

RESOLUTION NO. 3255

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE EASEMENTS CONCERNING CERTAIN INFRASTRUCTURE RELATING TO THE WILLAMETTE INTAKE FACILITIES COMMISSION'S WATER INTAKE FACILITIES.

WHEREAS, effective April 18, 2018, the cities of Wilsonville, Sherwood, Hillsboro, Tigard, and Beaverton, along with TVWD, entered into the Willamette Intake Facilities Intergovernmental Agreement (the "IGA") to establish the Willamette Intake Facilities Commission; and

WHEREAS, the IGA also established the ownership, management, and operation of water intake facilities that withdraw and transmit water from the authorized diversion point in the Willamette River to a system separation point between the City's Willamette River Water Treatment Plant and the Willamette Water Supply System Water Treatment Plant; and

WHEREAS, the Commission's water intake facilities and appurtenances are located on property jointly owned by the City of Wilsonville and Tualatin Valley Water District, and so the Commission needs easements from the City of Wilsonville and Tualatin Valley Water District for the Commission's water intake facilities.

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

Section 1. Findings. The City Council adopts the recitals above and the staff report accompanying this Resolution as its findings as if fully set forth herein.

Section 2. The City Council authorizes the City Manager to execute a WIF Intake Water Pipeline Easement Agreement, a WIF Intake Ground Improvements Easement Agreement, and a WIF Pump Station Easement Agreement substantially similar to Exhibits 1 through 3, respectively, attached hereto and incorporated by reference herein.

Section 3. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 6th day of April 2026 and filed with the Wilsonville City Recorder this date.

Signed by:
Mayor Shawn O'Neil
9FC7B198F01449B...

Shawn O'Neil, Mayor

ATTEST:

DocuSigned by:
Kimberly Veliz
E781DE10276B498...

Kimberly Veliz, MMC, City Recorder

SUMMARY OF VOTES:

Mayor O'Neil	Yes
Council President Berry	Excused
Councilor Cunningham	Yes
Councilor Scull	Yes
Councilor Shevlin	Yes

EXHIBITS:

1. WIF Intake Water Pipeline Easement Agreement
2. WIF Intake Ground Improvements Easement Agreement
3. WIF Pump Station Easement Agreement

EXHIBIT 1 to Resolution No. 3255

After recording, return to:

City of Wilsonville
Attn: Legal Department
29799 SW Town Center Loop East
Wilsonville OR 97070

EASEMENT AGREEMENT (WIF Intake Water Pipeline)

This Easement Agreement (“Agreement”) is by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (“Wilsonville”), **Tualatin Valley Water District**, a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (“TVWD”), and the **Willamette Intake Facilities Commission**, an Oregon intergovernmental entity (“WIF Commission” or “Grantee”). Wilsonville and TVWD are referred to herein, collectively, as “Grantor” and are the legal owners of that certain real property (“Property”) described as follows:

See **Exhibit A**, Property legal description, attached hereto and incorporated by reference as if fully set forth herein.

1. **Grant of Permanent Easement.** Grantor hereby grants to Grantee, its successors, and heirs, a perpetual, non-exclusive easement (“Easement”) for the purpose of constructing, operating, maintaining, repairing, modifying, and replacing a raw water pipeline (“WIF Intake Pipeline Facilities”) associated with Grantee’s Water Intake Facility and associated appurtenances incident thereto (“WIF Intake Facilities”), as set forth in this Agreement.
2. **Consideration.** Consideration for this Agreement has been negotiated and agreed upon by the parties to be good and satisfactory consideration.
3. **Identification of and Description of Easement Area.** The Easement shall burden the portions of the Property described and depicted in Exhibits B and C, attached hereto and incorporated by reference as if fully set forth herein (the “Easement Area”).
4. **Grantee’s Use of Easement Area.** Grantee shall use the Easement Area only for the purposes set forth in this Agreement. Grantee must comply with any and all applicable legal requirements, including land use approvals, the City of Wilsonville Development Code, and City of Wilsonville Public Works Standards concerning Grantee’s use and activities in the Easement Area.
 - 4.1. To the extent there are existing ingress and egress accesses and/or existing leases, easements, or franchises over, under, along, across, or above the Easement Area, Grantee’s use of the Easement Area shall be performed in a manner that will not unreasonably interfere with those existing uses. If Grantee damages any other utilities or improvements located within the Easement Area, Grantee must immediately notify Grantor or other utility provider and immediately repair such damage, at Grantee’s expense, to the same or better condition that

existed prior to the damage occurring.

4.2. Grantee shall have no right to provide additional leases, subleases, easements, or grants of use of any kind to the Easement Area; provided, however, this prohibition does not prevent Grantee from selling or otherwise transferring all or a portion of its rights and interests in the Easement Area to another governmental entity, upon notice to Grantor and assumption of this Agreement by such other governmental entity per Section 14.

5. Grantor's Use of Grantor's Property.

5.1. Except as limited by other encumbrances to which Grantor is subject, Grantor retains, reserves, and shall continue to enjoy use of all of Grantor's Property not located within the Easement Area that is exclusive to Grantee's use.

5.2. Grantor shall not permanently alter the surface of the Easement Area without the prior written consent of Grantee, which consent shall not be unreasonably withheld. Prior to any work by Grantor on, over, or immediately adjacent to the Easement Area where ground disturbance is expected to exceed six (6) inches in depth or temporary stockpiling of materials will occur on or over the Easement Area, Grantor must obtain the prior written consent of Grantee, which consent shall not be unreasonably withheld.

5.3. Grantor may lease or grant easements, franchise agreements, or other rights of use to other parties or itself for various utilities, including fiber optic cable, over, along, under, or across the Easement Area ("Other Allowed Uses"), provided, however, such Other Allowed Uses do not unreasonably interfere with Grantee's permitted use, the WIF Intake Pipeline Facilities, or the WIF Intake Facilities. Grantor shall notify Grantee, in writing, of any proposed Other Allowed Use. Grantee shall provide to Grantor, within fifteen (15) Business Days of receipt of the notice, Grantee's written consent, which shall not be unreasonably withheld. If Grantee objects, Grantee will provide a written statement as to why the proposed additional use will interfere with Grantee's permitted use and will also indicate if Grantee believes there are any conditions that could be imposed that would allow Grantee to approve the Other Allowed Use, subject to those suggested conditions. If Grantee does not respond within the fifteen (15) Business Days, Grantee will be deemed to have consented to the proposed Other Allowed Use. In the event of a disagreement, the parties shall follow the dispute resolution process set forth in Section 15.

6. **AS IS CONDITION.** Except for warranty of title, Grantor makes no other representations or warranties with regard to the condition or suitability of the Easement Area for Grantee's intended use. This disclaimer of any and all warranties, excepting warranty of title, includes, but is not limited to, the environmental condition of the Easement Area and adjacent lands. If any environmental hazards are discovered within the Easement Area, Grantee will be solely responsible for clean-up and remediation unless Grantee can prove that a Hazardous Substance release was caused by Grantor after April 18, 2018. Grantor will not be responsible to Grantee for the clean-up or remediation of any pre-existing (prior to April 18, 2018) environmental hazards,

releases, or contamination. Grantee shall also be responsible for any exacerbation by Grantee of any Hazardous Substance release that was caused by Grantor after April 18, 2018, but only to the extent of the exacerbation, as long as Grantee had not been made aware of the condition caused by Grantor after April 18, 2018 and prior to the action that caused the exacerbation. Grantor's limited post-April 18, 2018 responsibility for any Hazardous Substance condition within the Easement Area will apply only to the condition caused by the Hazardous Substance release after April 18, 2018. As used herein:

- 6.1. "Hazardous Substances" shall mean any substance, material, or product defined or designated as hazardous, toxic, radioactive, or dangerous, regulated wastes or substances, or any other similar term in or under any Environmental Laws as now apply or may apply in the future; and
 - 6.2. "Environmental Laws" include any and all federal, state, and local statutes, regulations, rules, and ordinances (including those of the Oregon Department of Environmental Quality (DEQ), the Environmental Protection Agency (EPA), or any such state or federal successor agency) now or hereafter in effect, as they may be amended from time to time, that in any way govern materials, substances, or products and/or relate to the protection of health, safety, or the environment.
7. **Damage and Restoration.** Except where Grantee makes improvements within the Easement Area, Grantee shall restore the Easement Area and any improvements disturbed by Grantee that were in place on the Property as of the Effective Date to the same or better condition and repair, unless Grantor agrees to some other proposed condition. Grantee shall also be liable to reimburse Grantor for any damage to Grantor's Property outside the Easement Area caused by Grantee's construction or operations. Except in the case of an emergency, Grantor shall receive reasonable notice of any work that is to occur within the Easement Area that could impact any of Grantors' utilities or structures, whether above or below ground. "Reasonable notice" means no less than thirty (30) days' prior written notice. In the case of emergency, Grantee must provide notice as soon as practicable, but no later than 24 hours after the emergency occurs. "Emergency" means any sudden or serious event or an unforeseen change in circumstances that necessitates immediate action by Grantee to protect life, health, or property from imminent danger or to lessen or avert the threat of disaster.
 8. **Record Drawings.** Upon completion of construction of any improvements in the Stormwater Easement Area or Driveway Easement Area, Grantee shall provide Grantor with an electronic copy of record drawings that reflect the location of the improvements, prepared by and stamped by an appropriate licensed professional.
 9. **Obligations Beyond Initial Construction.**
 - 9.1. **Temporary Use of Property Outside Easement Area.** In the event any replacement, repair, or removal of Grantee's facilities in the Easement Area necessitates the use of the Property outside of the Easement Area, Grantee must obtain written approval from Grantor, which approval shall not be unreasonably

withheld, for a temporary construction easement or other license for that purpose.

- 9.2. **Maintenance Obligations.** Maintenance of the Easement Area to accommodate Grantee's use of those areas, and of any of Grantee's improvements within those areas, shall be the sole obligation of Grantee. Any damage to the Property caused by such maintenance must be promptly repaired and the surface restored to pre-maintenance condition. Grantee will comply with its written WIF Operations Plan.
10. **Relocation.** Grantor may request relocation of the Easement Area, provided that such relocation does not interfere with the operation of the WIF Intake Facilities. Grantee's approval of a requested relocation will not be unreasonably withheld. The cost of such relocation shall be at Grantor's sole expense, except as provided in Wilsonville Code Section 3.340(8) as applied to third-party utility providers.
11. **Insurance.** Grantee will maintain and abide by the insurance requirements set forth in the Willamette Intake Facilities Intergovernmental Agreement, dated April 6, 2018, and will name Grantor as additional insureds with respect to the Easement. In addition, during construction activities and any time Hazardous Substances are being used within the Easement Area, other than in small quantities as generally needed for landscaping or as cleaning supplies, Grantee or Grantee's contractor shall carry full environmental coverage, including sudden and accidental and gradual release pollution liability coverage that will cover, among other things, environmental damage, any spillage of chemicals, fuels, oils, lubricants, de-icing, anti-freeze, or other hazardous materials, or disturbance of any Hazardous Substances during the performance of any work on the Pump Station or other activities in the Easement Area or as a result of any pipe rupture, leakage, or other failure, written on an "occurrence" form policy. Grantee will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The amount of coverage will be agreed by Grantor and Grantee to be reasonable given the type of construction activity. Whatever the coverage might be, however, will not limit Grantee's liability or responsibility for any environmental damage claim or Hazardous Substances release. If said insurance is carried by Grantee's contractor, in lieu of Grantee, then Grantee must ensure that Grantor is named as an additional insured on the pollution policy in accordance with all requirements for naming Grantor as an additional insured. Nothing contained herein, however, shall be construed as a limitation on liability. Grantor shall maintain a direct right of action against Grantee and shall not be required to first seek relief through the insurance carrier or general contractor.
12. **Grantee's General Indemnity.** To the maximum extent allowed by law, Grantee agrees to defend (using legal counsel reasonably acceptable to Grantor, taking into account insurance defense requirements), indemnify, reimburse, and hold harmless Grantor from and against any and all claims, demands, damages to person or property, including Grantor's own property, causes of action for injury or death, fines, penalties, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), liabilities, losses, proceedings, and/or suits that may be

imposed on or claimed against Grantor, in whole or in part, directly or indirectly, arising from or in any way connected with: (a) any act, omission, or negligence by Grantee or its partners, officers, directors, members, managers, agents, employees, invitees, contractors, subcontractors, and suppliers; (b) any use, occupation, management, or control of the Easement Area by Grantee, including, but not limited to, the sudden or accidental release of raw water that causes damage to person or property; (c) any condition created in or about the Easement Area by Grantee, including any accident, injury, or damage occurring on or about the Easement Area during the term of this Agreement, unless caused by Grantor or a third party unrelated to Grantee; (d) any breach, violation, or nonperformance of any of Grantee's obligations under this Agreement; or (e) any damage caused on or to the Easement Area during Grantee's use or occupancy thereof, unless caused by Grantor or a third party unrelated to Grantee. As used throughout this Agreement, "Grantee" includes all of Grantee's partners, officers, directors, members, managers, agents, employees, invitees, contractors, consultants, and suppliers. This indemnity shall apply to any claim, however caused, or regardless of the legal grounds and basis, in which Grantor is named.

13. **Condemnation.** If the Property or any interest therein is taken as a result of the exercise of the right of eminent domain or under threat thereof (a "Taking"), this Agreement will terminate with regard to the portion that is taken by condemnation authority. If Grantee determines that the portion of the Easement Area taken does not feasibly permit the continuation of the operation of Grantee's facilities, this Agreement will terminate. The termination will be effective as of the date of the Taking. Any condemnation award relating to the land will be the property of Grantor. Grantee will not be entitled to any proceeds of any such real property award, except Grantee will be entitled to any compensation attributed by the condemning authority to Grantee's ownership interest in the WIF Intake Pipeline Facilities and relocation expense and loss or interruption of business. Notwithstanding the foregoing, neither Grantee nor Grantor waives any right to object to the authority of a condemning entity to condemn any portion of the Easement Area or any personal property located therein.
14. **Legal Effect and Assignment.** This Agreement is personal to Grantee and does not run with the land. This Agreement is not assignable without the prior written permission of Grantor, provided Grantee may assign this Agreement to an intergovernmental entity organized under ORS 190. Except as provided in Section 4.2, in the event of any assignment by Grantee or any successor Grantee, the assignment will be without release, and Grantee shall remain fully responsible for all obligations, responsibilities, and liabilities of Grantee under this Agreement (including, but not limited to, requirements for indemnity and insurance).
15. **Defaults and Disputes.**
 - 15.1. **Event of Default.** The following will constitute an "Event of Default" if not cured within the applicable cure period, as set forth below:
 - 15.1.1 Lapse of or Change in Insurance Coverage. Should Grantee allow any provided insurance policies to lapse or to be materially changed without Grantor Wilsonville's prior written consent, such lapse or material change will be an Event of Default if not cured within three (3) Business

Days of lapse of coverage or any material change in coverage.

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

15.1.3 Insolvency. Any of the following will be an Event of Default: an assignment by Grantee for the benefit of creditors; filing by Grantee of a voluntary petition of bankruptcy; adjudication that Grantee is bankrupt or the appointment of a receiver of the properties of Grantee; the filing of an involuntary petition of bankruptcy and failure of Grantee to secure a dismissal of the petition within ninety (90) days after filing; or attachment of or the levying of execution on the leasehold interest and failure of Grantee to secure discharge of the attachment or release of the levy of execution within ninety (90) days.

15.2. **Remedies on Default.** If an Event of Default occurs, Grantor, at its sole option, may terminate the Easement by notice, in writing. The notice may be given before or within any of the above-referenced cure periods or grace periods for Default and may be included in a notice of failure of compliance, but the termination will be effective only on the expiration of the above- referenced cure periods or grace periods.

15.2.1 Termination. If the Easement is terminated, Grantor may seek any damages suffered by Grantor as a result of the Event of Default, including, without limitation, all obligations of Grantee; and the reasonable costs of reentry, including, without limitation, the cost of any cleanup, site restoration, and removal of Grantee's facilities or property, or any other expense occasioned by Grantee's failure to quit the Easement Area upon termination and to leave it in the condition required at the expiration of this Agreement; and any attorney fees, court costs, and fees.

- 15.2.2 Reentry After Termination. If the Easement is terminated or abandoned for any reason, Grantee's liability for damages will survive the termination, and the rights and obligations of the parties will be as follows:
- (a) Grantee will provide Grantor with a removal plan within ninety (90) days of the date of termination. No use of the Easement Area for purposes other than removal and restoration shall be allowed following the date of termination. Improvements may be left in place only if agreed to, in writing, in Grantor's sole discretion. Grantee must perform any cleanup, restoration, alterations, or other work necessary to leave the Easement Area in the condition required at the end of the Term.
 - (b) Grantor may reenter, take possession of the Easement Area, and remove any persons or personal property by legal action or by self-help with the use of reasonable force and without liability for damages.
- 15.2.3 Damages. Damages will be limited to actual damages, excluding consequential or punitive damages.
- 15.2.4 Right to Sue More than Once. In an Event of Default, Grantor may elect to continue this Agreement and to sue periodically to recover damages, and no action for damages will bar a later action for damages subsequently accruing.
- 15.2.5 Equitable Relief. A party may seek injunctive relief or an order of specific performance from any court of competent jurisdiction, requiring that another party perform its obligations under this Agreement.

16. **Termination, Abandonment, and Site Restoration.**

- 16.1. If Grantor believes that Grantee has abandoned its use of the Easement Area, Grantor shall provide written notice, articulating the reason for its belief thereof, to Grantee through the designated contact person maintained by Grantee under this Agreement, said notice to be sent by certified mail and electronic means. Unless Grantee has responded within thirty (30) calendar days after such notice has been sent, by providing Grantor with a written response articulating the reasons why abandonment has not occurred, then Grantee may proceed to record an affidavit providing notice of abandonment and termination of this Agreement with the Clackamas County Recorder's office.
- 16.2. Within thirty (30) days following termination of this Agreement, Grantee will meet with Grantor to discuss removal plans for Grantee's improvements or to propose other options to removal, with the clear understanding that whether or not to require removal of the improvements and consider other options shall be within the sole discretion of Grantor. Grantor's decision will be final and is not

subject to mediation, arbitration, or litigation. Within ninety (90) days following termination of the Easement, Grantor will provide written notice to Grantee as to whether Grantor will require removal of Grantee's improvements, in whole or in part. If removal is required, Grantor and Grantee will meet within thirty (30) days from the date of notice by Grantor for removal to arrange a removal plan that minimizes disruption to Grantor's Property. If Grantor elects to have Grantee's improvements removed, Grantee shall promptly remove Grantee's improvements and all related appurtenances from or within the Property or Easement Area. Upon any removal, Grantee shall reclaim the Property and Easement Area to elevations and surface composition the same as prior to such removal, with Grantee being required to provide necessary fill and topsoil, landscape materials, and asphalt or concrete, as applicable, including any base rock or drainage facilities and utilities in order to sufficiently reclaim the Property and Easement Area to preexisting or better condition, provided that all such activities shall be in conformance with any applicable regulatory requirements. Grantee shall separately compensate Grantor for any losses and damages to the Property or Easement Area incurred by reason of any defective or deficient reclamation and removal. Grantee shall also be liable for and shall indemnify Grantor against any claims for damage, destruction, or injury to any third party as a result of Grantee's removal and reclamation work or filling Grantee's improvements in, on, or about the Property or Easement Area. Removal work plan is subject to Grantee review and written approval.

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

To Grantor Wilsonville:

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

with a copy to:

Wilsonville City Attorney
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Grantor TVWD:

Tualatin Valley Water District
Attn: Chief Executive Officer
1850 SW 170th Avenue Beaverton,
OR 97003

with a copy to:

Tualatin Valley Water District
Attn: District Counsel
1850 SW 170th Avenue
Beaverton, OR 97003

To Grantee WIF Commission:

Tualatin Valley Water District
Attn: WIF General Manager
1850 SW 170th Avenue
Beaverton, OR 97003

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

18. **General Provisions.**

- 18.1. **Covenants, Conditions, and Restrictions.** This Agreement is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, loans, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record as of the date of this Agreement regarding the Easement Area and to any applicable land use or zoning laws or regulations.
- 18.2. **Nonwaiver.** The waiver by either party of strict performance of any provision of this Agreement will not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 18.3. **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.
- 18.4. **Attorney Fees.** If any suit, action, or other proceeding (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party will be entitled to recover attorney, paralegal, accountant, and other expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees also applies to any administrative proceeding, petition for review, trial, and appeal. Whenever this Agreement requires one party to defend the other party, the defense will be by legal counsel acceptable to the party to be defended, understanding that claims are often covered by insurance, with the insurance carrier designating the defense counsel.
- 18.5. **Time of Essence.** Time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.
- 18.6. **Governing Law.** This Agreement is governed by and will be construed according to the laws of the State of Oregon, without regard to its choice-of-law provisions. Any action or suit to enforce or construe any provision of this Agreement by either party will be brought in the Circuit Court of the State of Oregon for Clackamas County or in United States Federal Court for the District of Oregon if there are jurisdiction and grounds.

- 18.7. **Compliance with Laws and Regulations.** Grantee will comply with all applicable laws, ordinances, rules, and regulations of the United States, State of Oregon, City of Wilsonville, County of Clackamas, County of Washington, and all other government authorities with jurisdiction over the Property or Easement Area, including, but not limited to, local fire codes, zoning regulations, and occupancy codes.
- 18.8. **Survival.** Any covenant or condition (including, but not limited to, environmental obligations and all indemnification agreements) set forth in this Agreement, the full performance of which is not specifically required before the expiration or earlier termination of this Agreement, and any covenant or condition that by its terms is to survive, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.
- 18.9. **Partial Invalidity.** If any provision of this Agreement is held to be unenforceable or invalid, it will be adjusted rather than voided, if possible, to achieve the intent of the parties to the extent possible. In any event, all the other provisions of this Agreement will be deemed valid and enforceable to the fullest extent.
- 18.10. **Modification.** This Agreement may not be modified except in writing, signed by all parties.
- 18.11. **Successors.** The rights, liabilities, and remedies provided in this Agreement will extend to the heirs, legal representatives, and, as far as the terms of this Agreement permit, successors and assigns of the parties.
- 18.12. **Calculation of Time.** Unless referred to in this Agreement as Business Days, all periods of time referred to in this Agreement include Saturdays, Sundays, and Legal Holidays; however, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period extends to include the next day that is not a Saturday, Sunday, or Legal Holiday. "Legal Holiday" means any holiday observed by Grantor. "Business Day" means any day Monday through Friday, excluding Legal Holidays when Grantor's City Hall is closed for business.
- 18.13. **Capacity to Execute, Mutual Representations.** Grantor and Grantee each warrant and represent to one another that this Agreement constitutes a legal, valid, and binding obligation of that party. Without limiting the generality of the foregoing, each party represents that its governing process has been followed in order to authorize the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement each warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting.
- 18.14. **Recording.** Grantor will record a Memorandum of the Easement in the real estate Records of Clackamas County, Oregon.
- 18.15. **Counterparts.** This Agreement may be executed in one or more counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, to be effective as of the Effective Date first above written.

[Signatures on following pages]

GRANTOR WILSONVILLE:

ACCEPTED on behalf of the public and Grantee by the City of Wilsonville, a municipal corporation of the State of Oregon:

By: _____

Name: Jeanna Troha

As Its: City Manager

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2026, by Jeanna Troha, as City Manager of the City of Wilsonville.

Notary Public – State of Oregon
My Commission Expires: _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney

APPROVED AS TO LEGAL DESCRIPTION:

Zach Weigel, P.E., City Engineer

[Signatures continue on following pages]

GRANTEE

Willamette Intake Facilities Commission, an Oregon intergovernmental entity

By: _____

Name: David Kraska

As Its: General Manager

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 2026, by David Kraska, as General Manager of the Willamette Intake Facilities Commission, an Oregon intergovernmental entity.

NOTARY PUBLIC for Oregon
My Commission Expires: _____

Exhibit A

Willamette Intake Facilities Commission
March 4, 2025

CITY OF WILSONVILLE
31W23B 01900

Entire Property

Parcel I of that tract of land conveyed to City of Wilsonville, an Oregon municipal corporation, on September 4, 1998, by deed recorded as Document Number 98-083412, Clackamas County Deed Records, also being Parcel II of that tract of land in which a 49% ownership was conveyed to Tualatin Valley Water District, a water supply district, on July 28, 2000, by Special Warranty Deed recorded as Document Number 2000-048871, Clackamas County Deed Records, lying in the Southwest Quarter of Section 23, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2025.03.21 13:26:51-07'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2026

Exhibit B

Willamette Intake Facilities Commission
March 4, 2025

CITY OF WILSONVILLE
31W23B 01900

WIF Intake Pipe Easement

A portion of Parcel I of that tract of land conveyed to City of Wilsonville, an Oregon municipal corporation, on September 4, 1998, by deed recorded as Document Number 98-083412, Clackamas County Deed Records, also being a portion of Parcel II of that tract of land in which a 49% ownership was conveyed to Tualatin Valley Water District, a water supply district, on July 28, 2000, by Special Warranty Deed recorded as Document Number 2000-048871, Clackamas County Deed Records, lying in the Southwest Quarter of Section 23, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon, being more particularly described as follows:

COMMENCING at the Northwest corner of said Section 23; from which the north quarter corner of said Section 23 bears North 89°59'22" East a distance of 2631.37 feet; thence South 08°58'30" East a distance of 3095.96 feet to the POINT OF BEGINNING; thence North 85°23'23" East, 26.00 feet; thence South 04°42'44" East, 215.29 feet to a point on the Ordinary Low Water Line of the Willamette River; thence along said Ordinary Low Water Line the following two courses: South 63°58'23" West, 10.22 feet and South 71°44'10" West, 16.97 feet; thence North 04°42'44" West, 223.02 feet to the POINT OF BEGINNING.

Contains 5711 square feet (0.131 acres), more or less.

Bearings and distances are based on the Oregon Coordinate Reference System, Portland Zone

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2025.03.21 13:27:16-07'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2026

P.O.C.

NW COR SEC 23

N. 1/4 COR SEC 23

N89°59'22"E 2631.37'

S08°58'30"E
3095.96'

P.O.B.

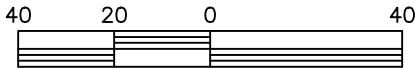
N85°23'23"E
26.00'



= EASEMENT FOR INTAKE PIPE
AREA = 5711 SQ. FT.±

3 1W23B 1900
City of Wilsonville
(Doc. No. 98-083412)
Tualatin Valley Water District
(Doc. No. 2000-048871)

P.O.C.= POINT OF COMMENCEMENT
P.O.B.= POINT OF BEGINNING



SCALE: 1" = 40'

N04°42'44"W
223.02'

S04°42'44"E
215.29'

ORDINARY LOW
WATER LINE, EL
55.0

WILLAMETTE RIVER

S71°44'10"W
16.97'

S63°58'23"W
10.22'

WILLAMETTE INTAKE
FACILITIES COMMISSION

EXHIBIT C
SKETCH TO ACCOMPANY
WIF INTAKE PIPE EASEMENT
SW1/4 S23 T3S R1W - TAX LOT 01900

Otak
808 SW 3rd Ave., Ste. 800
Portland, Oregon 97204
Phone: (503) 287-6825
www.otak.com
project: 18439

DATE
2/7/2025

DRAWN BY
KLA

CHECKED BY
JMY

EXHIBIT 2 to Resolution No. 3255

After recording, return to:

City of Wilsonville
Attn: Legal Department
29799 SW Town Center Loop East
Wilsonville OR 97070

EASEMENT AGREEMENT (WIF Intake Ground Improvements)

This Easement Agreement (“Agreement”) is by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (“Wilsonville”), **Tualatin Valley Water District**, a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (“TVWD”), and the **Willamette Intake Facilities Commission**, an Oregon intergovernmental entity (“WIF Commission” or “Grantee”). Wilsonville and TVWD are referred to herein, collectively, as “Grantor” and are the legal owners of that certain real property (“Property”) described as follows:

See **Exhibit A**, Property legal description, attached hereto and incorporated by reference as if fully set forth herein.

1. **Grant of Permanent Easement.** Grantor hereby grants to Grantee, its successors, and heirs, a perpetual, non-exclusive easement (“Easement”) for the purpose of making and maintaining certain ground improvements (“WIF Intake Ground Improvements”) associated with Grantee’s Water Intake Facility and associated appurtenances incident thereto (“WIF Intake Facilities”), as set forth in this Agreement.
2. **Consideration.** Consideration for this Agreement has been negotiated and agreed upon by the parties to be good and satisfactory consideration.
3. **Identification of and Description of Easement Area.** The Easement shall burden the portions of the Property described and depicted in Exhibits B and C, attached hereto and incorporated by reference as if fully set forth herein (the “Easement Area”).
4. **Grantee’s Use of Easement Area.** Grantee shall use the Easement Area only for the purposes set forth in this Agreement. Grantee must comply with any and all applicable legal requirements, including land use approvals, the City of Wilsonville Development Code, and City of Wilsonville Public Works Standards concerning Grantee’s use and activities in the Easement Area.
 - 4.1. To the extent there are existing ingress and egress accesses and/or existing leases, easements, or franchises over, under, along, across, or above the Easement Area, Grantee’s use of the Easement Area shall be performed in a manner that will not unreasonably interfere with those existing uses. If Grantee damages any other utilities or improvements located within the Easement Area, Grantee must immediately notify Grantor or other utility provider and immediately repair such damage, at Grantee’s expense, to the same or better condition that existed prior to the damage occurring.

4.2. Grantee shall have no right to provide additional leases, subleases, easements, or grants of use of any kind to the Easement Area; provided, however, this prohibition does not prevent Grantee from selling or otherwise transferring all or a portion of its rights and interests in the Easement Area to another governmental entity, upon notice to Grantor and assumption of this Agreement by such other governmental entity, per Section 13.

5. **Grantor's Use of Grantor's Property.**

5.1. Except as limited by other encumbrances to which Grantor is subject, Grantor retains, reserves, and shall continue to enjoy use of all of Grantor's Property not located within the Easement Area that is exclusive to Grantee's use.

5.2. Grantor may lease or grant easements, franchise agreements, or other rights of use to other parties or itself for various utilities, including fiber optic cable, over, along, under, or across the Easement Area ("Other Allowed Uses"), provided, however, such Other Allowed Uses do not unreasonably interfere with Grantee's permitted use, the Intake Ground Improvements, or the Intake Facilities. Grantor shall notify Grantee, in writing, of any proposed Other Allowed Use. Grantee shall provide to Grantor, within fifteen (15) Business Days of receipt of the notice, Grantee's written consent, which shall not be unreasonably withheld. If Grantee objects, Grantee will provide a written statement as to why the proposed additional use will interfere with Grantee's permitted use and will also indicate if Grantee believes there are any conditions that could be imposed that would allow Grantee to approve the Other Allowed Use, subject to those suggested conditions. If Grantee does not respond within the fifteen (15) Business Days, Grantee will be deemed to have consented to the proposed Other Allowed Use. In the event of a disagreement, the parties shall follow the dispute resolution process set forth in Section 14.

6. **AS IS CONDITION.** Except for warranty of title, Grantor makes no other representations or warranties with regard to the condition or suitability of the Easement Area for Grantee's intended use. This disclaimer of any and all warranties, excepting warranty of title, includes, but is not limited to, the environmental condition of the Easement Area and adjacent lands. If any environmental hazards are discovered within the Easement Area, Grantee will be solely responsible for clean-up and remediation unless Grantee can prove that a Hazardous Substance release was caused by Grantor after April 18, 2018. Grantor will not be responsible to Grantee for the clean-up or remediation of any pre-existing (prior to April 18, 2018) environmental hazards, releases, or contamination. Grantee shall also be responsible for any exacerbation by Grantee of any Hazardous Substance release that was caused by Grantor after April 18, 2018, but only to the extent of the exacerbation, as long as Grantee had not been made aware of the condition caused by Grantor after April 18, 2018 and prior to the action that caused the exacerbation. Grantor's limited post-April 18, 2018 responsibility for any Hazardous Substance condition within the Easement Area will apply only to the condition caused by the Hazardous Substance release after April 18, 2018. As used herein:

- 6.1. “Hazardous Substances” shall mean any substance, material, or product defined or designated as hazardous, toxic, radioactive, or dangerous, regulated wastes or substances, or any other similar term in or under any Environmental Laws as now apply or may apply in the future; and
 - 6.2. “Environmental Laws” include any and all federal, state, and local statutes, regulations, rules, and ordinances (including those of the Oregon Department of Environmental Quality (DEQ), the Environmental Protection Agency (EPA), or any such state or federal successor agency) now or hereafter in effect, as they may be amended from time to time, that in any way govern materials, substances, or products and/or relate to the protection of health, safety, or the environment.
7. **Damage and Restoration.** Except where Grantee makes permanent improvements within the Easement Area, Grantee shall restore the Easement Area and any improvements disturbed by Grantee that were in place on the Property as of the Effective Date to the same or better condition and repair, unless Grantor agrees to some other proposed condition. Grantee shall also be liable to reimburse Grantor for any damage to Grantor’s Property outside the Easement Area caused by Grantee’s construction or operations. Except in the case of an emergency, Grantor shall receive reasonable notice of any work that is to occur within the Easement Area that could impact any of Grantors’ utilities or structures, whether above or below ground. “Reasonable notice” means no less than thirty (30) days’ prior written notice. In the case of emergency, Grantee must provide notice as soon as practicable, but no later than 24 hours after the emergency occurs. “Emergency” means any sudden or serious event or an unforeseen change in circumstances that necessitates immediate action by Grantee to protect life, health, or property from imminent danger or to lessen or avert the threat of disaster.
8. **Record Drawings.** Upon completion of construction of any improvements in the Easement Area, Grantee shall provide Grantor with an electronic copy of record drawings that reflect the location of the improvements, prepared by and stamped by an appropriate licensed professional.
9. **Obligations Beyond Initial Construction.**
 - 9.1. **Temporary Use of Property Outside Easement Area.** In the event any replacement, repair, or removal of Grantee’s facilities in the Easement Area necessitates the use of the Property outside of the Easement Area, Grantee must obtain written approval from Grantor, which approval shall not be unreasonably withheld, for a temporary construction easement or other license for that purpose.
 - 9.2. **Maintenance Obligations.** Maintenance of the Easement Area to accommodate Grantee’s use of those areas, and of any of Grantee’s improvements within those areas, shall be the sole obligation of Grantee. Any damage to the Property caused by such maintenance must be promptly repaired and the surface restored to pre-maintenance condition. Grantee will comply with its written WIF Operations Plan.

10. **Insurance.** Grantee will maintain and abide by the insurance requirements set forth in the Willamette Intake Facilities Intergovernmental Agreement, dated April 6, 2018, and will name Grantor as additional insureds with respect to the Easement. In addition, during construction activities and any time Hazardous Substances are being used within the Easement Area, other than in small quantities as generally needed for landscaping or as cleaning supplies, Grantee or Grantee's contractor shall carry full environmental coverage, including sudden and accidental and gradual release pollution liability coverage that will cover, among other things, environmental damage, any spillage of chemicals, fuels, oils, lubricants, de-icing, anti-freeze, or other hazardous materials, or disturbance of any Hazardous Substances during the performance of any work on the Pump Station or other activities in the Easement Area or as a result of any pipe rupture, leakage, or other failure, written on an "occurrence" form policy. Grantee will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The amount of coverage will be agreed by Grantor and Grantee to be reasonable given the type of construction activity. Whatever the coverage might be, however, will not limit Grantee's liability or responsibility for any environmental damage claim or Hazardous Substances release. If said insurance is carried by Grantee's contractor, in lieu of Grantee, then Grantee must ensure that Grantor is named as an additional insured on the pollution policy in accordance with all requirements for naming Grantor as an additional insured. Nothing contained herein, however, shall be construed as a limitation on liability. Grantor shall maintain a direct right of action against Grantee and shall not be required to first seek relief through the insurance carrier or general contractor.
11. **Grantee's General Indemnity.** To the maximum extent allowed by law, Grantee agrees to defend (using legal counsel reasonably acceptable to Grantor, taking into account insurance defense requirements), indemnify, reimburse, and hold harmless Grantor from and against any and all claims, demands, damages to person or property, including Grantor's own property, causes of action for injury or death, fines, penalties, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), liabilities, losses, proceedings, and/or suits that may be imposed on or claimed against Grantor, in whole or in part, directly or indirectly, arising from or in any way connected with: (a) any act, omission, or negligence by Grantee or its partners, officers, directors, members, managers, agents, employees, invitees, contractors, subcontractors, and suppliers; (b) any use, occupation, management, or control of the Easement Area by Grantee, including, but not limited to, the sudden or accidental release of raw water that causes damage to person or property; (c) any condition created in or about the Easement Area by Grantee, including any accident, injury, or damage occurring on or about the Easement Area during the term of this Agreement, unless caused by Grantor or a third party unrelated to Grantee; (d) any breach, violation, or nonperformance of any of Grantee's obligations under this Agreement; or (e) any damage caused on or to the Easement Area during Grantee's use or occupancy thereof, unless caused by Grantor or a third party unrelated to Grantee. As used throughout this Agreement, "Grantee" includes all of Grantee's partners, officers, directors, members, managers, agents, employees, invitees, contractors, consultants, and suppliers. This indemnity shall apply to any claim, however caused, or regardless of the legal grounds and basis, in which Grantor is named.

12. **Condemnation.** If the Property or any interest therein is taken as a result of the exercise of the right of eminent domain or under threat thereof (a “Taking”), this Agreement will terminate with regard to the portion that is taken by condemnation authority. If Grantee determines that the portion of the Easement Area taken does not feasibly permit the continuation of the operation of Grantee’s facilities, this Agreement will terminate. The termination will be effective as of the date of the Taking. Any condemnation award relating to the land will be the property of Grantor. Grantee will not be entitled to any proceeds of any such real property award, except Grantee will be entitled to any compensation attributed by the condemning authority to Grantee’s ownership interest in the WIF Intake Ground Improvements and relocation expense and loss or interruption of business. Notwithstanding the foregoing, neither Grantee nor Grantor waives any right to object to the authority of a condemning entity to condemn any portion of the Easement Area or any personal property located therein.

13. **Legal Effect and Assignment.** This Agreement is personal to Grantee and does not run with the land. This Agreement is not assignable without the prior written permission of Grantor, provided Grantee may assign this Agreement to an intergovernmental entity organized under ORS 190. Except as provided in Section 3.6, in the event of any assignment by Grantee or any successor Grantee, the assignment will be without release, and Grantee shall remain fully responsible for all obligations, responsibilities, and liabilities of Grantee under this Agreement (including, but not limited to, requirements for indemnity and insurance).

14. **Defaults and Disputes.**
 - 14.1. **Event of Default.** The following will constitute an “Event of Default” if not cured within the applicable cure period, as set forth below:
 - 14.1.1 Lapse of or Change in Insurance Coverage. Should Grantee allow any provided insurance policies to lapse or to be materially changed without Grantor Wilsonville’s prior written consent, such lapse or material change will be an Event of Default if not cured within three (3) Business Days of lapse of coverage or any material change in coverage.
 - 14.1.2 Default in Other Covenants. Failure of Grantee or any of its contractors, subcontractors, suppliers, agents, or employees to comply with any term or condition or to fulfill any obligation of this Agreement within thirty (30) days after written notice by Grantor specifying the nature of the Default with reasonable particularity will be an Event of Default. If the Default is of such a nature that it cannot be completely remedied within the thirty (30) day period, Grantee will be in compliance with this provision if Grantee begins correction of the Default within the thirty (30) day period and, thereafter, proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Notwithstanding the foregoing, if Grantee violates the same provision of this Agreement more than two (2) times in any rolling twelve (12) month period, measured from the date notice of the violation is given by Grantor Wilsonville, then the violation will constitute an immediate

Event of Default for which no further notice or cure period need be granted by Grantor Wilsonville, provided, however, if there is a third violation of the same Easement provision that occurs within the same twelve (12) month period that is of a truly de minimis and inadvertent nature, and Grantee promptly cures it within thirty (30) days or less, Grantor will not declare an immediate Default.

14.1.3 Insolvency. Any of the following will be an Event of Default: an assignment by Grantee for the benefit of creditors; filing by Grantee of a voluntary petition of bankruptcy; adjudication that Grantee is bankrupt or the appointment of a receiver of the properties of Grantee; the filing of an involuntary petition of bankruptcy and failure of Grantee to secure a dismissal of the petition within ninety (90) days after filing; or attachment of or the levying of execution on the leasehold interest and failure of Grantee to secure discharge of the attachment or release of the levy of execution within ninety (90) days.

14.2. **Remedies on Default.** If an Event of Default occurs, Grantor, at its sole option, may terminate the Easement by notice, in writing. The notice may be given before or within any of the above-referenced cure periods or grace periods for Default and may be included in a notice of failure of compliance, but the termination will be effective only on the expiration of the above- referenced cure periods or grace periods.

14.2.1 Termination. If the Easement is terminated, Grantor may seek any damages suffered by Grantor as a result of the Event of Default, including, without limitation, all obligations of Grantee; and the reasonable costs of reentry, including, without limitation, the cost of any cleanup, site restoration, and removal of Grantee's facilities or property, or any other expense occasioned by Grantee's failure to quit the Easement Area upon termination and to leave it in the condition required at the expiration of this Agreement; and any attorney fees, court costs, and fees.

14.2.2 Reentry After Termination. If the Easement is terminated or abandoned for any reason, Grantee's liability for damages will survive the termination, and the rights and obligations of the parties will be as follows:

(a) Improvements shall be left in place. Grantee must perform any cleanup, restoration, alterations, or other work necessary to leave the Easement Area in the condition required at the end of the Term.

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

14.2.3 Damages. Damages will be limited to actual damages, excluding

consequential or punitive damages.

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

14.2.5 Equitable Relief. A party may seek injunctive relief or an order of specific performance from any court of competent jurisdiction, requiring that another party perform its obligations under this Agreement.

15. **Termination, Abandonment, and Site Restoration.** If Grantor believes that Grantee has abandoned its use of the Easement Area, Grantor shall provide written notice, articulating the reason for its belief thereof, to Grantee through the designated contact person maintained by Grantee under this Agreement, said notice to be sent by certified mail and electronic means. Unless Grantee has responded within thirty (30) calendar days after such notice has been sent, by providing Grantor with a written response articulating the reasons why abandonment has not occurred, then Grantee may proceed to record an affidavit providing notice of abandonment and termination of this Agreement with the Clackamas County Recorder's office.

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

To Grantor Wilsonville:

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

to: with a copy

Wilsonville City Attorney
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Grantor TVWD:

Tualatin Valley Water District
Attn: Chief Executive Officer
1850 SW 170th Avenue Beaverton,
OR 97003

to: with a copy

Tualatin Valley Water District
Attn: District Counsel
1850 SW 170th Avenue
Beaverton, OR 97003

To Grantee WIF Commission:

Tualatin Valley Water District
Attn: WIF General Manager
1850 SW 170th Avenue
Beaverton, OR 97003

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

17. General Provisions.

- 17.1. **Covenants, Conditions, and Restrictions.** This Agreement is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, loans, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record as of the date of this Agreement regarding the Easement Area and to any applicable land use or zoning laws or regulations.
- 17.2. **Nonwaiver.** The waiver by either party of strict performance of any provision of this Agreement will not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 17.3. **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.
- 17.4. **Attorney Fees.** If any suit, action, or other proceeding (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party will be entitled to recover attorney, paralegal, accountant, and other expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees also applies to any administrative proceeding, petition for review, trial, and appeal. Whenever this Agreement requires one party to defend the other party, the defense will be by legal counsel acceptable to the party to be defended, understanding that claims are often covered by insurance, with the insurance carrier designating the defense counsel.
- 17.5. **Time of Essence.** Time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.
- 17.6. **Governing Law.** This Agreement is governed by and will be construed according to the laws of the State of Oregon, without regard to its choice-of-law provisions. Any action or suit to enforce or construe any provision of this Agreement by either party will be brought in the Circuit Court of the State of Oregon for Clackamas County or in United States Federal Court for the District of Oregon if there are jurisdiction and grounds.
- 17.7. **Compliance with Laws and Regulations.** Grantee will comply with all

applicable laws, ordinances, rules, and regulations of the United States, State of Oregon, City of Wilsonville, County of Clackamas, County of Washington, and all other government authorities with jurisdiction over the Property or Easement Area, including, but not limited to, local fire codes, zoning regulations, and occupancy codes.

- 17.8. **Survival.** Any covenant or condition (including, but not limited to, environmental obligations and all indemnification agreements) set forth in this Agreement, the full performance of which is not specifically required before the expiration or earlier termination of this Agreement, and any covenant or condition that by its terms is to survive, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.
- 17.9. **Partial Invalidity.** If any provision of this Agreement is held to be unenforceable or invalid, it will be adjusted rather than voided, if possible, to achieve the intent of the parties to the extent possible. In any event, all the other provisions of this Agreement will be deemed valid and enforceable to the fullest extent.
- 17.10. **Modification.** This Agreement may not be modified except in writing, signed by all parties.
- 17.11. **Successors.** The rights, liabilities, and remedies provided in this Agreement will extend to the heirs, legal representatives, and, as far as the terms of this Agreement permit, successors and assigns of the parties.
- 17.12. **Calculation of Time.** Unless referred to in this Agreement as Business Days, all periods of time referred to in this Agreement include Saturdays, Sundays, and Legal Holidays; however, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period extends to include the next day that is not a Saturday, Sunday, or Legal Holiday. "Legal Holiday" means any holiday observed by Grantor. "Business Day" means any day Monday through Friday, excluding Legal Holidays when Grantor's City Hall is closed for business.
- 17.13. **Capacity to Execute, Mutual Representations.** Grantor and Grantee each warrant and represent to one another that this Agreement constitutes a legal, valid, and binding obligation of that party. Without limiting the generality of the foregoing, each party represents that its governing process has been followed in order to authorize the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement each warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting.
- 17.14. **Recording.** Grantor will record a Memorandum of the Easement in the real estate Records of Clackamas County, Oregon.
- 17.15. **Counterparts.** This Agreement may be executed in one or more counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, to be effective as of the Effective Date first above written.

[Signatures on following pages]

GRANTEE

Willamette Intake Facilities Commission, an Oregon intergovernmental entity

By: _____

Name: David Kraska

As Its: General Manager

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 2026, by David Kraska, as General Manager of the Willamette Intake Facilities Commission, an Oregon intergovernmental entity.

NOTARY PUBLIC for Oregon
My Commission Expires: _____

Exhibit A

Willamette Water Supply
February 7, 2025

CITY OF WILSONVILLE
31W23B 01900

Entire Property

Parcel I of that tract of land conveyed to City of Wilsonville, an Oregon municipal corporation, on September 4, 1998, by deed recorded as Document Number 98-083412, Clackamas County Deed Records, also being Parcel II of that tract of land in which a 49% ownership was conveyed to Tualatin Valley Water District, a water supply district, on July 28, 2000, by Special Warranty Deed recorded as Document Number 2000-048871, Clackamas County Deed Records, lying in the Southwest Quarter of Section 23, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2025.02.14 16:08:44-08'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2026

Exhibit B

Willamette Water Supply
February 7, 2025

CITY OF WILSONVILLE
31W23B 01900

Ground Improvement Easement

A portion of Parcel I of that tract of land conveyed to City of Wilsonville, an Oregon municipal corporation, on September 4, 1998, by deed recorded as Document Number 98-083412, Clackamas County Deed Records, also being a portion of Parcel II of that tract of land in which a 49% ownership was conveyed to Tualatin Valley Water District, a water supply district, on July 28, 2000, by Special Warranty Deed recorded as Document Number 2000-048871, Clackamas County Deed Records, lying in the Southwest Quarter of Section 23, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon, being more particularly described as follows:

COMMENCING at the Northwest corner of said Section 23 from which the north quarter corner of said Section 23 bears North 89°59'22" East a distance of 2631.37 feet; thence South 08°22'48" East a distance of 3093.67 feet to the POINT OF BEGINNING; thence North 85°23'50" East, 136.00 feet; thence South 04°36'10" East, 79.00 feet; thence South 85°23'50" West, 136.00 feet; thence North 04°36'10" West, 79.00 feet to the POINT OF BEGINNING.

Contains 10,744 square feet (0.247 acres), more or less.

Bearings and distances are based on the Oregon Coordinate Reference System, Portland Zone

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2025.02.14 16:09:12-08'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2026

P.O.C.
NW COR SEC 23

N. 1/4 COR SEC 23

N89°59'22"E 2631.37'

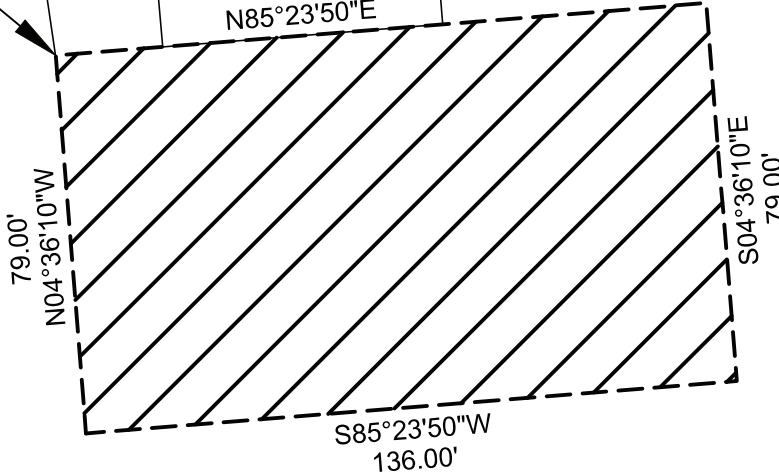
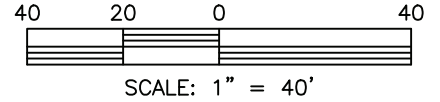
S08°22'48"E
3093.67'

P.O.B.

136.00'
N85°23'50"E

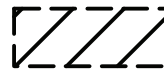
N04°36'10"W
79.00'

S85°23'50"W
136.00'



P.O.C.= POINT OF COMMENCEMENT
P.O.B.= POINT OF BEGINNING

3 1W23B 1900
City of Wilsonville
(Doc. No. 98-083412)
Tualatin Valley Water District
(Doc. No. 2000-048871)

 = EASEMENT FOR GROUND IMPROVEMENTS
AREA = 10,744 SQ. FT.±

WILLAMETTE RIVER

WILLAMETTE INTAKE
FACILITIES COMMISSION

EXHIBIT C
SKETCH TO ACCOMPANY
GROUND IMPROVEMENT EASEMENT
SW1/4 S23 T3S R1W - TAX LOT 01900

Otak
808 SW 3rd Ave., Ste. 800
Portland, Oregon 97204
Phone: (503) 287-6825
www.otak.com
project: 18439

DATE
2/7/2025

DRAWN BY
KLA

CHECKED BY
JMY

EXHIBIT 3 to Resolution No. 3255

After recording, return to:

City of Wilsonville
Attn: Legal Department
29799 SW Town Center Loop East
Wilsonville OR 97070

EASEMENT AGREEMENT (WIF Pump Station)

This Easement Agreement (“Agreement”) is by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (“Wilsonville”), **Tualatin Valley Water District**, a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (“TVWD”), and the **Willamette Intake Facilities Commission**, an Oregon intergovernmental entity (“WIF Commission” or “Grantee”). Wilsonville and TVWD are referred to herein, collectively, as “Grantor” and are the legal owners of that certain real property (“Property”) described as follows:

See **Exhibit A**, Property legal description, attached hereto and incorporated by reference as if fully set forth herein.

1. **Grant of Permanent Easement.** Grantor hereby grants to Grantee, its successors, and heirs, a perpetual, non-exclusive easement (“Easement”) for the purpose of constructing, operating, maintaining, repairing, modifying, and replacing the pump station building (“WIF Pump Station”) associated with Grantee’s Water Intake Facility and associated appurtenances incident thereto (“WIF Intake Facilities”), as set forth in this Agreement.
2. **Consideration.** Consideration for this Agreement has been negotiated and agreed upon by the parties to be good and satisfactory consideration.
3. **Identification of and Description of Easement Area.** The Easement shall burden the portions of the Property described and depicted in Exhibits B and C, attached hereto and incorporated by reference as if fully set forth herein (the “Easement Area”).
4. **Limit on Grantee’s Use of Easement Area.** Grantee shall use the Easement Area only for the purposes set forth in this Agreement. Grantee must comply with any and all applicable legal requirements, including land use approvals, the City of Wilsonville Development Code, and City of Wilsonville Public Works Standards concerning Grantee’s use and activities in the Easement Area.
 - 4.1. Grantee acknowledges that Grantor has authorized the Willamette Water Supply System Commission (“WWSS Commission”) to install and maintain certain WWSS Pump Station Improvements at the WIF Pump Station, and intends to grant the WWSS Commission an easement for the same purpose. Grantee’s use of the Easement Area shall be performed in a manner that will not unreasonably interfere with the rights granted to, or to be granted to, the WWSS Commission, and Grantee shall reasonably coordinate with the WWSS Commission to ensure

Grantee and the WWSS Commission are able to use the WIF Pump Station as intended.

- 4.2. If Grantee damages any other utilities or improvements located within the Easement Area, Grantee must immediately notify Grantor or other utility provider and immediately repair such damage, at Grantee's expense, to the same or better condition that existed prior to the damage occurring.
- 4.3. Grantee shall have no right to provide additional leases, subleases, easements, or grants of use of any kind to the Easement Area; provided, however, this prohibition does not prevent Grantee from selling or otherwise transferring all or a portion of its rights and interests in the Easement Area to another governmental entity, upon notice to Grantor and assumption of this Agreement by such other governmental entity per Section 13.

5. **Grantor's Use of Easement Area and Grantor's Property.**

- 5.1. Grantor hereby reserves the right to install equipment in the WIF Pump Station as necessary for the operation and maintenance of the Willamette River Water Treatment Plant ("WRWTP"). Grantee's use of the Easement Area shall be performed in a manner that will not unreasonably interfere with these reserved rights, and Grantor and Grantee shall reasonably coordinate with the WWSS Commission to ensure Grantor, Grantee, and the WWSS Commission are able to use the Pump Station as intended.
- 5.2. Except as limited by other encumbrances to which Grantor is subject, Grantor retains, reserves, and shall continue to enjoy use of all of Grantor's Property not located within the Easement Area that is exclusive to Grantee's use.
- 5.3. Except for the rights reserved to Grantor, or as necessary for Grantor to cooperate with Grantee, as provided for in Sections 4.1 and 5.1, Grantor may not lease or grant easements, franchise agreements, or other rights of use to other parties or itself for various utilities, including fiber optic cable, over, along, under, or across the Easement Area.

6. **AS IS CONDITION.** Except for warranty of title, Grantor makes no other representations or warranties with regard to the condition or suitability of the Easement Area for Grantee's intended use. This disclaimer of any and all warranties, excepting warranty of title, includes, but is not limited to, the environmental condition of the Easement Area and adjacent lands. If any environmental hazards are discovered within the Easement Area, Grantee will be solely responsible for clean-up and remediation unless Grantee can prove that a Hazardous Substance release was caused by Grantor after April 18, 2018. Grantor will not be responsible to Grantee for the clean-up or remediation of any pre-existing (prior to April 18, 2018) environmental hazards, releases, or contamination. Grantee shall also be responsible for any exacerbation by Grantee of any Hazardous Substance release that was caused by Grantor after April 18, 2018, but only to the extent of the exacerbation, as long as Grantee had not been made aware of the condition caused by Grantor after April 18, 2018 and prior to the action that caused the exacerbation. Grantor's limited post-April 18, 2018 responsibility for

any Hazardous Substance condition within the Easement Area will apply only to the condition caused by the Hazardous Substance release after April 18, 2018. As used herein:

- 6.1. "Hazardous Substances" shall mean any substance, material, or product defined or designated as hazardous, toxic, radioactive, or dangerous, regulated wastes or substances, or any other similar term in or under any Environmental Laws as now apply or may apply in the future; and
 - 6.2. "Environmental Laws" include any and all federal, state, and local statutes, regulations, rules, and ordinances (including those of the Oregon Department of Environmental Quality (DEQ), the Environmental Protection Agency (EPA), or any such state or federal successor agency) now or hereafter in effect, as they may be amended from time to time, that in any way govern materials, substances, or products and/or relate to the protection of health, safety, or the environment.
7. **Damage and Restoration.** Grantee shall be liable to reimburse Grantor for any damage to Grantor's Property outside the Easement Area caused by Grantee's construction or operations. Except in the case of an emergency, Grantor shall receive reasonable notice of any work that is to occur within the Easement Area that could impact any of Grantor's utilities or structures, whether above or below ground. "Reasonable notice" means no less than thirty (30) days' prior written notice. In the case of emergency, Grantee must provide notice as soon as practicable, but no later than 24 hours after the emergency occurs. "Emergency" means any sudden or serious event or an unforeseen change in circumstances that necessitates immediate action by Grantee to protect life, health, or property from imminent danger or to lessen or avert the threat of disaster.
8. **Record Drawings.** Upon completion of construction of any improvements in the Easement Area, Grantee shall provide Grantor with an electronic copy of record drawings that reflect the location of the improvements, prepared by and stamped by an appropriate licensed professional.
9. **Obligations Beyond Initial Construction.**
- 9.1. **Temporary Use of Property Outside Easement Area.** In the event any replacement, repair, or removal of Grantee's facilities in the Easement Area necessitates the use of the Property outside of the Easement Area, Grantee must obtain written approval from Grantor, which approval shall not be unreasonably withheld, for a temporary construction easement or other license for that purpose.
 - 9.2. **Maintenance Obligations.** Maintenance of the Easement Area to accommodate Grantee's use of those areas, and of any of Grantee's improvements within those areas, shall be the sole obligation of Grantee. Any damage to the Property caused by such maintenance must be promptly repaired and the surface restored to pre-maintenance condition. Grantee will comply with its written WIF Operations Plan.

10. **Insurance.** Grantee will maintain and abide by the insurance requirements set forth in the Willamette Intake Facilities Intergovernmental Agreement, dated April 6, 2018, and will name Grantor as additional insureds with respect to the Easement. In addition, during construction activities and any time Hazardous Substances are being used within the Easement Area, other than in small quantities as generally needed for landscaping or as cleaning supplies, Grantee or Grantee's contractor shall carry full environmental coverage, including sudden and accidental and gradual release pollution liability coverage that will cover, among other things, environmental damage, any spillage of chemicals, fuels, oils, lubricants, de-icing, anti-freeze, or other hazardous materials, or disturbance of any Hazardous Substances during the performance of any work on the Pump Station or other activities in the Easement Area or as a result of any pipe rupture, leakage, or other failure, written on an "occurrence" form policy. Grantee will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The amount of coverage will be agreed by Grantor and Grantee to be reasonable given the type of construction activity. Whatever the coverage might be, however, will not limit Grantee's liability or responsibility for any environmental damage claim or Hazardous Substances release. If said insurance is carried by Grantee's contractor, in lieu of Grantee, then Grantee must ensure that Grantor is named as an additional insured on the pollution policy in accordance with all requirements for naming Grantor as an additional insured. Nothing contained herein, however, shall be construed as a limitation on liability. Grantor shall maintain a direct right of action against Grantee and shall not be required to first seek relief through the insurance carrier or general contractor.
11. **Grantee's General Indemnity.** To the maximum extent allowed by law, Grantee agrees to defend (using legal counsel reasonably acceptable to Grantor, taking into account insurance defense requirements), indemnify, reimburse, and hold harmless Grantor from and against any and all claims, demands, damages to person or property, including Grantor's own property, causes of action for injury or death, fines, penalties, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), liabilities, losses, proceedings, and/or suits that may be imposed on or claimed against Grantor, in whole or in part, directly or indirectly, arising from or in any way connected with: (a) any act, omission, or negligence by Grantee or its partners, officers, directors, members, managers, agents, employees, invitees, contractors, subcontractors, and suppliers; (b) any use, occupation, management, or control of the Easement Area by Grantee, including, but not limited to, the sudden or accidental release of raw water that causes damage to person or property; (c) any condition created in or about the Easement Area by Grantee, including any accident, injury, or damage occurring on or about the Easement Area during the term of this Agreement, unless caused by Grantor or a third party unrelated to Grantee; (d) any breach, violation, or nonperformance of any of Grantee's obligations under this Agreement; or (e) any damage caused on or to the Easement Area during Grantee's use or occupancy thereof, unless caused by Grantor or a third party unrelated to Grantee. As used throughout this Agreement, "Grantee" includes all of Grantee's partners, officers, directors, members, managers, agents, employees, invitees, contractors, consultants, and suppliers. This indemnity shall apply to any claim, however caused, or regardless of the legal grounds and basis, in which Grantor is named.

12. **Condemnation.** If the Property or any interest therein is taken as a result of the exercise of the right of eminent domain or under threat thereof (a “Taking”), this Agreement will terminate with regard to the portion that is taken by condemnation authority. If Grantee determines that the portion of the Easement Area taken does not feasibly permit the continuation of the operation of Grantee’s facilities, this Agreement will terminate. The termination will be effective as of the date of the Taking. Any condemnation award relating to the land will be the property of Grantor. Grantee will not be entitled to any proceeds of any such real property award, except Grantee will be entitled to any compensation attributed by the condemning authority to Grantee’s ownership interest in the WIF Pump Station Improvements and relocation expense and loss or interruption of business. Notwithstanding the foregoing, neither Grantee nor Grantor waives any right to object to the authority of a condemning entity to condemn any portion of the Easement Area or any personal property located therein.

13. **Legal Effect and Assignment.** This Agreement is personal to Grantee and does not run with the land. This Agreement is not assignable without the prior written permission of Grantor, provided Grantee may assign this Agreement to an intergovernmental entity organized under ORS 190. Except as provided in Section 4.3, in the event of any assignment by Grantee or any successor Grantee, the assignment will be without release, and Grantee shall remain fully responsible for all obligations, responsibilities, and liabilities of Grantee under this Agreement (including, but not limited to, requirements for indemnity and insurance).

14. **Defaults and Disputes.**
 - 14.1. **Event of Default.** The following will constitute an “Event of Default” if not cured within the applicable cure period, as set forth below:
 - 14.1.1 Lapse of or Change in Insurance Coverage. Should Grantee allow any provided insurance policies to lapse or to be materially changed without Grantor Wilsonville’s prior written consent, such lapse or material change will be an Event of Default if not cured within three (3) Business Days of lapse of coverage or any material change in coverage.
 - 14.1.2 Default in Other Covenants. Failure of Grantee or any of its contractors, subcontractors, suppliers, agents, or employees to comply with any term or condition or to fulfill any obligation of this Agreement within thirty (30) days after written notice by Grantor specifying the nature of the Default with reasonable particularity will be an Event of Default. If the Default is of such a nature that it cannot be completely remedied within the thirty (30) day period, Grantee will be in compliance with this provision if Grantee begins correction of the Default within the thirty (30) day period and, thereafter, proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Notwithstanding the foregoing, if Grantee violates the same provision of this Agreement more than two (2) times in any rolling twelve (12) month period, measured from the date notice of the violation is given by Grantor Wilsonville, then the violation will constitute an immediate

Event of Default for which no further notice or cure period need be granted by Grantor Wilsonville, provided, however, if there is a third violation of the same Easement provision that occurs within the same twelve (12) month period that is of a truly de minimis and inadvertent nature, and Grantee promptly cures it within thirty (30) days or less, Grantor will not declare an immediate Default.

14.1.3 Insolvency. Any of the following will be an Event of Default: an assignment by Grantee for the benefit of creditors; filing by Grantee of a voluntary petition of bankruptcy; adjudication that Grantee is bankrupt or the appointment of a receiver of the properties of Grantee; the filing of an involuntary petition of bankruptcy and failure of Grantee to secure a dismissal of the petition within ninety (90) days after filing; or attachment of or the levying of execution on the leasehold interest and failure of Grantee to secure discharge of the attachment or release of the levy of execution within ninety (90) days.

14.2. **Remedies on Default.** If an Event of Default occurs, Grantor, at its sole option, may terminate the Easement by notice, in writing. The notice may be given before or within any of the above-referenced cure periods or grace periods for Default and may be included in a notice of failure of compliance, but the termination will be effective only on the expiration of the above- referenced cure periods or grace periods.

14.2.1 Termination. If the Easement is terminated, Grantor may seek any damages suffered by Grantor as a result of the Event of Default, including, without limitation, all obligations of Grantee; and the reasonable costs of reentry, including, without limitation, the cost of any cleanup, site restoration, and removal of Grantee's facilities or property, or any other expense occasioned by Grantee's failure to quit the Easement Area upon termination and to leave it in the condition required at the expiration of this Agreement; and any attorney fees, court costs, and fees.

14.2.2 Reentry After Termination. If the Easement is terminated or abandoned for any reason, Grantee's liability for damages will survive the termination, and the rights and obligations of the parties will be as follows:

(a) Improvements shall be left in place. Grantee must perform any cleanup, restoration, alterations, or other work necessary to leave the Easement Area in the condition required at the end of the Term.

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

14.2.3 Damages. Damages will be limited to actual damages, excluding

consequential or punitive damages.

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

14.2.5 Equitable Relief. A party may seek injunctive relief or an order of specific performance from any court of competent jurisdiction, requiring that another party perform its obligations under this Agreement.

15. **Termination, Abandonment, and Site Restoration.** If Grantor believes that Grantee has abandoned its use of the Easement Area, Grantor shall provide written notice, articulating the reason for its belief thereof, to Grantee through the designated contact person maintained by Grantee under this Agreement, said notice to be sent by certified mail and electronic means. Unless Grantee has responded within thirty (30) calendar days after such notice has been sent, by providing Grantor with a written response articulating the reasons why abandonment has not occurred, then Grantee may proceed to record an affidavit providing notice of abandonment and termination of this Agreement with the Clackamas County Recorder's office.

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

To Grantor Wilsonville:

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

with a copy to:

Wilsonville City Attorney
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Grantor TVWD:

Tualatin Valley Water District
Attn: Chief Executive Officer
1850 SW 170th Avenue Beaverton,
OR 97003

with a copy to:

Tualatin Valley Water District
Attn: District Counsel
1850 SW 170th Avenue
Beaverton, OR 97003

To Grantee WIF Commission:

Willamette Intake Facilities Commission
Attn: Managing Agency
c/o Tualatin Valley Water District
1850 SW 170th Avenue
Beaverton, OR 97003

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

17. General Provisions.

- 17.1. **Covenants, Conditions, and Restrictions.** This Agreement is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, loans, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record as of the date of this Agreement regarding the Easement Area and to any applicable land use or zoning laws or regulations.
- 17.2. **Nonwaiver.** The waiver by either party of strict performance of any provision of this Agreement will not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 17.3. **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.
- 17.4. **Attorney Fees.** If any suit, action, or other proceeding (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party will be entitled to recover attorney, paralegal, accountant, and other expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees also applies to any administrative proceeding, petition for review, trial, and appeal. Whenever this Agreement requires one party to defend the other party, the defense will be by legal counsel acceptable to the party to be defended, understanding that claims are often covered by insurance, with the insurance carrier designating the defense counsel.
- 17.5. **Time of Essence.** Time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.
- 17.6. **Governing Law.** This Agreement is governed by and will be construed according to the laws of the State of Oregon, without regard to its choice-of-law provisions. Any action or suit to enforce or construe any provision of this Agreement by either party will be brought in the Circuit Court of the State of Oregon for Clackamas County or in United States Federal Court for the District of Oregon if there are jurisdiction and grounds.

- 17.7. **Compliance with Laws and Regulations.** Grantee will comply with all applicable laws, ordinances, rules, and regulations of the United States, State of Oregon, City of Wilsonville, County of Clackamas, County of Washington, and all other government authorities with jurisdiction over the Property or Easement Area, including, but not limited to, local fire codes, zoning regulations, and occupancy codes.
- 17.8. **Survival.** Any covenant or condition (including, but not limited to, environmental obligations and all indemnification agreements) set forth in this Agreement, the full performance of which is not specifically required before the expiration or earlier termination of this Agreement, and any covenant or condition that by its terms is to survive, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.
- 17.9. **Partial Invalidity.** If any provision of this Agreement is held to be unenforceable or invalid, it will be adjusted rather than voided, if possible, to achieve the intent of the parties to the extent possible. In any event, all the other provisions of this Agreement will be deemed valid and enforceable to the fullest extent.
- 17.10. **Modification.** This Agreement may not be modified except in writing, signed by all parties.
- 17.11. **Successors.** The rights, liabilities, and remedies provided in this Agreement will extend to the heirs, legal representatives, and, as far as the terms of this Agreement permit, successors and assigns of the parties.
- 17.12. **Calculation of Time.** Unless referred to in this Agreement as Business Days, all periods of time referred to in this Agreement include Saturdays, Sundays, and Legal Holidays; however, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period extends to include the next day that is not a Saturday, Sunday, or Legal Holiday. "Legal Holiday" means any holiday observed by Grantor. "Business Day" means any day Monday through Friday, excluding Legal Holidays when Grantor's City Hall is closed for business.
- 17.13. **Capacity to Execute, Mutual Representations.** Grantor and Grantee each warrant and represent to one another that this Agreement constitutes a legal, valid, and binding obligation of that party. Without limiting the generality of the foregoing, each party represents that its governing process has been followed in order to authorize the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement each warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting.
- 17.14. **Recording.** Grantor will record a Memorandum of the Easement in the real estate Records of Clackamas County, Oregon.

17.15. **Counterparts.** This Agreement may be executed in one or more counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, to be effective as of the Effective Date first above written.

[Signatures on following pages]

GRANTEE

Willamette Intake Facilities Commission, an Oregon intergovernmental entity

By: _____

Name: David Kraska

As Its: General Manager

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 2026, by David Kraska, as General Manager of the Willamette Intake Facilities Commission, an Oregon intergovernmental entity.

NOTARY PUBLIC for Oregon
My Commission Expires: _____

Exhibit A

Willamette Water Supply
February 7, 2025

CITY OF WILSONVILLE
31W23B 01900

Entire Property

Parcel I of that tract of land conveyed to City of Wilsonville, an Oregon municipal corporation, on September 4, 1998, by deed recorded as Document Number 98-083412, Clackamas County Deed Records, also being Parcel II of that tract of land in which a 49% ownership was conveyed to Tualatin Valley Water District, a water supply district, on July 28, 2000, by Special Warranty Deed recorded as Document Number 2000-048871, Clackamas County Deed Records, lying in the Southwest Quarter of Section 23, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2025.02.14 16:10:37-08'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2026

Exhibit B

Willamette Water Supply
February 7, 2025

CITY OF WILSONVILLE
31W23B 01900

WIF Pump Station Building

A portion of Parcel I of that tract of land conveyed to City of Wilsonville, an Oregon municipal corporation, on September 4, 1998, by deed recorded as Document Number 98-083412, Clackamas County Deed Records, also being a portion of Parcel II of that tract of land in which a 49% ownership was conveyed to Tualatin Valley Water District, a water supply district, on July 28, 2000, by Special Warranty Deed recorded as Document Number 2000-048871, Clackamas County Deed Records, lying in the Southwest Quarter of Section 23, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon, being more particularly described as follows:

COMMENCING at the Northwest corner of said Section 23 from which the north quarter corner of said Section 23 bears North 89°59'22" East a distance of 2631.37 feet; thence South 08°51'37" East a distance of 3042.16 feet to the POINT OF BEGINNING; thence North 85°12'33" East, 75.00 feet; thence South 04°47'27" East, 53.50 feet; thence South 85°12'33" West, 75.00 feet; thence North 04°47'27" West, 53.50 feet to the POINT OF BEGINNING.

Contains 4012 square feet (0.092 acres), more or less

Bearings and distances are based on the Oregon Coordinate Reference System, Portland Zone

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2025.02.14 16:11:04-08'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2026

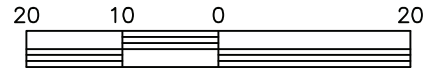
P.O.C.
NW COR SEC 23

N. 1/4 COR SEC 23
N89°59'22"E 2631.37'

S08°51'37"E
3042.16'

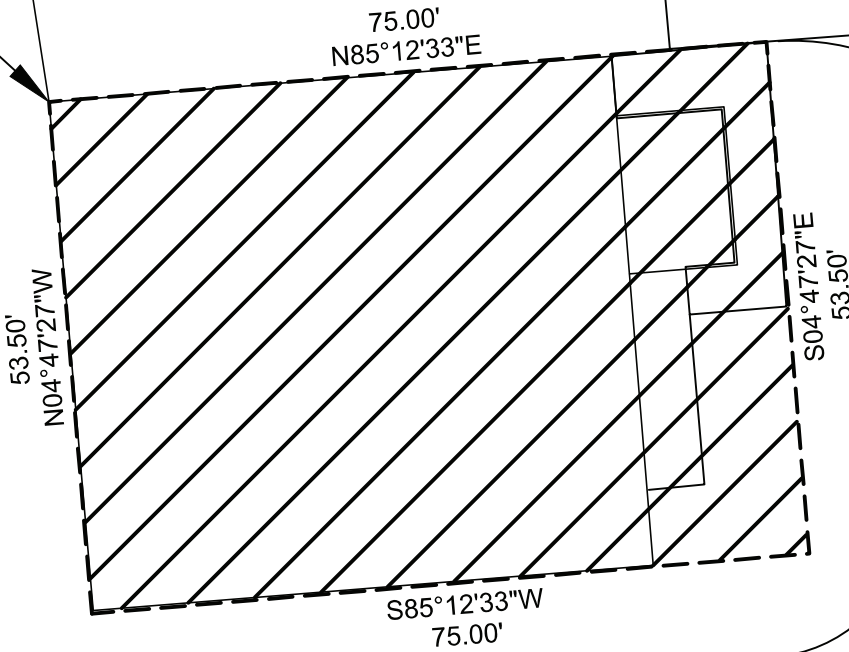


= EASEMENT FOR PUMP STATION
BUILDING
AREA = 4,012 SQ. FT.±



SCALE: 1" = 20'

P.O.B.



3 1W23B 1900
City of Wilsonville
(Doc. No. 98-083412)
Tualatin Valley Water District
(Doc. No. 2000-048871)

P.O.C.= POINT OF COMMENCEMENT
P.O.B.= POINT OF BEGINNING

WILLAMETTE INTAKE
FACILITIES COMMISSION

EXHIBIT C
SKETCH TO ACCOMPANY
WIF PUMP STATION BUILDING EASEMENT
SW1/4 S23 T3S R1W - TAX LOT 01900

Otak
808 SW 3rd Ave., Ste. 800
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Phone: (503) 287-6825
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project: 18439

DATE
2/7/2025

DRAWN BY
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