the lights were brought to the City's attention. Their concerns included lack of consistency with other lighting in the area, incompatibility with the neighborhood character, too tall, and industrial aesthetic in color and style.
- The typical street light installation for streets classified as arterial or collector has been an aluminum, 30-foot, cobra style street light (as per Resolution #881). The street classification for Grahams Ferry Road is minor arterial.
- To address the citizen concerns, staff determined it would be appropriate to identify other feasible alternatives for the subject street lighting.

Alternatives:

- The City is enrolled with PGE for Option B street light maintenance. We considered four alternate street light styles that are available under Option B (acorn, Westbrook, 30-foot black cobra and 25-foot aluminum cobra).
- The acorn style considered has been used on the local streets throughout Villebois south of Lowrie School. The Westbrook is a black street light being used on the local streets in Villebois north of Lowrie School.
- The shorter acorn, Westbrook, and 25-foot aluminum cobra style heights require more frequent spacing to meet lighting standards.

Installation and Maintenance Costs:

- The installation costs for the acorn and Westbrook styles are higher than the existing cobra style (installation cost for cobra = \$2,300 each; acorn = \$3,300 each; Westbrook = \$4,800 each).
- The monthly maintenance costs for the acorn and Westbrook are 40 to 72 % higher than the existing cobra style because there are more of them.

Findings:

- The acorn was found to be unsuitable for Grahams Ferry Road based on increased visual glare.

- The existing eleven cobra lights could be replaced with about sixteen Westbrook lights. New foundations and electrical will be required. Installation cost estimate is approximately \$77,000.
- If the Westbrook is used, the City likely will need to pay the increased cost of their installation compared to the cobra style that the developer has already assumed for the lights north to Barber. This cost is approximately \$35,000.
- A black fiberglass cobra style street light is available in 30 and 35-foot heights. The existing eleven lights can be replaced with eleven 30-foot black cobra lights that do not require new foundations. Installation cost estimate is approximately \$26,000.
- The existing eleven lights can be replaced with about fourteen 25-foot tall, aluminum cobra style lights. Installation cost estimate is approximately \$33,000.
- If removed, the existing eleven lights can be re-used for a future road project.
- The 30-foot black and 25-foot aluminum cobra head styles are consistent with the City's use of cobra style lighting on collectors and arterials.

Conclusions and Recommendations:

- The existing lights are considered appropriate based on lighting standards, cost, and consistency with other collector and arterial lighting throughout the City, but they do not address the citizen concerns.
- The 25-foot aluminum cobra style light is considered a feasible alternative based on lighting standards, lower height, cost, and consistency with other collector and arterial lighting throughout the City. However, a drawback with this style is the increased number required to meeting lighting standards.
- The Westbrook style is not considered a feasible alternative based on the number (spacing frequency) needed to meet lighting standards, installation cost, and higher long-term maintenance costs.
- The black 30-foot cobra style light is considered a feasible alternative for the street lighting on Grahams Ferry Road based on lighting standards, color, reduced height, and cost. This style is the most cost-effective alternative if the eleven existing lights are to be replaced.

Please let me know if you have any questions. Thank you. -Nancy

Nancy Kraushaar, PE
Community Development Director
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070
503.570.1562 (office)

MEMO
Community Development Department
Engineering Division

DATE: February 26, 2013

TO: Nancy Kraushaar, P.E.
Community Development Director

FROM: Steve R. Adams, P.E.
Deputy City Engineer

**RE: *Grahams Ferry Road
Street Light Summary – Cobra / Acorn / Westbrooke Lights***

Attached please find the engineering summary for Grahams Ferry Road comparing Cobra and Acorn style street lights, along with the spreadsheet of luminescence acquired from field measurements and the lighting reports prepared by DKS Associates and Kittleson & Associates, Inc.

Executive Summary

Based on driver/vehicle safety and compliance with national roadway lighting standards, along with evaluating initial construction costs, maintenance costs, power consumption and lighting efficiency, it is recommended that the City continue to use Cobra street lights on Grahams Ferry Road and other streets within the City designated as Arterials or Collectors.

Within the City on our major streets that have been designated with Arterial or Collector classifications, the typical street light installation has been a Cobra style light mounted to a 30-foot pole. Resolution 881, adopted in 1991, initially established this pattern for acceptable street lighting in the City. Based on recent studies on Cobra lights, Acorn lights and Westbrooke lights completed by DKS Associates (DKS) and Kittleson & Associates, Inc. (KAI), and field measurements taken by staff, the Cobra street lights remain the most economical and efficient choice.

Presently on a 1500-foot section of Grahams Ferry Road adjacent to Villebois the developer has installed 11 City-approved Cobra style lights mounted on 35-foot aluminum poles. If the color of the poles is to be addressed, an acceptable alternative would be to use black, 30- or 35-foot fiberglass poles with black luminaires and arms. If the height of the poles is to be addressed, an acceptable alternative would be to use 25-foot aluminum Cobra poles (however a total of 14 lights would be needed, although these could be 100 Watt luminaires). To switch out the current 11 aluminum Cobra poles and lights to eleven black Cobra poles and lights would cost an estimated \$35,000; to switch out to fourteen 25-foot aluminum Cobra poles would cost an estimated \$42,000. With either of these options about \$25,000 could be recovered by installing the recovered aluminum poles and lights on a future project. It would take approximately 3 to 4 months to have the black poles and lights, or 25-ft aluminum poles to be ordered, delivered and installed.

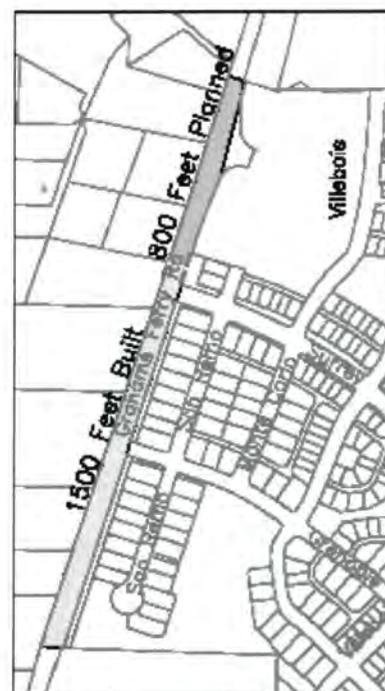
A decision is needed soon because Engineering is currently reviewing plans for construction of the next 800-foot section of Grahams Ferry Road which includes 8 new Cobra street lights (if 35-foot height, 11 Cobra lights if 25-foot height). Note that this 800-foot section of Grahams Ferry Road is being privately constructed; any change in density of lights and/or type of lights could be the City's costs since there is no condition of approval or lighting standard that could force this cost onto the developer.

Costs

Cobra lights installed on 30 or 35-foot poles are both less expensive per light installed and in the total number of lights required to meet lighting standards. Northwest Earthmovers, Inc. has been involved with recent construction work in Villebois and has indicated their costs to purchase and install these various street lights to be:

Cobra lights:	\$2,300/ea (aluminum or black)
Acorn lights:	\$3,300/ea
Westbrook lights:	\$4,800/ea

DKS has calculated there would be a 64% to 82% increase in the number of Acorn lights (depending on height) to provide a lighting standard meeting target light levels for the street based on the roadway's functional classification, land use, and City of Wilsonville Standards. KAI has calculated there would be a 32% to 58% increase in the number of Westbrooke lights (depending on wattage) to meet similar lighting standards. Estimated cost to replace the existing 35-ft Cobra lights by purchasing and installing new lights for this 2300-foot section of Grahams Ferry Road from the boundary of the abandoned Living Enrichment Center property north to past the planned Barber Street roundabout (as shown in the figure):



Cobra lights, 35-ft black pole:	19 lights	\$44,000
Cobra lights, 25-ft:	25 lights	\$58,000
Acorn lights:	31 to 34 lights	\$102,000 to \$112,000
Westbrook lights:	25 to 30 lights	\$120,000 to \$144,000

Potential costs to the City for the 1500-foot section of Grahams Ferry Road already constructed and covering the balance of the costs of the 800-foot section being designed:

Cobra lights, existing:	19 lights	no cost
Cobra lights, black fiberglass	19 lights	\$35,000
Cobra lights, 25-ft aluminum:	25 lights	\$49,000
Acorn lights:	31 to 34 lights	\$83,000 to \$93,000
Westbrook lights:	25 to 30 lights	\$100,000 to \$125,000

The City is enrolled in PGE Option "B" for maintaining street lights that the City owns. While the per month maintenance cost for 200 Watt luminaires is only slightly higher for Westbrooke or Acorn lights over Cobra lights, the increased number of lights will add significantly to our monthly payments to PGE. For this 2300-ft section of Grahams Ferry Road the City's maintenance costs would be:

Cobra lights:	19 lights	\$203/mo.
Cobra lights:	25 lights	\$191/mo. (21 lights are 100 Watt)
Acorn lights:	31 to 34 lights	\$349 to \$383/mo.
Westbrook lights:	31 to 34 lights	\$282 to \$339/mo.

Lighting Standards

The City's Public Works Standards § 201.9.00 "Lighting" states:

"All installation of streetlights shall be done in accordance with "Statement of Streetlight Installation Responsibilities," Option B, by PGE, revised March 1, 2001, or latest edition."

Conditions of approval for all private development projects which include street work contain a standard engineering condition which states,

"The applicant shall provide a 'stamped' engineering plan and supporting information that shows the proposed street light locations meet the appropriate AASHTO lighting standards for all proposed streets and pedestrian alleyways."

DKS follows the recommended street lighting levels provided by the American National Standard Practice for Roadway Lighting manual RP-8-00, produced by the Illuminating Engineering Society of North America. Their review of the Acorn lights presently installed around Villebois indicate that "none of the options would meet desired veiling luminance which would lead to increased visual glare than currently exists with the cobrahead poles thus reducing driver visibility" if these Acorn style lights were installed on a roadway designated as an arterial.

KAI evaluated the Westbrooke lights in regards to a roadway's functional classification, surrounding land use, and City of Wilsonville Standards and they were shown to meet the required lighting standards.

Discussion

City staff met with Ken and Kathryn Whittaker on the evening of December 12, 2012 on-site, where Grahams Ferry Road passes in front of their home, along with three other concerned residents, two of whom lived within the Villebois development and the third being a neighbor of the Whittaker's. Their main concerns were expressed as aesthetics, for both the look of the metallic Cobra poles during the day and the 35-foot height of the lights at night. They thought the poles were out of context for the residential-rural environment of the area.

City staff agreed to research street lighting patterns here in the City, conducted field research, contacted a contractor for their purchase and installation costs, and contracted with DKS Associates and Kittleson & Associates, Inc. to study the options between using Cobra, Acorn or Westbrooke style street lights.

Conclusions

Based on Staff having completed a comprehensive review of Resolution 881, review of PGE Streetlight "Option B" requirements and charges, review of the lighting summaries provided by DKS and KAI, field measurements of street light intensity and sidecast light values, driver/vehicle safety and compliance with national roadway lighting standards, along with evaluating initial construction costs, maintenance costs, power consumption and lighting efficiency it is recommended that the City continue to use Cobra street lights on Grahams Ferry Road and other streets designated as Arterials or Collectors. . If the color of the poles is to be addressed, an acceptable alternative would be to use black, 30- or 35-foot fiberglass poles with black luminaires and arms. If the height of the poles is to be addressed, an acceptable alternative would be to use 25-foot aluminum Cobra poles, however either of these changes would be an added cost to the City.

Cobra light - Grahams Ferry Road



Acorn light - Tooze Road



Westbrooke light – Carinthia Circle



CITY COUNCIL ROLLING SCHEDULE

Board and Commission Meetings 2013

MARCH

DATE	DAY	TIME	MEETING	LOCATION
3/4	Monday	7 p.m.	City Council Meeting	Council Chambers
3/11	Monday	6:30 p.m.	DRB Panel – A	Council Chambers
3/13	Wednesday	6 p.m.	Planning Commission	Council Chambers
3/14	Thursday	6:30 p.m.	Parks & Recreation Advisory Board	Council Chambers
3/18	Monday	7 p.m.	City Council	Council Chambers
3/25	Monday	6:30 p.m.	DRB Panel – B	Council Chambers
3/27	Wednesday	6:30 p.m.	Library Board	Library

COMMUNITY EVENTS:

ECONOMIC DEVELOPMENT STRATEGY TASK FORCE

Wednesday, March 20, 2013 6 p.m.
Willamette River Room I&II

COMMUNITY GARDEN PLOT REGISTRATION BEGINS

Thursday, March 21, 2013 8 a.m.
Stop by the Community Center to reserve your plot

WILSONVILLE EGG HUNT

Saturday, March 30, 2013 10:00 a.m.
Memorial Park




**CITY COUNCIL MEETING
 STAFF REPORT**

Meeting Date: March 4, 2013	Subject: Resolution No. 2403 Resolution Approving Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout Between the City of Wilsonville and Polygon at Villebois III, L.L.C. Staff Member: Michael Kohlhoff Department: Legal	
Action Required <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 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	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: This is a follow up agreement fulfilling a provision in Addendum No 4 to the Matrix Development Agreement recently approved by the City Council. Therefore, it is being put on as a consent item.	
Staff Recommendation: Approve the consent agenda item.		
Recommended Language for Motion: I move to approve the consent agenda.		
PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

- 1) Under the Dolan decision, a developer can only be required to pay for road improvements that are roughly proportional to the benefits and impacts the development brings about. Under Addendum 4, the City agreed to provide SDC credits for building off-site road improvements by a first in developer, who would not otherwise be directly responsible for these costs; provided, an agreement could be reached with the owner of the adjacent property who would be responsible to build this portion of the road improvements upon

subsequent development to refund the City the credited amount at the time of the subsequent development. This Agreement provides for the owner to refund the credit amount at the time of development. At the time Addendum 4 was being negotiated with a Polygon LLC, Zions National Bank was the owner and subsequently negotiated a sale of the property to another Polygon entity. This Agreement provides for the credit amount to be refunded at the time of lot development in keeping with Addendum 4.

EXECUTIVE SUMMARY:

See comment section above.

EXPECTED RESULTS:

See issue discussion above.

TIMELINE: N/A

CURRENT YEAR BUDGET IMPACTS:

None.

FINANCIAL REVIEW / COMMENTS: *[Item must be sent to Finance for review.]*

Reviewed by: _____ Date: _____

LEGAL REVIEW / COMMENT:

Reviewed by: MEK Date: 2/22/13

Author of report.

COMMUNITY INVOLVEMENT PROCESS: N/A

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

See policy issues above. City is able to gain road improvements, leverage its SDC's, aids developer cash flow, and recoups SDC's.

ALTERNATIVES:

CITY MANAGER COMMENT:

ATTACHMENTS

A. Resolution No. 2403

B. Agreement

RESOLUTION NO. 2403

A RESOLUTION OF THE CITY OF WILSONVILLE APPROVING AGREEMENT REGARDING SDC CREDITS FOR COSTA CIRCLE EXTENSION AND ROUNDABOUT BETWEEN THE CITY OF WILSONVILLE AND POLYGON AT VILLEBOIS III, L.L.C.

WHEREAS, the City, Polygon Northwest Company, L.L.C. (Polygon), and the Urban Renewal Agency of the City of Wilsonville entered into an agreement, Addendum No. 4 to the Development Agreement of June 14, 2004, dated January 31, 2013 (Addendum No. 4); and

WHEREAS, this Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout between the City of Wilsonville and Polygon at Villebois III, L.L.C. fulfills the provisions of Addendum No. 4 for refunding by Zions National Bank of the credited SDCs for the early building of Costa Circle Extension and Roundabout since Zions National Bank, as one of the owners of the property, would have had to build Costa Circle Extension and Roundabout upon development of its property. Polygon at Villebois III, L.L.C. is the successor in interest to Zions National Bank, having purchased the affected property from PNW Home Builders, L.L.C., who had purchased the property from Zions National Bank, and is entering this Agreement to refund the SDC credits as the owner of the affected property to be developed in the future.

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

1. The City Manager is authorizing to execute on behalf of the City of Wilsonville the Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout between the City of Wilsonville and Polygon at Villebois III, L.L.C., a copy of which is marked as **Exhibit 1**, attached hereto and incorporated by reference as if fully set forth herein.
2. This Resolution shall take effect upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2013, and filed with the Wilsonville City Recorder this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Goddard

Councilor Fitzgerald

Councilor Stevens

Attachments:

Exhibit 1 – Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout

After Recording Return To:

City of Wilsonville
Attn: City Recorder
29799 SW Town Center Loop East
Wilsonville, OR 97070

AGREEMENT REGARDING SDC CREDITS FOR
COSTA CIRCLE EXTENSION AND ROUNDABOUT

This Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout (the "Agreement") is dated February 21, 2013, and is between the City of Wilsonville (the "City") and Polygon at Villebois III, L.L.C., a Washington limited liability company ("Owner").

Recitals:

A. Owner owns the property described in the attached Exhibit A which Owner acquired from PNW Home Builders, L.L.C., and which PNW Home Builders, L.L.C. acquired from Zions National Bank (the "Zions Property").

B. The City, Polygon Northwest Company, L.L.C. ("Polygon"), and the Urban Renewal Agency of the City of Wilsonville are parties to Addendum No. 4 to the Development Agreement of June 14, 2004, dated January 31, 2013 ("Addendum No. 4") pertaining to real property owned by Sharon L. Lund and Donald E. Bischof (the "Bischof/Lund Property").

C. As part of the development of land in SAP Central, a portion of the Villebois community in Wilsonville, Oregon, the Villebois Master Plan contemplates the construction of Villebois Drive from 110th Avenue to Costa Circle Drive, a roundabout, and Costa Circle Drive from Villebois Drive (collectively, the "Costa Circle Extension and Roundabout"). Pursuant to Section 5.2 of Addendum No. 4, Polygon or its affiliate may construct the Costa Circle Extension and Roundabout and receive SDC credits for such work. The purpose of this Agreement is to provide for reimbursement by the Owner or any future owner of the Zions Property for the Zions Property's share of such SDC credits when building permits are applied for on each lot on the Zions Property.

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Agreement, the receipt and adequacy of which are acknowledged, the parties agree as follows:

Agreement:

I. Reimbursement of Zions Property Share. If Polygon constructs the Costa Circle Extension and Roundabout and the City provides SDC credits to Polygon equal to the reasonable permitted costs, fees, and expenses, as allowed by City SDC regulations, that are incurred by Polygon in connection with construction of the Costa Circle Extension and Roundabout (the "Street SDC Credits"),

then Owner agrees to accept a supplemental street systems development charge in connection with the development of the Zions Property equal to the share of the Street SDC Credits properly allocated by the City to the Zions Property. The estimated amount of the Street SDC Credits to be allocated to the Zions Property is \$292,578.00.

2. Timing of Payment of Supplemental Street SDC. The supplemental street systems development charge described in Section 1 of this Agreement shall be allocated among the lots to be developed on the Zions Property and shall be payable, on a lot-by-lot basis, in accordance with the City's SDC reimbursement regulations, when a building permit application is made for any lot located within the Zions Property.

3. Lot Releases. Upon payment of the systems development charge described in Section 1 with respect to each lot, the City shall execute, acknowledge, and deliver to Owner a document, in recordable form, that releases the lot at issue from this Agreement and states that the obligations in this Agreement are satisfied with respect to such lot.

4. Binding on Successor Owners. The provisions of this Agreement shall run with and burden the Zions Property and shall be binding on the Owner and any future owner(s) of the Zions Property that applies for the initial building permits on any lots within the Zions Property.

5. Notices. All notices, demands, consents, approvals, and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: Michael E. Kohlhoff
City Attorney
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville OR 97070

To Owner: Polygon at Villebois III, L.L.C.
Attn: Fred Gast
109 E. 13th Street
Vancouver WA 98660

With a copy to: Radler White Parks & Alexander LLP
Attn: Barbara Radler
111 SW Columbia Street, Suite 1100
Portland, OR 97201

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

7. Jurisdiction and Venue. This Agreement will be governed in accordance with the laws of the State of Oregon. Venue will be in Clackamas County Circuit Court.

8. 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.

9. Recording. The fully executed original of this Agreement shall be duly recorded in the Records of Clackamas County.

10. Modifications. This Agreement may not be modified unless signed by all parties and the modification is recorded.

11. Non-Waiver. Any failure to enforce any provision of this Agreement will not be deemed a waiver of the right to enforce that provision or any other provision of this Agreement.

12. Severability. If any provision of this Agreement is found to be void or unenforceable, 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.

13. Authority. The party executing this Agreement represents that he/she has full legal authority to bind the Owner and that the Owner is the true and actual legal owner of the Zions Property.

14. Time of the Essence. Time is of the essence in performance of this Agreement.

15. Entire Agreement. This Agreement, including all documents attached to this Agreement and all documents incorporated by reference herein, represents the entire Agreement between the parties with respect to Owner's obligation to pay its share of SDC Credits for the Costa Circle Extension and Roundabout.

16. Guaranty. Based on due consideration, the receipt and adequacy of which are hereby acknowledged, Polygon, by signing below, guarantees the performance of Owner under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

City: City of Wilsonville

By: _____
Name: _____
Title: _____

Approved as to form:

Michael E. Kohlhoff, City Attorney

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013 by _____, as _____ of the City of Wilsonville.

Notary Public for Oregon
My Commission Expires: _____

Owner:

Polygon at Villebois III, L.L.C.,
a Washington limited liability company

By: PNW Home Builders South, L.L.C.,
a Washington limited liability company
Its: Manager

By: PNW Home Builders, L.L.C.,
a Washington limited liability Company
Its: Sole Member

By: PNW Home Builders Group, Inc.,
a Washington corporation
Its: Manager

By: _____
Fred Gast, Assistant V. P.

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013 by Fred Gast, as Assistant Vice President of PNW Home Builders Group, Inc., as Manager of PNW Home Builders, L.L.C., the sole member of PNW Home Builders South, L.L.C., the manager of Polygon at Villebois III, L.L.C., a Washington limited liability company, on behalf of the limited liability company.

Notary Public for Oregon
My Commission Expires: _____

Polygon:

Polygon Northwest Company, L.L.C.,
a Washington limited liability company

By: Brentview, Inc., its Manager

By: _____
Fred Gast, Assistant Vice President

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013 by Fred Gast, as Assistant Vice President of Brentview, Inc., the manager of Polygon Northwest Company, L.L.C., a Washington limited liability company, on behalf of the limited liability company.

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT A

Legal Description

TRACT 1

Parcels 2 and 3, PARTITION PLAT NO. 2007-127, in the City of Wilsonville, County of Clackamas, and State of Oregon.

TRACT 2

Parcel 2, PARTITION PLAT NO. 2010-46, in the City of Wilsonville, County of Clackamas, and State of Oregon.

**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: March 04, 2013	Subject: Resolution No. 2402 Intergovernmental Agreement with the City of Sherwood for Construction of Segment 3B of the Water Transmission Pipeline Staff Member: Eric Mende, Deputy City Engineer Department: Engineering	
Action Required <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 type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: 	
Staff Recommendation: Approve Resolution No. 2402.		
Recommended Language for Motion: I move to Approve Resolution No. 2402.		
PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Action is requested to approve an IGA with the City of Sherwood for construction and financing of the last segment (Segment 3B) of the 48-inch Water Transmission Pipeline to Sherwood.

EXECUTIVE SUMMARY:

The Willamette River Water Treatment Plant was constructed by Tualatin Valley Water District (TVWD) and the City of Wilsonville (Wilsonville) to initially serve the City of Wilsonville with up to a 10 million gallons per day (mgd) supply of municipal water and TVWD, or a water consortium to be formed by TVWD and nearby cities, with up to a 5 mgd supply, with future

expansion of another 10 mgd for Wilsonville and another 45 mgd for TVWD (or a Water Consortium). With Wilsonville's permission, Sherwood, as an intended city in the water consortium, acquired from TVWD its interest in its original 5 mgd of supply. To transmit Sherwood its supply and to accommodate Wilsonville's transmission and long term distribution needs, Wilsonville and Sherwood have entered into agreements on a segment-by-segment basis that address construction capacity ownership for Segments 2, 3A, 4, 5A, and 5B of the transmission line, plus the revenue vault (meter) located at Tooze/Westfall Roads.

This IGA addresses the last remaining 2400 feet of 48-inch diameter transmission line, known as Segment 3B, thereby completing the pipeline and allowing Sherwood to receive their full 5mgd of supply. This IGA allocates ownership capacity and costs for the construction of Segment 3B and details the financing commitments of the parties. Ownership of the pipeline is evenly split at 50 percent for each party. Total Project Costs are currently allocated at 48.2 percent Sherwood and 51.8 percent Wilsonville, and are subject to a "true up" provision contained in the IGA. The reason the cost allocation and ownership percentages are different is due to the inclusion of a large pressure reducing station in the project which will serve only Wilsonville, and for which only Wilsonville is financially responsible. Final cost allocation percentages ("true up") will be determined based on actual construction costs, determined at the end of the project, plus agreed upon markups for Wilsonville project management and administrative costs. The current estimated construction cost is \$3,497,000. With estimated engineering, permitting, acquisition, and project management costs, the estimated Total Project Cost is \$4,511,000.

Sherwood has previously advanced monies for design, permitting, and easement acquisition for the project, as detailed in Resolution 2242 and the associated IGA (January 19, 2012). In this IGA, Sherwood is agreeing to advance payment of the full construction costs for the project, with Wilsonville reimbursing Sherwood for Wilsonville's allocated portion of total costs within 180 days of project completion. Advance payment from Sherwood must be received before the Construction Contract is brought to City Council for approval (tentatively, June 03, 2013).

EXPECTED RESULTS:

This project will complete the last segment of 48-inch diameter water transmission pipeline needed for Sherwood to receive their full 5 mgd water right. The project will also improve fire flow and pressure in the north half of Wilsonville's distribution system, and accommodate future growth in the Coffee Creek and Frog Pond areas.

Approval of this IGA is a necessary pre-cursor to Sherwood's advance payment funding the construction, and Sherwood's advance payment is a necessary pre-cursor for Council approval of a Construction Contract.

TIMELINE:

Permitting is complete. Easement acquisition is in progress with appraisals completed and offers/negotiations with three property owners pending. Final design is in progress and is at approximately 75 percent. Bids are scheduled for May. Construction is scheduled for June through November 2013.

CURRENT YEAR BUDGET IMPACTS:

Engineering, permitting, and easement acquisition are currently funded in 2012/2013 under CIP #1055. Revenue from Sherwood will be needed to fund construction in 2013/2014.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: ___JEO_____ Date: ___2/21/13_____

Confirmed projects costs are properly budgeted and funding is available for the engineering, permitting, and easement acquisition in 2012/13 and project costs in 2013/14.

LEGAL REVIEW / COMMENT:

Reviewed by: ___MEK_____ Date: _2/20/2013_____

The Resolution is approved as to form.

COMMUNITY INVOLVEMENT PROCESS:

The project has received media attention numerous times over the years, and has also been before Council for approval of previous IGA's and contracts. The pipeline concept was also part of the open house presentations in 2011 for the Barber Street and Kinsman Road project(s). There have been no documented objections to the project or various IGA's.

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

Construction will be in an undeveloped area and there will be no road closures or detours required, therefore, construction impacts on the community will be minimal. Long term, businesses and residents will benefit from the larger pipeline via improved fire flow and pressure, and accommodation of future growth in the Coffee Creek and Frog Pond areas.

ALTERNATIVES:

None

CITY MANAGER COMMENT:

ATTACHMENTS

- A. Resolution No. 2402
- B. Diagram of Water Transmission Line Segments

RESOLUTION NO. 2402

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF SHERWOOD AND WILSONVILLE REGARDING TRANSMISSION SEGMENT 3B: CONSTRUCTION, OWNERSHIP AND OPERATION THEREOF; AND REGARDING PAYMENT TERMS AND SCHEDULES FOR DEPOSITS BY SHERWOOD TO WILSONVILLE FOR ADVANCE FUNDING OF CONSTRUCTION COSTS; AND REGARDING AN AGREED METHODOLOGY TO DETERMINE FINAL PROJECT COSTS ATTRIBUTABLE TO EACH PARTY; AND REGARDING REIMBURSEMENT BY WILSONVILLE TO SHERWOOD FOR WILSONVILLE'S SHARE OF PROJECT COSTS

WHEREAS, the City of Wilsonville and City of Sherwood desire to enter into an Intergovernmental Agreement between the Cities Of Sherwood and Wilsonville regarding construction, ownership, and operation of transmission Segment 3B, and regarding payment terms and schedules for advance deposits by the City of Sherwood to the City of Wilsonville to fund the construction effort, and regarding a methodology to determine the project costs attributable to each party, and regarding a schedule for reimbursement of applicable project costs from Wilsonville to Sherwood, for Wilsonville's share of project costs and ,

WHEREAS, the "IGA Regarding Transmission Segment 3B," a copy of which is marked as Exhibit 1, is attached hereto and incorporated by reference as if fully set forth herein, in accordance with the recitals and the provisions of the agreement.

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

1. The City Council authorizes the City Manager to enter into, on behalf of the City of Wilsonville, the IGA Regarding Transmission Segment 3B, Exhibit 1 attached hereto and incorporated by reference as if fully set forth herein.
2. This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a meeting thereof this 4th day of March, 2013, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Fitzgerald

Councilor Goddard

Councilor Stevens

Attachments:

Exhibit 1 – Intergovernmental Agreement Regarding Transmission Segments 3B

EXHIBIT 1

AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE CITY OF WILSONVILLE REGARDING COST, CONSTRUCTION, OWNERSHIP, AND OPERATION OF SEGMENT 3B OF A 48-INCH DIAMETER WATER TRANSMISSION LINE FROM THE TERMINUS OF SEGMENT 3A IN KINSMAN ROAD TO THE BEGINNING POINT OF SEGMENT 4 NEAR THE INTERSECTION OF THE PROPOSED, AS YET TO BE COMPLETED, SEGMENT OF KINSMAN ROAD AND BOECKMAN ROAD, A LENGTH OF APPROXIMATELY 2,400 FEET

This Agreement ("Agreement") is made and entered into this ___ day of _____, 2013, by and between the City of Sherwood, an Oregon municipal corporation ("Sherwood"), and the City of Wilsonville, an Oregon municipal corporation ("Wilsonville"), referred to collectively as ("the Parties").

RECITALS

The Parties agree upon the following Recitals:

A. WHEREAS, originally Tualatin Valley Water District ("TVWD") and Wilsonville partnered to construct and own undivided shares in the Willamette River Water Treatment Plant ("WRWTP") and appurtenances thereto from the raw water intake in the Willamette River through Segment 1 of the finished water 63-inch water transmission line ("Supply Facilities"). The treatment plant portion of the WRWTP has a current designed capacity of 15 mgd. Subsequently, based on certain conditions, Wilsonville consented to Sherwood purchasing certain interests in the WRWTP Supply Facilities from TVWD, which included the purchase of TVWD's 1/3 of the 15 mgd capacity (i.e., 5 mgd), while Wilsonville retained the remaining 2/3 of the 15 mgd capacity (i.e., 10 mgd), of the WRWTP capacity. In addition, Wilsonville and TVWD own larger capacity interests in other appurtenant facilities.

B. WHEREAS, Sherwood and Wilsonville entered into agreements whereby Wilsonville had constructed or would construct, and Sherwood would purchase capacity in, Segments 2, 3A, 4, and 5A of 48-inch diameter water transmission lines within Wilsonville, which in conjunction with the WRWTP and other facilities will jointly serve both cities with a permanent potable water supply. All these segments are now constructed and capacity purchased under the terms of the agreements. Together, these transmission facilities are 8,183 lf in length

and represent a present joint investment of \$7,313,838. Sherwood and Wilsonville each own 1/2 of the capacity of Segments 2 and 3A. Sherwood owns 2/3 of the capacity of Segments 4 and 5A, while Wilsonville owns the remaining 1/3 capacity of each. The design capacity of each of these segments of 48-inch diameter pipe is 40 mgd.

C. WHEREAS, Sherwood constructed and owns 18,000 lf of 48-inch diameter transmission (Segments 6-9) from a point connecting to the Tooze Road Meter Vault described herein and continuing to the Snyder Park Reservoir, which is also owned by the City of Sherwood. The cost of the construction of these Sherwood transmission facilities, not including the cost of the Snyder Park Reservoir, is estimated to be in excess of \$11,630,000. Construction of these transmission segments was estimated to occur in the spring of 2011 by Emery & Sons Construction, Inc. ("Emery"), Sherwood's General Contractor; however, actual completion occurred in December 2010. In order for Sherwood to accept these new transmission facilities, they needed to be pressure tested and flushed, then maintained and regularly refreshed with approximately 400 gpm of potable water. The source of this potable water is the WRWTP and the Water Distribution System of the City of Wilsonville. A Temporary Water Supply Agreement was negotiated between the Parties for the 400 gpm water supply to permit pressure testing, flushing, and line maintenance. An agreement reflecting those negotiations was adopted by the Parties on January 11, 2011.

D. WHEREAS, the Parties also jointly provided for the construction of the Tooze Road Meter Vault facility and appurtenant 198-foot segment of 48-inch diameter transmission line ("Segment 5B"), collectively referred to as the Meter Vault Project. The Meter Vault Project links Transmission Segments 5A and 6, provides metering and flow control facilities for water flowing to Sherwood, and houses pressure reducing valves and transmission lines to serve existing and planned distribution and reservoir systems in Wilsonville. The Parties adopted the Tooze Road Meter Vault Agreement authorizing the construction of these improvements on January 11, 2011. Sherwood advanced its proportionate share of the Project, as well as advance funding and construction of the extension of a 24-inch diameter distribution line (previously referenced as a transmission line in the 2011 Agreement) that is wholly owned by Wilsonville. These facilities are now operational.

E. WHEREAS, the unanticipated early completion of Segments 6-9 in December 2010 and the later completion date of the Tooze Road Meter Vault left a short but very important period when water needed to be supplied to Sherwood. The Parties provided this temporary water supply through the advance construction by Sherwood of a 24-inch diameter distribution line extension to Wilsonville's future distribution system. This distribution line extension was a part of the Meter Vault Project, described in Recital D above, and is designed to serve Wilsonville permanently with potable water through the Tooze Road Meter Vault, but in the interim would be used to supply water from the Wilsonville distribution system to the vault for transmission to Sherwood. All required real property had been acquired by Wilsonville for the construction of the Tooze Road Meter Vault and this line extension and its connection to Sherwood's Segment 6 transmission line. Sherwood proposed to construct these facilities by means of a change order to its Segment 6 contract with Emery and to pay for the redesign associated with advancing the 24-inch line extension, as well as to front the cost of the Project subject to reimbursement by Wilsonville of its share through credits against future temporary and interim water sales to Sherwood. The terms of this arrangement are contained in the Temporary Water Supply Agreement between the Parties. This project is now completed. This temporary water supply arrangement has now been operationally replaced by an Interim Water Supply relationship described in Recital F below.

F. WHEREAS, the Parties previously executed an Interim Water Supply Agreement, which provided for the temporary wheeling of up to 2.5 mgd of surplus water from WRWTP potable water to Sherwood through the jointly-owned Sherwood and Wilsonville transmission lines, and also partially through Wilsonville existing distribution lines, until such time as Segment 3 is completed and operational. The Parties commissioned Montgomery Watson Harza, Inc. ("MWH") to perform a hydraulic capacity analysis of current WRWTP and Wilsonville facility capacity to ensure that 2.5 mgd of surplus water is available through the Wilsonville distribution system in addition to Wilsonville's current and projected needs. MWH completed the analysis on February 22, 2011, and concluded that the surplus capacity is available. The Parties also contracted with Galardi Rothstein Group to develop and recommend a methodology and estimated rate for water treatment and associated wheeling rates for production and delivery of the interim water to Sherwood following completion of the Meter

Vault Project and continuing until Segment 3 of the 48-inch transmission line is operational. That methodology and interim water rate have been adopted by the Parties.

G. WHEREAS, it is recognized and acknowledged by the Parties that the 48-inch transmission linkage between the WRWTP and Sherwood will not be completed until the remaining 2,400 lf of Segment 3 (hereinafter referenced as "Segment 3B") is constructed by Wilsonville. A map generally locating the 48-inch transmission line segments, including Segment 3B, is marked as **Exhibit A**, attached hereto and incorporated by reference herein. Wilsonville previously constructed Segment 3A and the Parties desired to convey to Sherwood a 1/2 capacity interest therein as well as reimbursement to Wilsonville of 1/2 of its costs incurred in constructing Segment 3A. The first phase of Segment 3B involves easement acquisition, environmental permitting, and pipeline design. In addition, Wilsonville advanced certain costs for preliminary work on Segment 3B through August 31, 2011, which needed to be repaid by Sherwood. In order to accomplish these objectives, the Parties entered into an Intergovernmental Agreement Between the Cities of Sherwood and Wilsonville Regarding Transmission Segment 3A: Reimbursement for Work Completed and Ownership Thereof; and Regarding Transmission Segment 3B: Payment by Sherwood to Wilsonville for Work Previously Accomplished, Easement Acquisition Costs, and Process, Environmental Permitting, Pipeline Design Services, and Terms of Advance Sherwood Funding for Construction of Segment 3B, dated January 23, 2012 (hereinafter, the "Segment 3A Agreement"). The Parties acknowledge that payments and deposits have been paid in accordance with said Segment 3A Agreement, subject to any final cost true-up for Pacific Habitat, Westech Engineering, Inc., Wilsonville project management, and property acquisition.

H. WHEREAS, the environmental permits for the construction of Segment 3B have now been issued, DSL Permit No. 49456-RF, issued August 22, 2012 and expiring August 22, 2013 unless renewed, and U.S. Army Corp of Engineers "Verification" Permit No. NWP-2012-68, issued September 21, 2012 and expiring September 21, 2014. The permits were issued to Wilsonville, which provided copies to Sherwood. In addition, a professional services agreement between Wilsonville and Westech Engineering, Inc., dated January 19, 2012, to provide Segment 3B water transmission preliminary and final design has been completed sufficient to establish the legal descriptions necessary to acquire property interests for the

construction of Segment 3B. On December 3, 2012, the Wilsonville City Council authorized the acquisition of the property interests necessary to construct Segment 3B. Wilsonville has contracted for appraisal services, with appraisal reports scheduled for mid-February 2013 and offers to property owners by March 1, 2013. If necessary, condemnation and right of entry authorization will be sought. The Parties agree that Wilsonville will provide Sherwood copies of the Westech agreement and legal descriptions for the property acquired for Segment 3B.

I. WHEREAS, paragraph 13 of the Segment 3A Agreement described in Recital G above provided a computation method of the Parties' share of Segment 3B costs. Paragraph 15 of the Segment 3A Agreement includes an overview of this Segment 3B Agreement and the construction and financing process regarding Segment 3B, establishes a baseline for negotiating this Agreement and dealing with costs related to Segment 3B not otherwise covered, and describes the terms for advancing funds for the construction and draw accounts and coordinated periodic pay estimates by Sherwood and repayment by Wilsonville. Paragraph 13 also references paragraphs 9-12, which respectively outline the cost-sharing for the environmental permitting for Segment 3B, the pipeline design contract for Segment 3B, repayment of costs advanced by Wilsonville, and easement acquisition. It is the intent of the Parties to follow these provisions in the Segment 3A Agreement in this Agreement unless otherwise specifically set forth herein. For ease of reference, paragraphs 9-15 of the Segment 3A Agreement are marked as **Exhibit B**, attached hereto and incorporated herein by reference.

J. WHEREAS, the Parties have the authority to enter into this Agreement pursuant to their applicable charters, principal acts, and ORS 190.003 – 190.030.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Recitals. The recitals set forth above are incorporated by reference and made a part of this Agreement.

2. Consideration. In consideration of the terms and conditions set forth below, the Parties enter into this Agreement.

3. Term. This Agreement becomes effective on the date of execution by the last signatory party and shall be perpetual unless otherwise agreed to by the Parties in writing.

4. Construction of Segment 3B.

4.1 *Sufficient Funds.* It is understood and agreed that each party will budget sufficient funds to perform their respective duties and obligations as contracted for herein.

4.2 *Wilsonville Responsibilities.* Subject to active involvement and coordination with Sherwood, Wilsonville shall oversee the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction, including inspection/project management, maintenance, and operation of the Segment 3B project. Both Wilsonville and Sherwood shall be joint owners of the Segment 3B construction project, unless Sherwood lawfully transfers its ownership in the project to the Willamette River Water Coalition (WRWC). Upon such transfer, the project shall be jointly owned by Wilsonville and the WRWC, but Wilsonville's responsibilities shall not change unless otherwise agreed to in writing by the Parties. No other party shall have interest therein unless mutually agreed to by the Parties.

4.3 *Cost of the Project.*

4.3.1 The Parties provided the cost and cost-sharing methodologies for permitting, engineering design, and easement acquisition for the Segment 3B Project in the Segment 3A Agreement, with the salient paragraphs 9-15 attached as **Exhibit B** for ease of reference. To the extent services for construction engineering, including but not limited to arborist services, and third-party inspection services were not specifically addressed in the Segment 3A Agreement, the Parties agree that these services shall be subject to the same cost-sharing methodology.

4.3.2 The estimated total construction cost for the Segment 3B Project is \$3,497,000.00. Based on this estimate and recognizing that pressure reducing valve facilities at Boeckman Road are being constructed solely for the benefit of Wilsonville, Sherwood shall be responsible for 46.2% of the cost of Segment 3B and Wilsonville shall be responsible for 53.8% of the cost to construct Segment 3B. The cost-sharing methodology and methodology for final true-up of

project costs and percentages is set forth in the Segment 3A Agreement and recited as set forth in **Exhibit B** incorporated herein.

4.4 *Deposit and Draw Structure.*

4.4.1 Funds Budget. Sherwood represents and warrants that it has sufficient funds to advance the total construction cost of the Segment 3B Project, subject to repayment by Wilsonville of its share of the costs as set forth in Section 4.3.2 above.

4.4.2 Deposit of Construction Funds. After Wilsonville identifies the lowest responsible bidder as the contractor for the Segment 3B Project but before the Wilsonville City Council approves a construction contract, Sherwood will deposit with Wilsonville (1) a sum equal to the sum of the bid of the lowest responsible bidder plus 5% for construction cost contingency, and (2) a sum for construction engineering and third-party inspection services equal to the awarded contract for such services, subject to approval by the Sherwood City Council. The funds shall be placed in a separate account and any interest earned by the funds shall accrue to Sherwood. The funds shall be used to compensate the selected contractor(s) and to reimburse Wilsonville for costs attributable to construction of the Segment 3B Project consistent with the terms of the Segment 3A Agreement and the percentages described in Section 4.3.2 above.

4.4.3 Deposit for Pre-Purchase of Pipes. In the event Wilsonville purchases water transmission pipes for Segment 3B in advance of approving the construction contract, Sherwood shall deposit with Wilsonville an amount sufficient to cover the cost of the pipes. The amount shall be based on a written estimate of the cost, and Wilsonville shall provide Sherwood with copies of the final invoice(s) that show the actual purchase cost(s). Any amount deposited with Wilsonville under this section shall be included in the payment obligation described in Section 4.4.2 above.

4.4.4 Contractor Draw Requests. Wilsonville shall cause the contractor to submit the contractor's draw request with at least one original to the designated

party for Wilsonville, and Wilsonville shall promptly forward a copy to Sherwood's designated party. Each city will notify the other within five days of receipt of any concerns or objections. Thereafter, Wilsonville, in consultation with Sherwood, shall take the appropriate action, as may be determined by the Parties and/or the applicable circumstances, to pay the billing, in whole or in part, under reservation, or not at all.

4.5 *Construction Responsibilities and Financial Reports.* Wilsonville shall be responsible for the control and supervision of all activities of construction of the Segment 3B Project. Wilsonville shall prepare and submit to Sherwood financial activity reports of the Segment 3B Project upon request but not more than once per month. Wilsonville shall prepare such other reports and information as the Parties may require and mutually agree upon.

4.6 *Plan Review, Change Orders, and Site Access.* Wilsonville shall provide Sherwood with copies of the 75-percent and 90-percent engineering design submittals and of all final project plans and allow Sherwood to comment on the plans. Contractor change orders must be approved by both Wilsonville and Sherwood. Sherwood shall be allowed access to the construction site during regular business hours to monitor construction activities, provided such access does not unreasonably interfere with construction.

4.7 *Financial "True-Up" and Repayment by Wilsonville.*

4.7.1 "True-Up." Within 90 days of the date the Wilsonville City Engineer determines the project is substantially complete, Wilsonville shall provide Sherwood with a financial accounting of the project that shows the actual total construction cost, construction engineering, arborists, and third-party inspection services, together with the agreed upon percentage for Wilsonville's project management and administration. To the extent the deposit described in Section 4.4.2 above exceeds the actual costs identified herein, such excess amount shall be refunded to Sherwood, including any interest thereon. Sherwood shall notify Wilsonville within 10 days whether Sherwood has any concerns or objections regarding the accounting.

4.7.2 Repayment by Wilsonville. Within 180 days of the date of substantial completion described in Section 4.7.1 above, subject to Section 4.9, Wilsonville shall pay to Sherwood an amount equal to Wilsonville's trued-up percentage of the actual total costs for the Segment 3B Project.

4.8 *Construction Engineering and Inspection Services.* Wilsonville shall retain an independent contractor to conduct construction engineering, including but not limited to arborist services, and construction inspection of all project elements. Wilsonville may elect to extend the existing contract with Westech to provide these services or solicit or select an alternative contractor. In either case, Wilsonville shall make available for Sherwood to review all inspections reports and, upon Sherwood's request, provide Sherwood with copies of the reports.

4.9 *Mitigation Funding.* Following the date of substantial completion, the Parties agree to establish a mitigation fund in the amount of \$100,000.00 for the purpose of funding environmental mitigation, monitoring, and maintenance, as required by the Oregon Division of State Lands and the United States Army Corp of Engineers, including but not limited to landscaping and wetland mitigation. From the amounts reimbursable to Sherwood under Section 4.7 above, Wilsonville shall retain an amount equal to Sherwood's percentage obligation of \$100,000.00 calculated according to the cost-sharing methodology set forth in the Segment 3A Agreement. Wilsonville shall retain

these funds for a period of up to two years following the date of substantial completion. The funds shall be deposited in a separate account and used only for the purpose of mitigation, monitoring, and maintenance related to the Segment 3B Project. At the end of the retention period, Wilsonville shall return Sherwood's percentage portion of any unused funds, including interest thereon, to Sherwood. During the retention period, Wilsonville shall provide a financial accounting of the funds to Sherwood upon request but not more than quarterly.

5. Ownership, Maintenance, and Operation of the Segment 3B Project.

5.1 *Ownership.* The Segment 3B Project is intended to have a final design capacity of 40 million gallons per day (mgd). Sherwood shall be entitled to a 50% capacity share thereof, and Wilsonville the remaining 50% capacity share. Sherwood shall have an undivided 50% ownership share, and Wilsonville shall have the remaining undivided 50% ownership share, of Segment 3B, both as tenants in common. Ownership means the right of each party to use for its own benefit its portion of transmission line capacity. In the event that final design capacity or actual operating capacity exceeds 40 mgd, the supplemental capacity shall be owned by the Parties in proportion to the above-referenced capacity shares. The respective capacity use of the Parties will be determined by appropriate metering. The operational characteristics and operational metering protocol have been agreed to by the Parties.

5.2 *Easements.* Wilsonville agrees to execute and deliver to Sherwood a non-exclusive, permanent easement to maintain and operate Segment 3B for the purposes intended by this Agreement, notwithstanding the termination of this Agreement or the withdrawal of either party from this Agreement, for so long as Sherwood shall use Segment 3B for its intended purposes and if Wilsonville fails to fulfill its operation and maintenance responsibilities.

5.3 *Operation and Maintenance Responsibilities.* Unless otherwise agreed to by the Parties in writing, Wilsonville shall have the responsibility for operation and maintenance of Segment 3B. The actual, direct, out-of-pocket expenses of post-construction operation and maintenance of Segment 3B (together with any allowance as

the Parties may agree upon for general or administrative expenses) shall be billed to the Parties monthly in proportion to their ownership interests reflected in Section 5.1, exclusive of the pressure reducing valve facilities which are owned by Wilsonville and are Wilsonville's sole responsibility to maintain. Wilsonville shall exercise due diligence in effecting its operation and maintenance responsibilities under this Agreement. For any non-emergency maintenance project or event in excess of \$50,000 in total, individual costs require coordination with and the consent of Sherwood. Subject to shut-down emergencies, announced scheduled repairs, or precautionary shut-down to allow upstream spills in the Willamette River to flow past the WRWTP, Wilsonville shall operate the water system in a manner to not harm Sherwood and to provide Sherwood's ownership capacity share, in keeping with the prior daily notification by Sherwood to Wilsonville of capacity needs or such notification schedule as the Parties otherwise may agree, at an adequate hydraulic grade at the point of delivery to Sherwood. The point of delivery is defined as the revenue meter located in the meter vault approximately 400 feet west of the intersection of SW Grahams Ferry Road and Tooze Road. Unless otherwise agreed to by the Parties, the hydraulic grade line at the point of delivery to Sherwood shall be a minimum of 392 feet, sufficient to completely fill Sherwood's terminal Sunset Reservoirs, which have an overflow elevation of approximately 380 feet. Should temporary conditions exist beyond the operational control of Wilsonville of the WRWTP, that materially affect the ability of the WRWTP to produce sufficient water to meet the demands of both cities, the available supply capacity of the WRWTP shall be split in accordance with the respective ownership rights in capacity at the WRWTP. The aforementioned is not intended to alter the respective ownership of capacity in the pipeline. Neither city shall be responsible to meet the water demands of the other.

5.4 *Non-Emergency Major Repair or Replacement.* Wilsonville shall monitor the overall condition of the transmission line and facilities and shall schedule any non-emergency major repair or replacement three years in advance of such major repair or replacement. At the same time, Wilsonville shall prepare an estimated projected annual expenditure report for the cost of the scheduled repair or replacement. Upon preparation of the schedule and annual costs report, Wilsonville shall provide Sherwood a copy of same.

6. Transmission of Water to Third Parties. Unless both Parties otherwise previously agree in writing, neither party shall permit use of the Segment 3B Project for the purpose of transmitting water to any person or party other than Wilsonville or Sherwood retail customers, save and except for a transfer by Sherwood of its ownership interest in the Segment 3B Project to the WRWC pursuant to Section 4.2 above. Subject to Sections 8 and 9 below, or as otherwise agreed to by the Parties in writing, transmission of water by a party shall not exceed that party's ownership share in the Willamette River Water Treatment Plant. Any revenues derived from transmission of water through the Segment 3B Project on behalf of entities other than Wilsonville or Sherwood customers shall be paid to the Parties in proportion to their ownership interest in capacity used by a third party in the Segment 3B Project, as reflected in Section 5.1.

7. Approvals. Unless otherwise directed by the respective City Councils, all approvals of either Wilsonville or Sherwood in this Agreement shall be made by the City Manager or the City Manager's authorized designee.

8. Leasing of Supply Capacity. Each party shall have the right to lease from the other party such unused capacity of its capacity share of the Segment 3B Project as the party with the unused capacity may determine to be reasonably available and prudent to be leased to the other party. The compensation to the leasing party shall be fairly and equitably agreed upon by the Parties.

9. Overuse of Supply Facility. Wilsonville and Sherwood shall each use the Segment 3B Project facilities in a manner consistent with prudent water utility practices and to minimize, insofar as is practicable, interference with each other's use of its respective share of capacity to meet its demand. Unless caused by system operation conditions not caused by the overusing party, any overuse of 10 percent or greater by either Wilsonville or Sherwood for two consecutive years or for three out of five consecutive years, shall result in the overusing party compensating the other party at a lease rate that will be fairly and equitably agreed upon by the Parties.

10. Dispute/Attorney Fees. If a dispute arises between the Parties regarding breach of this Agreement or interpretation of any term of this Agreement, the Parties shall first attempt to resolve the dispute by negotiation, followed by mediation and arbitration.

Step One: The respective City Managers of the Parties or their designees are designated to negotiate on behalf of the Party each represents. If the dispute is resolved at this Step One, there shall be a written determination of such resolution, signed by each Party's Manager and ratified by each governing body, if required by the governing body, which shall be binding upon the Parties. Step One will be deemed complete when a Party delivers notice in writing to the other Parties that the Party desires to proceed to Step Two.

Step Two: If the dispute cannot be resolved within 10 days after Step One, or earlier after written notice given by a party, the Parties shall submit the matter to non-binding mediation by a professional engineer with demonstrated substantial experience in the design, construction, and operation of complex municipal treatment, transmission, distribution, and storage systems. The Parties shall attempt to agree on a mediator. If they cannot agree, the Parties shall request a list of five mediators from an entity or firm experienced in providing engineering mediation services who do not have an existing professional relationship with either Party. The Parties will mutually agree upon a mediator from the list provided. Any common costs of mediation shall be borne equally by the Parties who shall each bear their own costs and fees. If the issue(s) is resolved at this Step Two, a written determination of such resolution shall be signed by each Manager and approved by their respective governing bodies, if necessary.

Step Three: If mediation does not resolve the issue within 45 days of submission of the issue to mediation, the matter will be referred to binding arbitration by a panel of three arbitrators who are professional engineers with demonstrated substantial experience in the design, construction, and operation of complex municipal treatment, transmission, distribution, and storage systems. One arbitrator will be chosen by each Party and those two arbitrators chosen will choose a third arbitrator. No panel member may have an on-going professional relationship to either Party. The arbitration panel will reasonably endeavor to reach a decision on the dispute within 60 days of its submission to the panel. The decision shall be binding on both Parties and there shall be no right of further appeal. The prevailing Party shall be entitled to its reasonable attorney fees as shall be awarded by the arbitration panel.

11. Breach. If a Party defaults under the terms of this Agreement, then upon 20 days written notice, the defaulting Party shall undertake steps to commence cure of the breach within a reasonable time, depending on the circumstances. In the event there is a dispute over the amount to be paid, the undisputed amount shall be paid immediately and the Agreement shall not be in default while the solution to the disputed payment portion is resolved under Section 7. The Parties understand and agree that water service is critical to each Party's customers and that monetary damages may be an insufficient remedy considering the infrastructure involved. Therefore, the Parties expressly agree that equitable remedies such as injunction or specific performance are specifically contemplated and allowed by this Agreement.

12. Notices. Notices regarding operation, maintenance, repair, replacement, breach, termination, renewal or other issues shall be deemed sufficient if deposited in the United States Mail, First Class, postage prepaid, addressed to the Parties as follows:

City Manager
City of Sherwood
22560 SW Pine Street
Sherwood OR 97140

City Manager
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville OR 97070

13. Insurance and Indemnity. To the full extent permitted by law, each Party agrees to indemnify and hold harmless the other, its counsel, officers, employees, and agents from any and all claims, demands, damages, actions, or other harm caused by the sole negligence or intentional acts of that Party, including any attorney fees or other costs of defense. Further, independent of the indemnity obligation, and as may be allowed under law, each Party agrees to maintain general liability insurance in an amount not less than Oregon Tort Claim limits applicable to public agencies as set forth in ORS 30.260 – 30.300.

14. Succession. This Agreement shall be binding upon any successors to the respective Parties, which through merger, consolidation or other means, including a lawful transfer by Sherwood to the Willamette River Water Coalition ("WRWC"), succeeds to the water supply treatment and distribution and transmission functions of that Party. No transfer to a private, nonpublic entity is permissible without the consent of both Parties.

15. Amendment. The terms of this Agreement may be amended or supplemented by mutual agreement of the Parties. Any amendment or supplement shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.

16. Good Faith and Cooperation. The Parties agree and represent to each other good faith, complete cooperation, and due diligence in the performance in all obligations of the Parties pursuant to this Agreement.

17. Governing Law. This Agreement is governed by the laws of the State of Oregon.

18. Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and, when taken together, shall constitute one and the same agreement.

19. Instruments of Further Assurance. From time to time, at the request of either Party, each Party shall, without further consideration, execute and deliver such further instruments and shall take such further action as may be reasonably required to fully effectuate the purposes of this Agreement.

20. Severability. In case any one or more of the provisions contained in this Agreement shall be judicially deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(signatures on following page)

IN WITNESS WHEREOF, the Parties have, pursuant to official action of their respective governing bodies duly authorizing the same, caused their respective officers to execute this Agreement on their behalf.

CITY OF SHERWOOD
an Oregon municipal corporation

CITY OF WILSONVILLE
an Oregon municipal corporation

City Manager

City Manager

Attested to:

Attested to:

City Recorder

City Recorder

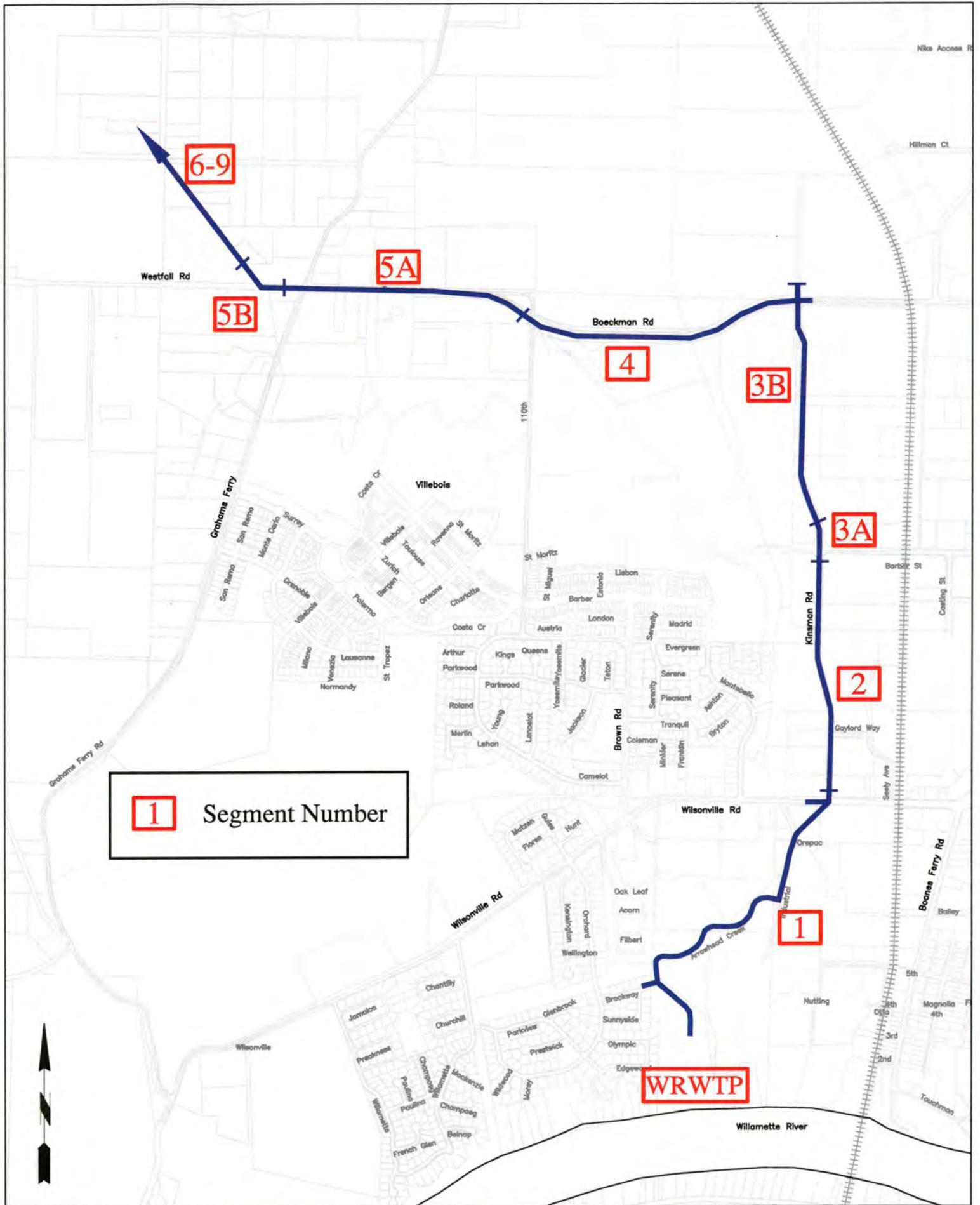
Approved as to Form:

Approved as to Form:

City Attorney

City Attorney

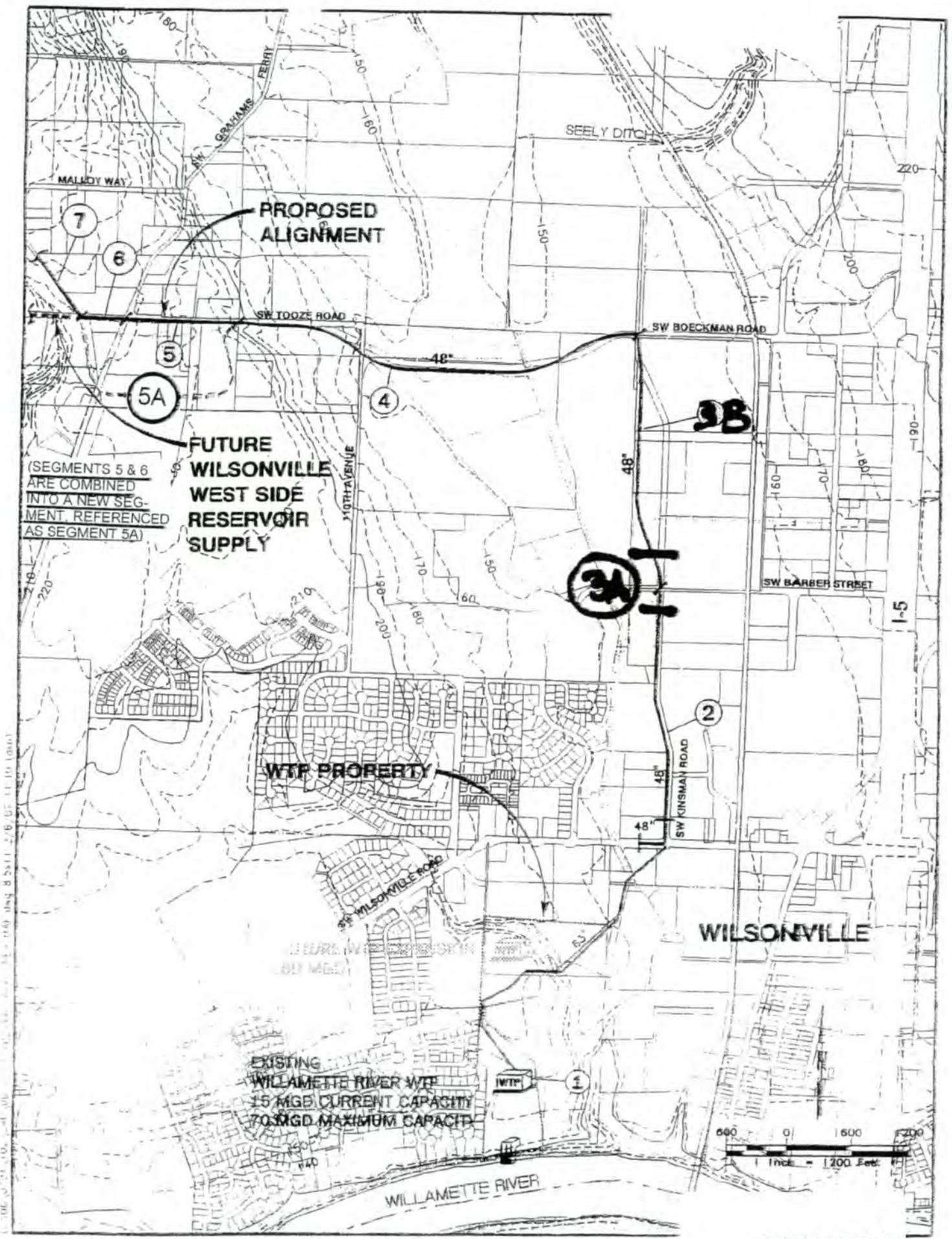
sherwood water\iga re segment 3b of 48-inch water line



1 Segment Number

WRWTP





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EXHIBIT A

~~Sherwood, within 30 days of adoption of this Agreement by the parties, will remit its 1/2 project share (\$204,960) to Wilsonville.~~

6. Conveyance of 1/2 Capacity and Ownership Share of Segment 3A from Wilsonville to Sherwood. Contemporaneous with payment by Sherwood to Wilsonville of its purchase of 1/2 the capacity of Segment 3A as described above, Wilsonville conveys 1/2 the capacity and ownership thereof to Sherwood. The Parties agree that Segment 3A has a design capacity of 40 mgd, and that if it has a greater operational capacity, any increase in capacity shall be shared equally by the Parties. Subject to permitting approved by state and federal regulations, the terms of other use rights and responsibilities of Segment 3 including Segment 3A will be set forth in the subsequent Agreement between the parties relating to the construction of Segment 3B. In the interim, use rights and responsibilities shall be as set forth in the Segment 2 Water Transmission Line Agreement entered into between the parties on August 7, 2007.

7. Segment 3A Easement. Wilsonville agrees, subject to Sherwood's compliance with the terms of Section 6 above, to execute and deliver to Sherwood a permanent easement to lay, replace, maintain, and use the Segment 3A Transmission Line for the purposes intended by this Agreement. The purpose and intent of the rights under such easement is to safeguard Sherwood and to be used only if Wilsonville fails or neglects its operation and maintenance responsibilities under Section 8 below.

8. Operational and Maintenance Responsibilities of Segment 3A. Segment 3A will operate as a part of Segment 3 which also shall include Segment 3B which is anticipated to be constructed by late 2013. Subject to permitting approved by state and federal regulations, the terms of operational and maintenance responsibilities of Segment 3 including Segment 3A will be set forth in the subsequent Agreement between the parties concerning the construction and operation of Segment 3B. In the interim, operation and maintenance responsibilities shall be as set forth in paragraphs 2.4 and 2.4.1 of the Segment 2 Water Transmission Line Agreement entered into between the parties on August 7, 2007.

9. Environmental Permitting for Segment 3B. Wilsonville has executed a contract with Pacific Habitat Services (PHS) to prepare and provide to Wilsonville appropriate environmental documentation to support a Joint Permit Application for the Segment 3B

Transmission line. A copy of the scope of work of the executed contract is attached hereto as Exhibit C and incorporated herein by reference. The contract amount is \$25,681. Within 30 days of execution of this Agreement by the Parties, Sherwood shall remit to Wilsonville 46.18% of that amount (\$11,859.49). In the event that final costs differ from the contract maximum amount, the Parties shall share proportionally any such overage or underage responsibility.

10. Pipeline Design Contract for Segment 3B. The Parties have been negotiating with WEI to provide Wilsonville with engineering services to provide a Segment 3B Water Transmission Pipeline Design. The Scope of Services is attached hereto as Exhibit D and is incorporated herein by reference. The Final Proposed contract amount is \$214,530. Within 30 days of execution of this Agreement by the Parties Sherwood will remit 46.18% of the contract amount (\$99,070) to Wilsonville. If there is a contract payment difference, then at the time of contract true up, the Parties shall share proportionally any such overage or underage responsibility.

11. Repayment of Segment 3B Costs Advanced by Wilsonville. Wilsonville has previously paid \$73,931 for authorized Segment 3B costs. They are summarized in Exhibit E. Within 30 days of the execution of this Agreement, Sherwood will remit to Wilsonville 46.18% of this amount (\$34,141.34).

12. Easement Acquisition. Wilsonville estimates that property acquisition costs to purchase needed easements from two property owners (Bruer and Inland) will total approximately \$280,000, exclusive of any wetland mitigation or wetland park property that may need to be acquired. They also estimate that appraisals, legal descriptions, negotiations with property owners, and legal work associated with easement purchases will total another \$35,000. Based on current calculations, Sherwood shall be responsible for 46.18% and Wilsonville for 53.82% of the expenses actually incurred. Within 30 days of execution of this Agreement, each Party will pay into a sinking fund \$17,500 to cover the foregoing costs incurred. Any overruns in these costs will be promptly satisfied by the parties on an equal basis. The Parties anticipate that permitting will have to be largely in place, including identification of any required property mitigation, before formal property acquisition may be concluded. At such time as these elements are in place and there is tentative agreement with one or both property owners, Sherwood will pay 46.18% and Wilsonville 53.82% of the agreed upon acquisition costs into a sinking fund.

Based upon current information, there appears to be a need for a 30 ft wide permanent utility easement. Initially, it was contemplated that the Kinsman Road street right of way would also overlap this easement. Present direction from reviewing governmental agencies appears to favor a stand alone water line easement. In the event that this regulatory direction changes, the Parties will review on the basis of equity and fairness sharing of acquisition costs between the water line easement and the other acquiring use.

13. Computation Method of the Parties' Share of Segment 3B Costs. As evidenced in Sections 9, 10, 11, and 12 above, Sherwood has a calculated 46.18% and Wilsonville a calculated 53.82% responsibility for Segment 3B Total Project Costs. These percentages are derived from current estimates of construction costs of the Segment 3B Project, excluding mobilization which is subject to the percentages and added back in. The difference in responsibility for payment relates to the fact that certain project elements (the pressure reducing valve facilities) have no benefit to Sherwood. Subsequently, the final percentages will be reflective of the actual construction costs, and if those costs have the effect of altering the proportional allocation of responsibility for other project costs as listed in paragraphs 9, 10, 11, and 12, the percentage allocations will be appropriately revised. Finally, at the time of Project completion and true up, this allocation will again be reviewed and changed if necessary. The term Total Project Cost shall have the meaning as defined in Section 2.4 of the Agreements for Segments 4 and 5A, which states:

2.4 Cost of Project. The direct cost of the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction including inspection/project management, ownership, maintenance, ownership, maintenance, and operation of ... [the] Project.

14. Responsibilities of the Parties. Wilsonville will be responsible for all contracting of obligations and services required by this IGA subject to oversight and active involvement and coordination of Sherwood in all aspects of the Project. The Sherwood Public Works Director will be concurrently copied on all correspondence and documents, including emails regarding the Project excepting otherwise privileged Wilsonville communications.

15. Overview of Second Segment 3B IGA and the Construction and Financing Process Regarding Segment 3B. The Parties will subsequently negotiate a second IGA dealing with the costs related to Segment 3B not otherwise covered in this Agreement. It is anticipated that Sherwood will advance funds for the construction phase based upon subsequently negotiated terms, including establishment of initial deposit draw accounts and establishment of coordinated periodic pay estimates. Wilsonville will repay Sherwood for costs advanced on its behalf by Sherwood no later than 180 days after completion of the Segment 3B Project. To the extent that monies are available to Wilsonville to repay all or a portion of the funds advanced in its behalf prior to 180 days, Wilsonville will exercise its best efforts to do so. Wilsonville Project overhead will be limited to 14% of Total Project Costs and Sherwood will accept that amount as an appropriate Wilsonville overhead charge without the need for further itemization by Wilsonville.

~~16. **Dispute/Attorneys Fees.** If a dispute arises between the Parties regarding breach of this Agreement or interpretation of any term of this Agreement, the Parties shall first attempt to resolve the dispute by negotiation, followed by mediation and arbitration.~~

Step One: The respective City Managers of the Parties or their designees are designated to negotiate on behalf of the Party each represents. If the dispute is resolved at this Step One, there shall be a written determination of such resolution, signed by each Party's Manager and ratified by each governing body, if required by the governing body, which shall be binding upon the Parties. Step one will be deemed complete when a Party delivers notice in writing to the other Parties that the Party desires to proceed to Step Two.

Step Two: If the dispute cannot be resolved within 10 days at Step One, or earlier after written notice given by a party, the Parties shall submit the matter to non-binding mediation by a professional engineer with demonstrated substantial experience in the design, construction and operation of complex municipal treatment, transmission, distribution, and storage systems. The Parties shall attempt to agree on a mediator. If they cannot agree, the Parties shall request a list of five mediators from an entity or firm experienced in providing engineering mediation services who do not have an existing professional relationship with either Party. The Parties will mutually agree upon a mediator from the list provided. Any common costs of mediation shall be borne equally by the Parties who shall each bear their own costs and fees. If the mediator is

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SHERWOOD
AND THE CITY OF WILSONVILLE REGARDING COST, CONSTRUCTION,
OWNERSHIP, AND OPERATION OF SEGMENT 3B OF A 48-INCH DIAMETER
WATER TRANSMISSION LINE FROM THE TERMINUS OF SEGMENT 3A IN
KINSMAN ROAD TO THE BEGINNING POINT OF SEGMENT 4 NEAR THE
INTERSECTION OF THE PROPOSED, AS YET TO BE COMPLETED, SEGMENT OF
KINSMAN ROAD AND BOECKMAN ROAD, A LENGTH OF
APPROXIMATELY 2,400 FEET**

This Agreement ("Agreement") is made and entered into this ___ day of _____, 2013, by and between the City of Sherwood, an Oregon municipal corporation ("Sherwood"), and the City of Wilsonville, an Oregon municipal corporation ("Wilsonville"), referred to collectively as ("the Parties").

RECITALS

The Parties agree upon the following Recitals:

A. WHEREAS, originally Tualatin Valley Water District ("TVWD") and Wilsonville partnered to construct and own undivided shares in the Willamette River Water Treatment Plant ("WRWTP") and appurtenances thereto from the raw water intake in the Willamette River through Segment 1 of the finished water 63-inch water transmission line ("Supply Facilities"). The treatment plant portion of the WRWTP has a current designed capacity of 15 mgd. Subsequently, based on certain conditions, Wilsonville consented to Sherwood purchasing certain interests in the WRWTP Supply Facilities from TVWD, which included the purchase of TVWD's 1/3 of the 15 mgd capacity (i.e., 5 mgd), while Wilsonville retained the remaining 2/3 of the 15 mgd capacity (i.e., 10 mgd), of the WRWTP capacity. In addition, Wilsonville and TVWD own larger capacity interests in other appurtenant facilities.

B. WHEREAS, Sherwood and Wilsonville entered into agreements whereby Wilsonville had constructed or would construct, and Sherwood would purchase capacity in, Segments 2, 3A, 4, and 5A of 48-inch diameter water transmission lines within Wilsonville, which in conjunction with the WRWTP and other facilities will jointly serve both cities with a permanent potable water supply. All these segments are now constructed and capacity purchased

under the terms of the agreements. Together, these transmission facilities are 8,183 lf in length and represent a present joint investment of \$7,313,838. Sherwood and Wilsonville each own 1/2 of the capacity of Segments 2 and 3A. Sherwood owns 2/3 of the capacity of Segments 4 and 5A, while Wilsonville owns the remaining 1/3 capacity of each. The design capacity of each of these segments of 48-inch diameter pipe is 40 mgd.

C. WHEREAS, Sherwood constructed and owns 18,000 lf of 48-inch diameter transmission (Segments 6-9) from a point connecting to the Tooze Road Meter Vault described herein and continuing to the Snyder Park Reservoir, which is also owned by the City of Sherwood. The cost of the construction of these Sherwood transmission facilities, not including the cost of the Snyder Park Reservoir, is estimated to be in excess of \$11,630,000. Construction of these transmission segments was estimated to occur in the spring of 2011 by Emery & Sons Construction, Inc. ("Emery"), Sherwood's General Contractor; however, actual completion occurred in December 2010. In order for Sherwood to accept these new transmission facilities, they needed to be pressure tested and flushed, then maintained and regularly refreshed with approximately 400 gpm of potable water. The source of this potable water is the WRWTP and the Water Distribution System of the City of Wilsonville. A Temporary Water Supply Agreement was negotiated between the Parties for the 400 gpm water supply to permit pressure testing, flushing, and line maintenance. An agreement reflecting those negotiations was adopted by the Parties on January 11, 2011.

D. WHEREAS, the Parties also jointly provided for the construction of the Tooze Road Meter Vault facility and appurtenant 198-foot segment of 48-inch diameter transmission line ("Segment 5B"), collectively referred to as the Meter Vault Project. The Meter Vault Project links Transmission Segments 5A and 6, provides metering and flow control facilities for water flowing to Sherwood, and houses pressure reducing valves and transmission lines to serve existing and planned distribution and reservoir systems in Wilsonville. The Parties adopted the Tooze Road Meter Vault Agreement authorizing the construction of these improvements on January 11, 2011. Sherwood advanced its proportionate share of the Project, as well as advance funding and construction of the extension of a 24-inch diameter distribution line (previously

referenced as a transmission line in the 2011 Agreement) that is wholly owned by Wilsonville. These facilities are now operational.

E. WHEREAS, the unanticipated early completion of Segments 6-9 in December 2010 and the later completion date of the Tooze Road Meter Vault left a short but very important period when water needed to be supplied to Sherwood. The Parties provided this temporary water supply through the advance construction by Sherwood of a 24-inch diameter distribution line extension to Wilsonville's future distribution system. This distribution line extension was a part of the Meter Vault Project, described in Recital D above, and is designed to serve Wilsonville permanently with potable water through the Tooze Road Meter Vault, but in the interim would be used to supply water from the Wilsonville distribution system to the vault for transmission to Sherwood. All required real property had been acquired by Wilsonville for the construction of the Tooze Road Meter Vault and this line extension and its connection to Sherwood's Segment 6 transmission line. Sherwood proposed to construct these facilities by means of a change order to its Segment 6 contract with Emery and to pay for the redesign associated with advancing the 24-inch line extension, as well as to front the cost of the Project subject to reimbursement by Wilsonville of its share through credits against future temporary and interim water sales to Sherwood. The terms of this arrangement are contained in the Temporary Water Supply Agreement between the Parties. This project is now completed. This temporary water supply arrangement has now been operationally replaced by an Interim Water Supply relationship described in Recital F below.

F. WHEREAS, the Parties previously executed an Interim Water Supply Agreement, which provided for the temporary wheeling of up to 2.5 mgd of surplus water from WRWTP potable water to Sherwood through the jointly-owned Sherwood and Wilsonville transmission lines, and also partially through Wilsonville existing distribution lines, until such time as Segment 3 is completed and operational. The Parties commissioned Montgomery Watson Harza, Inc. ("MWH") to perform a hydraulic capacity analysis of current WRWTP and Wilsonville facility capacity to ensure that 2.5 mgd of surplus water is available through the Wilsonville distribution system in addition to Wilsonville's current and projected needs. MWH completed the analysis on February 22, 2011, and concluded that the surplus capacity is

available. The Parties also contracted with Galardi Rothstein Group to develop and recommend a methodology and estimated rate for water treatment and associated wheeling rates for production and delivery of the interim water to Sherwood following completion of the Meter Vault Project and continuing until Segment 3 of the 48-inch transmission line is operational. That methodology and interim water rate have been adopted by the Parties.

G. WHEREAS, it is recognized and acknowledged by the Parties that the 48-inch transmission linkage between the WRWTP and Sherwood will not be completed until the remaining 2,400 lf of Segment 3 (hereinafter referenced as "Segment 3B") is constructed by Wilsonville. A map generally locating the 48-inch transmission line segments, including Segment 3B, is marked as **Exhibit A**, attached hereto and incorporated by reference herein. Wilsonville previously constructed Segment 3A and the Parties desired to convey to Sherwood a 1/2 capacity interest therein as well as reimbursement to Wilsonville of 1/2 of its costs incurred in constructing Segment 3A. The first phase of Segment 3B involves easement acquisition, environmental permitting, and pipeline design. In addition, Wilsonville advanced certain costs for preliminary work on Segment 3B through August 31, 2011, which needed to be repaid by Sherwood. In order to accomplish these objectives, the Parties entered into an Intergovernmental Agreement Between the Cities of Sherwood and Wilsonville Regarding Transmission Segment 3A: Reimbursement for Work Completed and Ownership Thereof; and Regarding Transmission Segment 3B: Payment by Sherwood to Wilsonville for Work Previously Accomplished, Easement Acquisition Costs, and Process, Environmental Permitting, Pipeline Design Services, and Terms of Advance Sherwood Funding for Construction of Segment 3B, dated January 23, 2012 (hereinafter, the "Segment 3A Agreement"). The Parties acknowledge that payments and deposits have been paid in accordance with said Segment 3A Agreement, subject to any final cost true-up for Pacific Habitat, Westech Engineering, Inc., Wilsonville project management, and property acquisition.

H. WHEREAS, the environmental permits for the construction of Segment 3B have now been issued, DSL Permit No. 49456-RF, issued August 22, 2012 and expiring August 22, 2013 unless renewed, and U.S. Army Corp of Engineers "Verification" Permit No. NWP-2012-68, issued September 21, 2012 and expiring September 21, 2014. The permits were issued

to Wilsonville, which provided copies to Sherwood. In addition, a professional services agreement between Wilsonville and Westech Engineering, Inc., dated January 19, 2012, to provide Segment 3B water transmission preliminary and final design has been completed sufficient to establish the legal descriptions necessary to acquire property interests for the construction of Segment 3B. On December 3, 2012, the Wilsonville City Council authorized the acquisition of the property interests necessary to construct Segment 3B. Wilsonville has contracted for appraisal services, with appraisal reports scheduled for mid-February 2013 and offers to property owners by March 1, 2013. If necessary, condemnation and right of entry authorization will be sought. The Parties agree that Wilsonville will provide Sherwood copies of the Westech agreement and legal descriptions for the property acquired for Segment 3B.

I. WHEREAS, paragraph 13 of the Segment 3A Agreement described in Recital G above provided a computation method of the Parties' share of Segment 3B costs. Paragraph 15 of the Segment 3A Agreement includes an overview of this Segment 3B Agreement and the construction and financing process regarding Segment 3B, establishes a baseline for negotiating this Agreement and dealing with costs related to Segment 3B not otherwise covered, and describes the terms for advancing funds for the construction and draw accounts and coordinated periodic pay estimates by Sherwood and repayment by Wilsonville. Paragraph 13 also references paragraphs 9-12, which respectively outline the cost-sharing for the environmental permitting for Segment 3B, the pipeline design contract for Segment 3B, repayment of costs advanced by Wilsonville, and easement acquisition. It is the intent of the Parties to follow these provisions in the Segment 3A Agreement in this Agreement unless otherwise specifically set forth herein. For ease of reference, paragraphs 9-15 of the Segment 3A Agreement are marked as **Exhibit B**, attached hereto and incorporated herein by reference.

J. WHEREAS, the Parties have the authority to enter into this Agreement pursuant to their applicable charters, principal acts, and ORS 190.003 – 190.030.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Recitals. The recitals set forth above are incorporated by reference and made a part of this Agreement.

2. **Consideration.** In consideration of the terms and conditions set forth below, the Parties enter into this Agreement.

3. **Term.** This Agreement becomes effective on the date of execution by the last signatory party and shall be perpetual unless otherwise agreed to by the Parties in writing.

4. **Construction of Segment 3B.**

4.1 *Sufficient Funds.* It is understood and agreed that each party will budget sufficient funds to perform their respective duties and obligations as contracted for herein.

4.2 *Wilsonville Responsibilities.* Subject to active involvement and coordination with Sherwood, Wilsonville shall oversee the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction, including inspection/project management, maintenance, and operation of the Segment 3B project. Both Wilsonville and Sherwood shall be joint owners of the Segment 3B construction project, unless Sherwood lawfully transfers its ownership in the project to the Willamette River Water Coalition (WRWC). Upon such transfer, the project shall be jointly owned by Wilsonville and the WRWC, but Wilsonville's responsibilities shall not change unless otherwise agreed to in writing by the Parties. No other party shall have interest therein unless mutually agreed to by the Parties.

4.3 *Cost of the Project.*

4.3.1 The Parties provided the cost and cost-sharing methodologies for permitting, engineering design, and easement acquisition for the Segment 3B Project in the Segment 3A Agreement, with the salient paragraphs 9-15 attached as **Exhibit B** for ease of reference. To the extent services for construction engineering, including but not limited to arborist services, and third-party inspection services were not specifically addressed in the Segment 3A Agreement, the Parties agree that these services shall be subject to the same cost-sharing methodology.

4.3.2 The estimated total construction cost for the Segment 3B Project is \$3,497,000.00. Based on this estimate and recognizing that pressure reducing valve facilities at Boeckman Road are being constructed solely for the benefit of Wilsonville, Sherwood shall be responsible for 46.2% of the cost of Segment 3B and Wilsonville shall be responsible for 53.8% of the cost to construct Segment 3B. The cost-sharing methodology and methodology for final true-up of project costs and percentages is set forth in the Segment 3A Agreement and recited as set forth in **Exhibit B** incorporated herein.

4.4 *Deposit and Draw Structure.*

4.4.1 Funds Budget. Sherwood represents and warrants that it has sufficient funds to advance the total construction cost of the Segment 3B Project, subject to repayment by Wilsonville of its share of the costs as set forth in Section 4.3.2 above.

4.4.2 Deposit of Construction Funds. After Wilsonville identifies the lowest responsible bidder as the contractor for the Segment 3B Project but before the Wilsonville City Council approves a construction contract, Sherwood will deposit with Wilsonville (1) a sum equal to the sum of the bid of the lowest responsible bidder plus 5% for construction cost contingency, and (2) a sum for construction engineering and third-party inspection services equal to the awarded contract for such services, subject to approval by the Sherwood City Council. The funds shall be placed in a separate account and any interest earned by the funds shall accrue to Sherwood. The funds shall be used to compensate the selected contractor(s) and to reimburse Wilsonville for costs attributable to construction of the Segment 3B Project consistent with the terms of the Segment 3A Agreement and the percentages described in Section 4.3.2 above.

4.4.3 Deposit for Pre-Purchase of Pipes. In the event Wilsonville purchases water transmission pipes for Segment 3B in advance of approving the construction contract, Sherwood shall deposit with Wilsonville an amount

sufficient to cover the cost of the pipes. The amount shall be based on a written estimate of the cost, and Wilsonville shall provide Sherwood with copies of the final invoice(s) that show the actual purchase cost(s). Any amount deposited with Wilsonville under this section shall be included in the payment obligation described in Section 4.4.2 above.

4.4.4 Contractor Draw Requests. Wilsonville shall cause the contractor to submit the contractor's draw request with at least one original to the designated party for Wilsonville, and Wilsonville shall promptly forward a copy to Sherwood's designated party. Each city will notify the other within five days of receipt of any concerns or objections. Thereafter, Wilsonville, in consultation with Sherwood, shall take the appropriate action, as may be determined by the Parties and/or the applicable circumstances, to pay the billing, in whole or in part, under reservation, or not at all.

4.5 *Construction Responsibilities and Financial Reports.* Wilsonville shall be responsible for the control and supervision of all activities of construction of the Segment 3B Project. Wilsonville shall prepare and submit to Sherwood financial activity reports of the Segment 3B Project upon request but not more than once per month. Wilsonville shall prepare such other reports and information as the Parties may require and mutually agree upon.

4.6 *Plan Review, Change Orders, and Site Access.* Wilsonville shall provide Sherwood with copies of the 75-percent and 90-percent engineering design submittals and of all final project plans and allow Sherwood to comment on the plans. Contractor change orders must be approved by both Wilsonville and Sherwood. Sherwood shall be allowed access to the construction site during regular business hours to monitor construction activities, provided such access does not unreasonably interfere with construction.

4.7 *Financial "True-Up" and Repayment by Wilsonville.*

4.7.1 "True-Up." Within 90 days of the date the Wilsonville City Engineer determines the project is substantially complete, Wilsonville shall provide Sherwood with a financial accounting of the project that shows the actual total construction cost, construction engineering, arborists, and third-party inspection services, together with the agreed upon percentage for Wilsonville's project management and administration. To the extent the deposit described in Section 4.4.2 above exceeds the actual costs identified herein, such excess amount shall be refunded to Sherwood, including any interest thereon. Sherwood shall notify Wilsonville within 10 days whether Sherwood has any concerns or objections regarding the accounting.

4.7.2 Repayment by Wilsonville. Within 180 days of the date of substantial completion described in Section 4.7.1 above, subject to Section 4.9, Wilsonville shall pay to Sherwood an amount equal to Wilsonville's trued-up percentage of the actual total costs for the Segment 3B Project.

4.8 *Construction Engineering and Inspection Services.* Wilsonville shall retain an independent contractor to conduct construction engineering, including but not limited to arborist services, and construction inspection of all project elements. Wilsonville may elect to extend the existing contract with Westech to provide these services or solicit or select an alternative contractor. In either case, Wilsonville shall make available for Sherwood to review all inspections reports and, upon Sherwood's request, provide Sherwood with copies of the reports.

4.9 *Mitigation Funding.* Following the date of substantial completion, the Parties agree to establish a mitigation fund in the amount of \$100,000.00 for the purpose of funding environmental mitigation, monitoring, and maintenance, as required by the Oregon Division of State Lands and the United States Army Corp of Engineers, including but not limited to landscaping and wetland mitigation. From the amounts reimbursable to Sherwood under Section 4.7 above, Wilsonville shall retain an amount equal to Sherwood's percentage obligation of \$100,000.00 calculated according to the cost-

sharing methodology set forth in the Segment 3A Agreement. Wilsonville shall retain these funds for a period of up to two years following the date of substantial completion. The funds shall be deposited in a separate account and used only for the purpose of mitigation, monitoring, and maintenance related to the Segment 3B Project. At the end of the retention period, Wilsonville shall return Sherwood's percentage portion of any unused funds, including interest thereon, to Sherwood. During the retention period, Wilsonville shall provide a financial accounting of the funds to Sherwood upon request but not more than quarterly.

5. Ownership, Maintenance, and Operation of the Segment 3B Project.

5.1 *Ownership.* The Segment 3B Project is intended to have a final design capacity of 40 million gallons per day (mgd). Sherwood shall be entitled to a 50% capacity share thereof, and Wilsonville the remaining 50% capacity share. Sherwood shall have an undivided 50% ownership share, and Wilsonville shall have the remaining undivided 50% ownership share, of Segment 3B, both as tenants in common. Ownership means the right of each party to use for its own benefit its portion of transmission line capacity. In the event that final design capacity or actual operating capacity exceeds 40 mgd, the supplemental capacity shall be owned by the Parties in proportion to the above-referenced capacity shares. The respective capacity use of the Parties will be determined by appropriate metering. The operational characteristics and operational metering protocol have been agreed to by the Parties.

5.2 *Easements.* Wilsonville agrees to execute and deliver to Sherwood a non-exclusive, permanent easement to maintain and operate Segment 3B for the purposes intended by this Agreement, notwithstanding the termination of this Agreement or the withdrawal of either party from this Agreement, for so long as Sherwood shall use Segment 3B for its intended purposes and if Wilsonville fails to fulfill its operation and maintenance responsibilities.

5.3 *Operation and Maintenance Responsibilities.* Unless otherwise agreed to by the Parties in writing, Wilsonville shall have the responsibility for operation and

maintenance of Segment 3B. The actual, direct, out-of-pocket expenses of post-construction operation and maintenance of Segment 3B (together with any allowance as the Parties may agree upon for general or administrative expenses) shall be billed to the Parties monthly in proportion to their ownership interests reflected in Section 5.1, exclusive of the pressure reducing valve facilities which are owned by Wilsonville and are Wilsonville's sole responsibility to maintain. Wilsonville shall exercise due diligence in effecting its operation and maintenance responsibilities under this Agreement. For any non-emergency maintenance project or event in excess of \$50,000 in total, individual costs require coordination with and the consent of Sherwood. Subject to shut-down emergencies, announced scheduled repairs, or precautionary shut-down to allow upstream spills in the Willamette River to flow past the WRWTP, Wilsonville shall operate the water system in a manner to not harm Sherwood and to provide Sherwood's ownership capacity share, in keeping with the prior daily notification by Sherwood to Wilsonville of capacity needs or such notification schedule as the Parties otherwise may agree, at an adequate hydraulic grade at the point of delivery to Sherwood. The point of delivery is defined as the revenue meter located in the meter vault approximately 400 feet west of the intersection of SW Grahams Ferry Road and Tooze Road. Unless otherwise agreed to by the Parties, the hydraulic grade line at the point of delivery to Sherwood shall be a minimum of 392 feet, sufficient to completely fill Sherwood's terminal Sunset Reservoirs, which have an overflow elevation of approximately 380 feet. Should temporary conditions exist beyond the operational control of Wilsonville of the WRWTP, that materially affect the ability of the WRWTP to produce sufficient water to meet the demands of both cities, the available supply capacity of the WRWTP shall be split in accordance with the respective ownership rights in capacity at the WRWTP. The aforementioned is not intended to alter the respective ownership of capacity in the pipeline. Neither city shall be responsible to meet the water demands of the other.

5.4 *Non-Emergency Major Repair or Replacement.* Wilsonville shall monitor the overall condition of the transmission line and facilities and shall schedule any non-emergency major repair or replacement three years in advance of such major repair or

replacement. At the same time, Wilsonville shall prepare an estimated projected annual expenditure report for the cost of the scheduled repair or replacement. Upon preparation of the schedule and annual costs report, Wilsonville shall provide Sherwood a copy of same.

6. Transmission of Water to Third Parties. Unless both Parties otherwise previously agree in writing, neither party shall permit use of the Segment 3B Project for the purpose of transmitting water to any person or party other than Wilsonville or Sherwood retail customers, save and except for a transfer by Sherwood of its ownership interest in the Segment 3B Project to the WRWC pursuant to Section 4.2 above. Subject to Sections 8 and 9 below, or as otherwise agreed to by the Parties in writing, transmission of water by a party shall not exceed that party's ownership share in the Willamette River Water Treatment Plant. Any revenues derived from transmission of water through the Segment 3B Project on behalf of entities other than Wilsonville or Sherwood customers shall be paid to the Parties in proportion to their ownership interest in capacity used by a third party in the Segment 3B Project, as reflected in Section 5.1.

7. Approvals. Unless otherwise directed by the respective City Councils, all approvals of either Wilsonville or Sherwood in this Agreement shall be made by the City Manager or the City Manager's authorized designee.

8. Leasing of Supply Capacity. Each party shall have the right to lease from the other party such unused capacity of its capacity share of the Segment 3B Project as the party with the unused capacity may determine to be reasonably available and prudent to be leased to the other party. The compensation to the leasing party shall be fairly and equitably agreed upon by the Parties.

9. Overuse of Supply Facility. Wilsonville and Sherwood shall each use the Segment 3B Project facilities in a manner consistent with prudent water utility practices and to minimize, insofar as is practicable, interference with each other's use of its respective share of capacity to meet its demand. Unless caused by system operation conditions not caused by the overusing party, any overuse of 10 percent or greater by either Wilsonville or Sherwood for two

consecutive years or for three out of five consecutive years, shall result in the overusing party compensating the other party at a lease rate that will be fairly and equitably agreed upon by the Parties.

10. Dispute/Attorney Fees. If a dispute arises between the Parties regarding breach of this Agreement or interpretation of any term of this Agreement, the Parties shall first attempt to resolve the dispute by negotiation, followed by mediation and arbitration.

Step One: The respective City Managers of the Parties or their designees are designated to negotiate on behalf of the Party each represents. If the dispute is resolved at this Step One, there shall be a written determination of such resolution, signed by each Party's Manager and ratified by each governing body, if required by the governing body, which shall be binding upon the Parties. Step One will be deemed complete when a Party delivers notice in writing to the other Parties that the Party desires to proceed to Step Two.

Step Two: If the dispute cannot be resolved within 10 days after Step One, or earlier after written notice given by a party, the Parties shall submit the matter to non-binding mediation by a professional engineer with demonstrated substantial experience in the design, construction, and operation of complex municipal treatment, transmission, distribution, and storage systems. The Parties shall attempt to agree on a mediator. If they cannot agree, the Parties shall request a list of five mediators from an entity or firm experienced in providing engineering mediation services who do not have an existing professional relationship with either Party. The Parties will mutually agree upon a mediator from the list provided. Any common costs of mediation shall be borne equally by the Parties who shall each bear their own costs and fees. If the issue(s) is resolved at this Step Two, a written determination of such resolution shall be signed by each Manager and approved by their respective governing bodies, if necessary.

Step Three: If mediation does not resolve the issue within 45 days of submission of the issue to mediation, the matter will be referred to binding arbitration by a panel of three arbitrators who are professional engineers with demonstrated substantial experience in the design, construction, and operation of complex municipal treatment, transmission, distribution, and storage systems. One arbitrator will be chosen by each Party and those two arbitrators

chosen will choose a third arbitrator. No panel member may have an on-going professional relationship to either Party. The arbitration panel will reasonably endeavor to reach a decision on the dispute within 60 days of its submission to the panel. The decision shall be binding on both Parties and there shall be no right of further appeal. The prevailing Party shall be entitled to its reasonable attorney fees as shall be awarded by the arbitration panel.

11. Breach. If a Party defaults under the terms of this Agreement, then upon 20 days written notice, the defaulting Party shall undertake steps to commence cure of the breach within a reasonable time, depending on the circumstances. In the event there is a dispute over the amount to be paid, the undisputed amount shall be paid immediately and the Agreement shall not be in default while the solution to the disputed payment portion is resolved under Section 7. The Parties understand and agree that water service is critical to each Party's customers and that monetary damages may be an insufficient remedy considering the infrastructure involved. Therefore, the Parties expressly agree that equitable remedies such as injunction or specific performance are specifically contemplated and allowed by this Agreement.

12. Notices. Notices regarding operation, maintenance, repair, replacement, breach, termination, renewal or other issues shall be deemed sufficient if deposited in the United States Mail, First Class, postage prepaid, addressed to the Parties as follows:

City Manager
City of Sherwood
22560 SW Pine Street
Sherwood OR 97140

City Manager
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville OR 97070

13. Insurance and Indemnity. To the full extent permitted by law, each Party agrees to indemnify and hold harmless the other, its counsel, officers, employees, and agents from any and all claims, demands, damages, actions, or other harm caused by the sole negligence or intentional acts of that Party, including any attorney fees or other costs of defense. Further, independent of the indemnity obligation, and as may be allowed under law, each Party agrees to maintain general liability insurance in an amount not less than Oregon Tort Claim limits applicable to public agencies as set forth in ORS 30.260 – 30.300.

14. Succession. This Agreement shall be binding upon any successors to the respective Parties, which through merger, consolidation or other means, including a lawful transfer by Sherwood to the Willamette River Water Coalition ("WRWC"), succeeds to the water supply treatment and distribution and transmission functions of that Party. No transfer to a private, nonpublic entity is permissible without the consent of both Parties.

15. Amendment. The terms of this Agreement may be amended or supplemented by mutual agreement of the Parties. Any amendment or supplement shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.

16. Good Faith and Cooperation. The Parties agree and represent to each other good faith, complete cooperation, and due diligence in the performance in all obligations of the Parties pursuant to this Agreement.

17. Governing Law. This Agreement is governed by the laws of the State of Oregon.

18. Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and, when taken together, shall constitute one and the same agreement.

19. Instruments of Further Assurance. From time to time, at the request of either Party, each Party shall, without further consideration, execute and deliver such further instruments and shall take such further action as may be reasonably required to fully effectuate the purposes of this Agreement.

20. Severability. In case any one or more of the provisions contained in this Agreement shall be judicially deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(signatures on following page)

IN WITNESS WHEREOF, the Parties have, pursuant to official action of their respective governing bodies duly authorizing the same, caused their respective officers to execute this Agreement on their behalf.

CITY OF SHERWOOD
an Oregon municipal corporation

CITY OF WILSONVILLE
an Oregon municipal corporation

City Manager

City Manager

Attested to:

Attested to:

City Recorder

City Recorder

Approved as to Form:

Approved as to Form:

City Attorney

City Attorney

sherwood water/iga re segment 3b of 48-inch water line



Community Development

FROM THE DIRECTOR'S OFFICE

In late January I joined people from all over the state at the Governor's Energy Plan Symposium (also called Cutting Edge Communities) where information was shared on a variety of public and private clean economy programs, such as Drive Oregon, Clean Energy Works, West Coast Infrastructure Exchange and Business Oregon.

In February, the Building Division did double duty examining dozens of plans for new building permits in Villebois Village. In the meantime, the Planning Division is processing applications for new area plans that will be coming online in Villebois over the next year or so. A flurry of building activity is underway and is expected to continue.

An ODOT Passenger Rail Corridor Forum meeting was held in late January where several alignment alternatives were presented along with proposed project goals and objectives and potential weighting criteria for evaluating the alternatives.

The Planning Division is moving forward with concept planning for the Frog Pond/Advance Road future urban growth areas. We started by submitting a Letter of Intent to Metro for a Construction Excise Tax (CET) grant to fund the project.

Outreach and design has started on the Memorial Park parking lot renovation project. Heads Up—soon to follow is planning for the Memorial Park sanitary sewer pump station replacement.

We plan to sync the planning for these to allow coordination.

The Engineering Division continued work on the agreement with Sherwood to move forward with the Segment 3B Water Transmission Pipeline Construction Agreement.

Two transportation funding opportunities were discussed at the C4 & WCCC Technical Advisory Committees, and the C4 Metro Subcommittee meetings in February: ODOT's Statewide Transportation Improvement Plan (STIP) and Metro's Regional Flexible Funds Allocation (RFFA). We are actively engaged in these discussions.

The first four draft TSP chapters were shared with the Planning Commission on February 13 where valuable conversation occurred. The City Council will see these at the March 18 work session.

On February 21, I participated in Oregon Tech's Clean Energy: Connecting our Community public forum about the role of renewable energy technology in Wilsonville. The Natural Resources Division shared a table with SMART to distribute information about water quality and the transit system.

Spring is on the way!

- Nancy Kraushaar, PE

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Building Division, Current Projects Update

Major Developments under construction:

- * Bell Tower - Temp. C of O has been issued.
- * Brenchley Estates Phase I North - Multi-family
- * Copper Creek Subdivisions
- * DW Fritz - Phase II almost complete for Temp. C of O.
- * Villebois Community Club-house - C of O issued.
- * Community Center Addition - C of O issued.
- * TVFR Building
- * Villebois Single Family



Brenchley Estates Phase I North

Engineering Division, Capital Projects

Kinsman Transmission Main Phase 3B (1055): 75% design review completed. IGA negotiations with Sherwood completed. Easement acquisition in process.

Tooze Road Reservoir Site (1075): A tree buffer for the east neighbor will be planted in March.

Barber Street Bridge (4116): 60% design review meeting held in February.

Boeckman Road Reconstruction (4177): Settlement is being monitored and continues to progress slower than anticipated by the geotechnical engineer. The City

authorized additional borings and testing of soil to be done to help determine what options are to be considered.

Rivergreen Storm Outfall (7012): A permit application has been submitted to Army Corps of Engineers and Oregon Department of State Lands for required project permits.

Morey's Landing Storm Channel (7044): A permit application has been submitted to Army Corps of Engineers and Oregon Department of State Lands for required project permits.



Waste Water Treatment Plant DBO (2082): Construction at 50% complete. On schedule, on budget. Next quarterly update to Council on April 1,

Engineering, Private Development

Villebois North PDP 1 Phase 1 – Polygon NW: There are no changes to last month's report.

Villebois North PDP 1 Phase 2 – Polygon NW: There are no changes to last month's report.

Ron Tonkin Gran Turismo: Plans have been submitted for redevelopment of the previous Gran Prix Motors site at 25300 SW Parkway Avenue. Along with building modifications and a slight expansion there will be considerable work on the private parking areas with substantial use of pervious pavers.

Planning Division, Current Projects



1. **LRS Architects, Inc.**, the DRB – Panel A approved development modifications to property owned by **RTGT Properties, LLC**, DBA Ron Tonkin Gran Turismo (Ferrari and Maserati dealerships), at 25300 SW Parkway Avenue, necessary to remodel and expand an existing automobile sales and service facility (total floor area of approximately 26,634 square feet), and associated site improvements. Case Files DB12-0060, 61, 63 and 68. Staff: Mike Wheeler

Planning Division, Current Projects, cont'd

2. **SFA Design Group on behalf of the Family Fun Center.** The DRB – Panel A approved a modification to the Master Plan, Site Design and a waiver to the 35 foot height limit to install a 74 foot monopole to support a zip line. Case files DB12-0071 through 73 and TR13-0002. Staff: Amanda Hoffman.



Planning Division, Long Range

Transportation System Plan Update: The Planning Commission reviewed the first four of seven chapters of the draft TSP at their regular meeting on February 13th. The last three chapters, as well as draft code amendments, will be presented at the March 13th Planning Commission meeting. Staff has scheduled a work session with the City Council for March 18th. The Commission will continue to work on the draft document in preparation for public hearings in May.

Statewide Planning Goal 10: Staff interviewed two qualified consulting teams the week of February 11th and selected a firm to work on the project the following week. This project is necessary to satisfy DLCD periodic review requirements and is needed to determine if the city has a 20-year supply of buildable residential land consistent with state law and will set the stage for future concept planning for the Frog Pond area and regional UGB discussions.

Frog Pond CET Grant: On Friday, February 15th, staff submitted a community planning grant application to Metro in the amount of \$338K to concept plan the Frog Pond and Advance Road areas.

Planning Commission: The next Planning Commission meeting is March 13th, 6:00 PM City Council Chambers. Tentative topics include work sessions on the draft TSP document and associated Development Code amendments.



Parks and Recreation Department

February 21, 2013 Report

Active Lifestyles
Social Opportunities
Healthy Community

Grand Re-Opening

The Community Center re-opening was celebrated on Thursday, February 14th by those who live and work in Wilsonville alike. Nutrition Coordinators Evie Proctor, Jennifer Nelson and their assistants, Dolores Mouk and Marie Vymazal offered a sampling of both hot and cold fare. Asparagus and ham roll ups and a fresh mushroom and sausage calzone were on the menu, as well as fruit and Thai chicken wings. Those in attendance were given a Bingo card that included facts about the Center's programs and services with the opportunity to win fabulous prizes.



Sports Field Sign Up

On February 7th, representatives from area sports organizations including Wilsonville Youth Sports, Willamette United Soccer and Wilsonville Adult Softball scheduled field usage for the upcoming year. Teams booked fields from early March to mid November. A total of 3,407 hours were booked.



Parks & Recreation Department

Upcoming Programs/Events

Adult 55+ Programs

Wilsonville Walkers

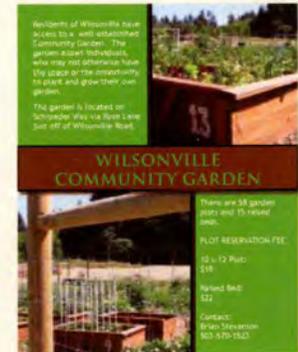
The Wilsonville Walkers group has grown leaps and bounds since the group began in 2005. This group of men and women meets in various locations around town on Tuesdays and Thursdays at 9:25am and goes for an hour long walk. The group is as much about fun as fitness and goes out as a group for coffee after walking.

Wilsonville Wheelers

The Wilsonville Wheelers, Wilsonville's bicycling group, will be starting its sixth year of group riding opportunities this April. Weekly Thursday morning rides, usually including a "coffee break", will again be an option as will more spontaneously offered weekend rides. If you live in the area, enjoy bike riding, and are looking to ride with a group, consider the Wheelers.

Community Garden Sign Up

The 2013 Community Garden season opens for registration on Thursday, March 21st. The garden is always a popular program and it is not uncommon to have a line of 20+ waiting for the Community Center doors to open at 8:00 am. In past years the garden has sold out in 1-2 days.



WILSONVILLE EGG HUNT

Wilsonville Parks & Recreation & Wilsonville Albertsons will be hosting this year's annual Easter Egg Hunt in Memorial Park.

Numerous prizes & gift baskets will be given away!
Bring your basket and hunt with us for the perfect egg.

1 to 11 yr olds
Sat. March 30th
10:00 AM
Memorial Park
FREE

Brought to you by:

City of
Wilsonville



WILSONVILLE PUBLIC WORKS DEPARTMENT

City Council Report, February 19, 2013

PARK MAINTENANCE

Dog Park Challenges

Following a recent flurry of concerns regarding the lack of dog park users and their owners following the rules, park staff is attempting to increase compliance by:

1. Purchasing and installing additional signage advising that leashes are required in Wilsonville parks except in the dog enclosure at Memorial Park. The majority of these signs will be kept on portable mounts to rotate thru the park system.
2. Contacting dog owners regarding following the rules or not during the week of February 11. We spoke with approximately 20-25 people with 40-45 dogs. Almost all violators were aware of the rules and all were appreciative of the park and dog run improvements. Many people offered suggestions of what they would like and also vented about others not being courteous or following the rules.



Sport Fields Preparation

Teams will begin practice on the sports fields in Memorial Park in the last week of February. Work that was completed over the winter, or is now in process include repairs to Field 4 and 5 backstops and fences; work on the infield/outfield transition areas on Field 1 and 2. Home plate and pitchers mound area on Field 3. Over seeding, line and fertilizer applications are underway and mowing has begun - And it's not even Spring, yet!

Invasive Species Removal

Efforts are continuing to remove invasive species from our parks and open spaces. Park Maintenance staff has been working with one to three interns weekly from Art Tech High School, volunteer groups and individuals and began supporting the Friends of Trees group as they develop multi-year projects in Memorial and Tranquil Parks. Efforts have also been conducted to remove English Ivy, Blackberry, Holly and Filbert from other areas. These efforts are focused at Arrowhead Creek Park, Boones Ferry Park and along the Boeckman Creek Trail.

Roads and Infrastructure

Holiday Lighting

Public Works crews removed the holiday lighting along Wilsonville Road. Public Works hopes that everyone had a safe and enjoyable holiday season and enjoyed the lighting display this winter.

Facility & Landscape Maintenance

Soil Preparation

Sr. Utility Workers Robb Rollins and Sean Byrne have been applying soil amendments and testing aeration equipment in preparation for Spring.



New Fleet Facility

The Facility Maintenance crew has been mounting numerous items for the Mechanics at the new Fleet facility. Previous training on the new HVAC and lighting system at the new facility proved to be valuable to the crew due to the fact that much of this equipment is state of the art and very different from our existing facilities.



**Wilsonville Public Library
Monthly Report to Council
February 2013**

**Patrick Duke
Library Director**

**LIBRARY
BOARD
Hilly Alexander
Chair**

**La Rue Williams
Bill Benedetto
Reggie Gaines
Alan Steiger**

December Statistics

- Physical item circulation: 43,160 items checked out or renewed. This is down 1% from last year.
- E-book and downloadable audiobook circulation: 1001
- Room Reservations: 296.
- Volunteer hours worked: 831

Administration

- **LINCC Libraries are supplement our e-book collection for local users**
Wilsonville Public Library has joined with the other libraries in Clackamas County to supplement the collection of the statewide library2go service, which provides e-books and other downloadable materials for citizens. The demand for online materials are at times unbearable, with over 100 people waiting for a few copies of some e-books and downloadable audiobooks. It is possible to increase the number of items available to local patrons only, and reduce the wait. Libraries countywide have pledged a total of \$70,000 to purchase these additional copies to bring wait times under control. A similar program in Washington County has reduced wait times to 21 days for even the most popular materials, which is consistent with wait times for print material.

Adult Services

Programming:

- **Library Book Club is reading and talking about *Never Let Me Go* by Kazuo Ishiguro**
March 14th
- **Oregon History Program at Mc Menamins Old Church and Pub**
R. Gregory Nokes will talk about his latest book: *Breaking Chains: Slavery on the Trail in the Oregon Territory*. March 26th at 6:30pm.
- **Booknotes Concert Series features Scott McDougall** on March 9th at 2pm.
- See more events at www.wilsonvillelibrary.org

Youth Services

- **Dolly Parton's Imagination Library**
Using a Wilsonville Opportunity grant, the Wilsonville Kiwanis Outreach Program will be mailing a flier to households in Wilsonville encouraging parents to sign-up their children for the program.

- **Young Adult Area Remodel: Thanks Wilsonville Fred Meyer**

Through the support of the Wilsonville Fred Meyer store, the Library's Young Adult area has undergone a remodeling. In addition to the new paint, reconfigured computers, furniture from Fred Meyer, the new area will accommodate significant additional shelving for materials. The space is well used, with circulation of Young Adult materials increasing by 16% just last month.

Programming

- **Storytime themes:** Dr Seuss; .Wild West; Reptiles; One Story, Three Ways
- **K-2 Book Adventures theme:** Silly Stories on March 21st
- **Teens** event will be a Far East Night on March 15

Affiliates

- **Wilsonville Friends of the Library**

The Friends Partner of the Month for January has been Sonic, and everyone who donated a bag of books got a free ice cream. March Partner of the Month: Pure Pizazz.

- **Wilsonville Public Library Foundation**

At the February meeting the Foundation adopted a budget that commits nearly \$20,000 to support the Library's adult education programs, Science Adventure, Imagination Library and other significant Library initiatives.

City of Wilsonville
March 4, 2013 City Council Meeting

SPEAKER CARD

NAME: SEAN MASON

ADDRESS: 11343 SW CHURCHILL

TELEPHONE: 503-449-4337 E-MAIL MASON0505@GMAIL.COM

AGENDA ITEM YOU WANT TO ADDRESS: NOISE ORDINANCE, NEED HELP
ON HOW TO PROCEED.

Please limit your comments to 3 minutes. Thank you.

City of Wilsonville
March 4, 2013 City Council Meeting

SPEAKER CARD

NAME: Ken Whiteaker

ADDRESS: 29001 Grahams Ferry Rd

TELEPHONE: 503 314-1184 E-MAIL _____

AGENDA ITEM YOU WANT TO ADDRESS: Grahams Ferry Rd
Street lights

Please limit your comments to 3 minutes. Thank you.

City of Wilsonville
March 4, 2013 City Council Meeting

SPEAKER CARD

NAME: Windy Hovey

ADDRESS: 5005 SW Murray Blvd. #424

TELEPHONE: 503-823-2969 E-MAIL whovey@racc.org

AGENDA ITEM YOU WANT TO ADDRESS: Community Announcement
Work for Art

Please limit your comments to 3 minutes. Thank you.

City of Wilsonville

**March 4, 2013
City Council Meeting
Action Minutes**

DATE: MARCH 5, 2013		
LOCATION: 29799 SW TOWN CENTER LOOP EAST, WILSONVILLE, OR		
Time Start: 7 P.M.	Time End: 7:31 P.M.	Remarks: Mayor Knapp and Councilor Starr were excused

ATTENDANCE LOG

COUNCILORS	STAFF		
Mayor Knapp	Bryan Cosgrove	Nancy Kraushaar	
Councilor Goddard	Mike Kohlhoff	Eric Mende	
Councilor Starr	Jeanna Troha		
Councilor Fitzgerald	Sandy King		
Councilor Stevens	Angela Handran		

AGENDA	ACTIONS
WORK SESSION – No work session held	
REGULAR MEETING	
<u>Consent Agenda</u>	
<ul style="list-style-type: none"> Resolution 2403 approving agreement for SDC Credits for Costa Circle Extension and Roundabout. 	Motion carried 3-0
<u>New Business</u>	
<ul style="list-style-type: none"> Resolution No. 2402 Authorizing an IGA with the city of Sherwood for construction of the water line Segment 3B 	Motion carried 3-0.
Adjourn 7:31 p.m.	
URBAN RENEWAL AGENCY MEETING	Called to order at 7:32 p.m.
<u>Consent Agenda</u>	
<ul style="list-style-type: none"> URA Resolution 226 authorizing execution of lease with West Linn-Wilsonville School District Minutes of 2/21/13 URA meeting 	Continued to 3/18/13 URA meeting 3-0 Adopted 3-0
Adjourn at 7:35 p.m.	

RECORDED BY: SCK