

RESOLUTION NO. 1725

A RESOLUTION AUTHORIZING CITY MANAGER TO EXECUTE ACCORD AGREEMENT BETWEEN CITY OF WILSONVILLE AND TUALATIN VALLEY WATER DISTRICT.

WHEREAS, the City of Wilsonville ("Wilsonville") and Tualatin Valley Water District ("TVWD") entered into an Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership, dated July 6, 2000, hereinafter referred to as "Master Agreement"; and

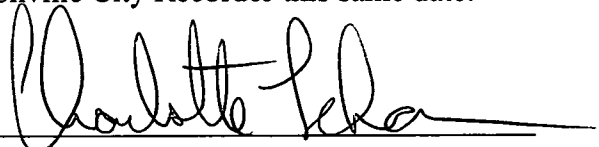
WHEREAS, pursuant to section 5 of the Master Agreement, Wilsonville and TVWD agreed to reach an accord in regards to Leasing of Supply Capacity, Future Expansion, Transfer of Ownership Interests in Supply Facilities, Right of First Offer, Future Voting Rights, Cooperation in Financing for Future Expenses and Defaults Regarding the Subject Matters of this Section 5 of Future Agreements by July 6, 2001; and

WHEREAS, Wilsonville and TVWD have negotiated in good faith and have reached an accord as to the above recited subject matters as well as to other areas set forth in the Master Agreement and Wilsonville and TVWD have documented the accord in the Accord Agreement, a copy of which is marked Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.

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

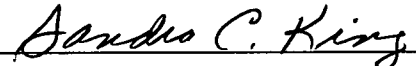
The City Manager is authorized to execute the Accord Agreement between the City of Wilsonville and Tualatin Valley Water District, a copy of which is marked Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.

ADOPTED by the Wilsonville City Council at a regular Council meeting thereof this 18th day of June, 2001, and filed with the Wilsonville City Recorder this same date.



CHARLOTTE LEHAN, MAYOR

ATTEST:



Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Councilor Helser	<u>Yes</u>
Councilor Barton	<u>Yes</u>
Councilor Kirk	<u>Yes</u>
Councilor Holt	<u>Yes</u>

Attachments:

Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership, dated July 6, 2000, referred to as "Master Agreement"

Accord Agreement, marked Exhibit A

JUN 21 2001

TUALATIN VALLEY
WATER DISTRICT**ACCORD AGREEMENT**

This Accord Agreement is made as of the 19th day of June, 2001 (the "Effective Date"), by and between CITY OF WILSONVILLE, an Oregon municipal corporation ("Wilsonville"), and the TUALATIN VALLEY WATER DISTRICT, an Oregon domestic water supply district formed under ORS Chapter 264 ("TVWD").

RECITALS

A. Wilsonville holds Permit No. 46319, which was issued on March 27, 1974, and authorizes Wilsonville to appropriate water from the Willamette River for municipal purposes at the rate of 30 cubic feet per second (19,389,450 gallons per day).

B. TVWD holds Permit No. 49240, which was issued on June 19, 1973, and authorizes TVWD to appropriate water from the Willamette River for municipal purposes at the rate of 202 cubic feet per second (130,555,630 gallons per day). TVWD may assign Permit No. 49240 to the Willamette Water Supply Agency ("WWSA").

C. Wilsonville and TVWD entered into an Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership, dated July 6, 2000, hereinafter referred to as "Master Agreement".

D. Pursuant to the Master Agreement between the parties dated July 6, 2000, TVWD purchased a 49% interest as Tenant in Common in certain real property from Wilsonville and Wilsonville retained a 51% interest in the property as Tenant in Common. The property is described in the Warranty Deed marked as Exhibit 1 and attached to the Master Agreement and incorporated by reference as though fully set forth therein (the "Property").

E. Pursuant to the Master Agreement, Wilsonville and TVWD have obtained necessary permits from the applicable regulatory government agencies and have commenced to design and build on the Property (i) an intake facility capable of drawing 120 million gallons per day (mgd); (ii) an intake line from the diversion point to the intake structure; (iii) a permanent, multi-barrier treatment plant with an initial capacity of 15 mgd and future, developed plant capacity of up to 70 mgd to treat water from the Willamette River so that it meets federal and state drinking water standards; (iv) transmission lines to Kinsman Road; and (v) access road bikeway and pedestrian pathway, collectively, the "Supply Facilities."

F. Pursuant to section 6.2.3 of the Master Agreement, Wilsonville and TVWD entered into an Operation and Maintenance Contract Between the City of Wilsonville, an Oregon Municipal Corporation, and Tualatin Valley Water District, an Oregon Domestic Water Supply District ORS Chapter 264 ("Owners"), and U.S. Filter Operating Services, Inc., a Delaware Corporation (USFOS), dated February 6, 2001, whereby US Filter would furnish all labor and materials and the like to properly operate and maintain the water treatment facilities as set forth therein.

G. Pursuant to section 5 of the Master Agreement, Wilsonville and TVWD agreed to reach an accord in regards to Leasing of Supply Capacity, Future Expansion, Transfer of Ownership Interests in Supply Facilities, Right of First Offer, Future Voting Rights, Cooperation in Financing for Future Expenses and Defaults Regarding the Subject Matters of this Section 5 of Future Agreements.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Accord Agreement, the Parties agree as follows:

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1. DEFINITIONS

Except as expressly provided herein, the definitions set forth in the July 6, 2000, Master Agreement regarding water treatment plant design, construction, operation and Property ownership and the definitions of the Operation and Maintenance Contract dated February 6, 2001, are incorporated herein by reference.

2. LEASING OF SUPPLY CAPACITY

2.1 Purpose

The purpose of this section is to acknowledge the rights of Wilsonville and of TVWD to lease from each other the unused portion of their respective 10 mgd and 5 mgd of the total 15 mgd capacity of the first phase of the treatment plant currently under construction, to establish the conditions under which such leasing may occur and to acknowledge the right to lease future capacity from each other based on future expansion of the Supply Facilities depending upon conditions and circumstances then and there existing and when future shares of capacities are known. This section is not intended to limit Wilsonville and TVWD from otherwise agreeing on leasing of supply capacity to each other.

2.2 Ownership Right to Lease

Wilsonville and TVWD have ownership interests in the project elements of the Supply Facility equal to each of their participating interest as defined in the definitions, section 4 and exhibit 3 of the Master Agreement. As set forth in section 4 of the Master Agreement, Wilsonville's participating interest is 10 mgd and TVWD's participating interest is 5 mgd of the first phase plant capacity for a total of 15 mgd, first phase plant capacity. Wilsonville shall have the right to lease to TVWD and TVWD to lease from Wilsonville such unused capacity of its 10 mgd as may be determined by Wilsonville to be reasonably available and prudent to be leased to TVWD pursuant to section 2.4 below or as they may otherwise agree. TVWD shall have the right to lease to Wilsonville and Wilsonville to lease from TVWD the unused capacity portion of its 5 mgd capacity as may be determined by TVWD to be reasonably available and prudent to be leased to Wilsonville pursuant to section 2.4 below or as they may otherwise agree.

2.3 Use of Supply Facilities

Wilsonville and TVWD shall each use the Supply Facilities in a manner consistent with prudent water utility practices and to minimize interference with each other's use of its respective share of capacity to meet its demand. Unless caused by system operation conditions not caused by the overusing party, any overuse of 10% or greater by either Wilsonville of its 10 mgd capacity or 10% or greater by TVWD of its 5 mgd capacity for two consecutive years or three out of five years, the overusing party shall compensate the other party at a lease rate as may be fairly and equitably agreed upon by the parties. In lieu of the above lease rate or in combination with it, Wilsonville and TVWD may agree to expand the Supply Facilities as set forth in this Accord Agreement or reduce demand so that overuse will cease to occur.

2.4 Mutual Planning Submittal

In order to make timely, reasonable and prudent judgments concerning meeting respective demand for capacity, the need to lease capacity, the ability to lease capacity, and the term and conditions of any such Lease, Wilsonville and TVWD shall each submit to the other commencing February 1, 2003 and February 1 of each fifth year thereafter, a 10-year planning forecast. The planning forecast shall set forth the respective projected demand, capacity to serve that demand, and identify any deficiencies in capacity by year for the 10-year period. Demand

shall include any sale of water from capacity agreed to or reasonably anticipated will be agreed to within the ten-year time frame. The capacity requirement for the Supply Facilities shall consist of the average of five consecutive days with the highest average peak day demands (mgd) imposed by Wilsonville and TVWD, respectively, for the summer period of May 15 to September 30. Wilsonville and TVWD shall agree on an appropriate course of action as they deem reasonably available and prudent, under the forecasted circumstances, including, but not limited to, leasing capacity from one to the other, both within and without the timeframe of such planning forecasts.

2.5 Leasing of Capacity Prior to Expansion to Serve Demand Needs Prior to Expansion

Wilsonville and TVWD agree the initial plant capacity share of each shall be first utilized to serve their respective demand needs. Thereafter, unless Wilsonville and TVWD otherwise deem it inappropriate, Wilsonville and TVWD agree that their respective unused share of plant capacity, if and when available in the 10-year planning forecast, shall first be utilized to serve the demand needs of the other prior to expansion of the Supply Facilities. Provided further, that in the event expansion of the Supply facilities occurs, then leasing as set forth herein shall likewise be the preferred alternative when readily available and prudent prior to any future subsequent expansions to serve demand needs.

2.6 Curtailment of Leasing Capacity

In any event, Wilsonville and TVWD agree that if an emergency or water shortage requires restriction on the deliverable supply of capacity to the lessor, then the lessor may employ a pro rata restriction of the deliverable supply leased to the lessee without penalty.

3. FUTURE EXPANSION

3.1 Purpose

The purpose of this section is to provide a notification procedure by which either Wilsonville or TVWD can provide the other with a Notice of Requested Expansion, a reasonable basis to establish the justification for the expansion request and justification to determine acceptance, acceptance with modification, or rejection, and reasonable time frames to

accomplish the above. Wilsonville and TVWD believe that first phase capacity should be sufficient to serve the demand needs through the initial 10-year planning forecast, but desire to establish a simple procedure to respond to an increase in anticipated demand whenever it may occur.

3.2 Condition precedent to requested expansion

If leasing is not reasonably available and prudent to meet respective demand needs and provided that either Wilsonville or TVWD holds permits to surface water rights as recited above or in addition to or in lieu thereof, Wilsonville or TVWD shall have the right to expansion as set forth in this section or as they may otherwise agree.

3.3 Notice of Requested Expansion

Based on the planning forecast submittal as required under Section 2.4 above, if either Wilsonville or TVWD desire to expand the Supply Facilities, then either Wilsonville or TVWD shall give to the other a Notice of Requested Expansion in writing, which notice shall provide the size of the expansion, the estimated time frame in which the expansion will need to be designed, constructed and on line, the estimated costs, the percent of the participating interest of the requestor and the acceptor, and the basis in the planning forecast upon which the request is being made.

3.4 Standards for Request and Acceptance, Modification or Rejection of Requested Expansion

Wilsonville and TVWD agree to apply standards of reasonableness and prudence to determine whether or not to request or to accept, modify, or reject the requested expansion set forth in the Notice of Requested Expansion. Such standards shall be applied to the accuracy of the information and/or any estimate provided in the Notice of Requested Expansion and the planning forecast. Such standards shall include, but not be limited to, taking into consideration the demand requested, the capacity of the treatment facilities as currently constructed or under construction, the available share of capacity owned or capable of being leased under section 2 above, financing considerations, generally accepted principles for utility planning in the municipal and domestic water utility industry, and that the initial participating interests in the

project elements of the Supply Facility were permitted, designed, constructed, and paid for to accommodate expansion as set forth in the Master Agreement.

4. TRANSFER OF OWNERSHIP INTERESTS IN SUPPLY FACILITIES

4.1 The purpose of this section is to ensure contractual obligations including, but not limited to, payments are not impaired or breached upon a transfer of ownership interests in the Property and the Supply Facility that the public's interests are preserved and maintained upon a transfer.

4.2 Provided a transfer of ownership, in whole or in part, in the Supply Facilities shall not impair or breach the Master Agreement, the Operation and Maintenance Agreement with USFOS, the design build construction agreement between Montgomery Watson, Wilsonville and TVWD, or bond covenants, loan covenants, or payment terms and conditions associated therewith, Wilsonville and TVWD may transfer their respective ownership interests, either in whole or in part, to the WWSA, another local government or water district without the consent of the non-transferring party and to a private entity with the consent of the non-transferring Owner. The consent of Wilsonville or TVWD as the case may be shall be based in its sole discretion on whether a transfer to an entity other than a local government or water district is in the best interest of, in the case of Wilsonville, its citizens and, in the case of TVWD, its customers. Provided further, however, any transfer shall be subject to the Right of First Offer set forth below in section 5.

5. RIGHT OF FIRST OFFER

5.1 Except as may be otherwise provided for in section 2.1.3 of the Master Agreement for TVWD to convey its property interest to WWSA, Wilsonville and TVWD agree not to sell, transfer, exchange, grant an option to purchase, lease, or otherwise dispose of its undivided interest in the Property, or any part of, or interest in, or its ownership interest in the Supply Facilities, or any part, or interest in, without first offering to the remaining Owner in writing ("Notice of Intent to Transfer") on the terms and conditions set forth in this Section. This right of first offer shall be perpetual unless it expires by its terms, or the parties mutually agree to its termination. This right of first offer shall run with and burden each Owner's undivided interest in the Property, the Owner and Owner's successors and assigns, and shall run

with and benefit the other Owner and its successors and assigns.

5.1.1 When an Owner receives the Notice of Intent to Transfer, it shall have the prior and preferential right to purchase the undivided interest in the Property or the ownership interest in the Supply Facilities, or both as the case may be, for cash. The notice shall disclose the terms and conditions the selling Owner has been offered by any third party to sell to it in order to give the other Owner fair opportunity to purchase. Such disclosure may be provided as confidential as allowed by law. The purchase price for each shall be the agreed or appraised fair market value of the undivided interest in the Property or ownership interest in the Supply Facilities as the case may be.

5.1.2 The receiving Owner shall give notice of its exercise of the right to purchase within 60 days after receipt of the written Notice of Intent to Transfer from the other declaring the property surplus and offering to sell to the receiving Owner. If the receiving Owner fails to timely give written notice to the selling Owner of the exercise of its right to purchase the offered, undivided interest in the Property and/or ownership interest in the Supply Facilities pursuant to the terms of this Section, then that Owner shall be entitled to sell, transfer or assign the undivided interest in the Property or the ownership interest in the Supply Facilities to a third-party, subject to section 4.2 above and section 2.1.3 and 2.1.4 of the Master Agreement, at such price, and on such terms and conditions acceptable to it, provided such terms and conditions are not inconsistent with the aforementioned fair opportunity to purchase.

5.2 Closing.

5.2.1 If an Owner exercises the right of first offer by electing to purchase the undivided interest, then the closing of the transaction contemplated by the Offer shall take place no later than one year after written notice of

exercise of the right to purchase subject to receipt of appraisal and negotiation of the purchase price.

- 5.2.2 At closing, the transferring Owner shall deliver a duly executed and acknowledged statutory warranty deed conveying the undivided interest free and clear of all liens and encumbrances, excepting only such matters as may be specifically referred to below, and shall pay the premium for the title insurance and share of escrow fees. At closing, the transferring Owner shall deliver a bill of sale of its ownership interest in the Supply Facilities and warranties regarding being free and clear of liens, any encumbrances, financing statements and other such warranties as are customarily provided under the circumstances or as may be agreed upon.
- 5.2.3 At closing, the purchasing Owner shall pay such amounts as may be required for recording fees, and its share of escrow fees.
- 5.2.4 Taxes, utilities and premiums for existing policies of insurance, and the current portion of assessments for governmental or quasi-governmental improvements, contractual payments, either due and owing or having been paid, for a time period which closing divides, shall be prorated between the parties as of the date of closing.
- 5.2.5 The transaction shall be closed when a mutually agreeable title insurance company is in a position to insure title to the undivided interest in the Property as provided below as well as performing a records search for liens, encumbrances or financing statements against the ownership interest in the Supply Facilities to establish free and clear title. The costs of escrow shall be shared equally by the parties.
- 5.2.6 The purchasing Owner shall be entitled to a standard owner's policy of title insurance insuring title to the undivided interest in it subject only to the standard printed exceptions and such additional exceptions as are acceptable. Costs of the policy shall be borne by the selling Owner.

5.2.7 Default. If either Owner shall fail or refuse to carry out any provision of this right of first offer, the other Owner shall be entitled to such remedy or remedies for breach of contract as may be available under applicable law, including without limitation the remedy of specific performance, if such other Owner has fully performed all of its obligations hereunder. Time is of the essence hereof.

6. OPERATION AND MANAGEMENT OF THE SUPPLY FACILITIES

6.1 Managing Owner, Duties, Annual Budget, Expenses and Owners

Wilsonville and TVWD are in accord and agree that in satisfaction and fulfillment of section 6.2.3 of the Master Agreement, the provisions of section 6, Operation and Management of the Supply Facilities; Future Agreement in the Master Agreement are incorporated by reference as if fully set forth herein.

7. FUTURE VOTING RIGHTS

7.1 The purpose of this section is to provide that Wilsonville and TVWD are in accord that as Owners they may have to reach future agreements, but that those agreements, as a practical matter, are based on existing contractual terms and conditions and standards for determinations between the two parties rather than voting. Wilsonville and TVWD further agree that a section on voting procedures and rights was in contemplation of both owners joining a separate intergovernmental entity, which was the WWSA, which is now not the case.

7.2 Wilsonville and TVWD shall have an equal right and obligation to manage, use, and operate the property and, as with the other agreements referenced herein, have entered into this Accord Agreement in the exercise of those rights.

8. COOPERATION IN FINANCING FOR FUTURE EXPENSES

8.1 Wilsonville and TVWD acknowledge that they have jointly and separately benefited from cooperation to date as Owners of the Property and the Supply Facilities and that each intends to cooperate with the other in reaching accord in the future including, but not

limited to, financing for future costs and expenses.

9. DEFAULTS REGARDING THE SUBJECT MATTER OF SECTION 5 OF THE MASTER AGREEMENT ADDRESSED BY THIS ACCORD AGREEMENT

9.1 Wilsonville and TVWD acknowledge and agree that to date all agreements referenced in this Accord Agreement that have been executed prior to the date of this Accord Agreement have been satisfactorily performed by Wilsonville and TVWD and neither is in default.

9.2 Wilsonville and TVWD acknowledge and agree that good faith negotiations have occurred and this Accord Agreements satisfies in full section 5, of the Master Agreement and Wilsonville and TVWD are not in default thereof.

9.3 Wilsonville and TVWD agree that the following sections and the provision contained therein of the Master Agreement are incorporated by reference as if fully set forth herein and any provision incorporated by reference which uses the term "this Agreement" shall mean this Accord Agreement as follows:

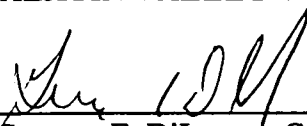
9.3.1 Master Agreement Section 9, Indemnity and Insurance, provisions 9.1 and 9.2 is incorporated by reference, save and except the reference in 9.1 to section 4.6 of the Master Agreement is changed and amended to be section 6.2.5 of the Master Agreement.

9.3.2 Master Agreement Section 10. Term is incorporated by reference.

9.3.3 Master Agreement Section 11. General Provisions 11.1 through 11.16 (includes dispute resolution) is incorporated by reference.

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

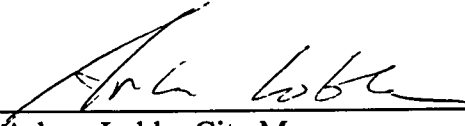
TUALATIN VALLEY WATER DISTRICT

By: 
Gregory E. DiLoreto, General Manager


APPROVED AS TO FORM


Clark I. Balfour, District Counsel

CITY OF WILSONVILLE

By: 
Arlene Loble, City Manager

APPROVED AS TO FORM


Michael E. Kohlhoff, City Attorney

COPY

ORIGINAL
to Sandy Ki

7/19/00

cc: Sandy W
2/1/00

**AGREEMENT REGARDING WATER TREATMENT PLANT
DESIGN, CONSTRUCTION, OPERATION, AND
PROPERTY OWNERSHIP**

This Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership ("Agreement") is made as of the 16 day of July, 2000 (the "Effective Date"), between the City of Wilsonville, a municipal corporation ("Wilsonville") and the TUALATIN VALLEY WATER DISTRICT, a water supply district formed under ORS Chapter 264 ("TVWD").

RECITALS

A. Wilsonville holds Permit No. 46319, which was issued on March 27, 1974, and authorizes Wilsonville to appropriate water from the Willamette River for municipal purposes at the rate of 30 cubic feet per second (19,389,450 gallons per day).

B. TVWD presently holds Permit No. 49240, which was issued on June 19, 1973, and authorizes TVWD to appropriate water from the Willamette River for municipal purposes at the rate of 202 cubic feet per second (130,555,630 gallons per day). TVWD may assign this permit to Willamette Water Supply Agency ("WWSA").

C. Wilsonville has purchased certain real property described in the copy of the Warranty Deed, marked Exhibit 1, attached hereto and incorporated by reference as though fully set forth herein (the "Property"). The Property is located near the points of diversion authorized by Permit Nos. 46319 and 49240. The location of the Property is also consistent with the Regional Water Supply Plan's recommendation for the location of a treatment plant. The Property is of a size and configuration which will accommodate a water treatment plant and intake facility for waters of the Willamette River to be appropriated, treated and used for domestic and municipal purposes in accordance with the above recited permits. On June 1, 2000, the City Council of the City of Wilsonville adopted Resolution No. 1646, approving a conditional use permit and site and design plans for a water treatment plant on the Property.

D. Wilsonville and TVWD have commenced to permit, design, and build upon approval by the applicable regulatory government agencies (i) an intake facility capable of ultimately drawing 120 million gallons per day (mgd); (ii) an intake line from the diversion point to the intake structure and (iii) a permanent, multi-barrier treatment plant with an initial capacity of 15 mgd and planned capacity of 70 mgd to treat the Willamette River water so that it meets federal and state drinking water standards; and (iv) transmission lines to Kinsman Road (v) access road, bikeway and pedestrian pathway (collectively, the "Supply Facilities").

E. Wilsonville and TVWD wish to enter into an Agreement pursuant to which they will allocate the costs of purchasing the Property and the design, construction, operation and maintenance of the Supply Facilities.

F. Wilsonville and TVWD wish to provide the opportunity for other local governments in the region (as may participate through TVWD and as may otherwise be provided for in this Agreement) to participate in the ownership of the Property and the ownership, development, operation and maintenance of the Supply Facilities.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Agreement, the Parties agree as follows:

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1.	DEFINITIONS	

"Agreement" means this Agreement, as it may be amended from time to time, together with all exhibits to it.

"Diversion Point" means the diversion point as mutually agreed by Wilsonville and TVWD and authorized by the Oregon Water Resources Department for appropriation of the waters of the Willamette River.

"Effective Date" has the meaning given to that term in the preamble to Agreement.

"Governing bodies" means the City Council of the City of Wilsonville and the Board of Commissioners of TVWD.

"Managing Owner" initially means City of Wilsonville. A change in Managing Owner shall only occur as provided for in this Agreement.

"Owners" means Wilsonville and TVWD. A change in Owners shall only occur as provided for in this Agreement.

"Ownership Interest" means the percent of interest of an owner in the real property as determined under Section 2.2.1.

"Participating Interest" means the percentage interest of an Owner in the Supply Facilities as determined under Section 4 of this Agreement.

"Party or Parties" means Wilsonville and the TVWD and, such other local governments and water districts as may participate in this Agreement in the future as provided for in this Agreement.

"Project Cost" means construction costs to be shared between the owners based on a proportional share of capacity, including the cost of all Development Review Board (DRB) requirements.

"Property" has the meaning given to that term in Recital C.

"Supply Facilities" has the meaning given to that term in Recital D.

"Technical Committee " means engineering representatives from the City of Wilsonville and TVWD.

"WWSA" means the Willamette Water Supply Agency, which has been created by intergovernmental cooperative agreement under ORS Chapter 190 among TVWD, Clackamas River Water, Canby Utility Board, City of Sherwood, City of Gladstone, City of Tigard, and City of Tualatin.

2. THE PROPERTY; CREATION OF PROPERTY OWNERSHIP INTEREST; MAINTENANCE AND COST ALLOCATION

2.1 Creation of Property Ownership Interest

2.1.1 In the form of the warranty deed ("Deed") set forth in Exhibit 1, recited and incorporated by reference above, Wilsonville shall convey to TVWD an undivided 49% interest as tenant in common in the Property and Wilsonville shall retain a 51% interest as tenant in common in the property. TVWD shall pay Wilsonville \$1,291,350, which includes interest accrued at the rate of 6% per annum from the City's original purchase date through June 30, 2000, which is agreed to be 49% of Wilsonville's original purchase price and of its reasonable expenses

incurred in acquiring the site. Closing costs for the Wilsonville transfer to TVWD shall be shared equally.

- 2.1.2 Title to the Property shall be held in the name of each of the Owners in its respective undivided interest. The Owners intend that their relationship, with respect to the Property, be a tenancy in common. The Recitals set forth above are incorporated herein and made a part of this Agreement and conveyance.
- 2.1.3 TVWD's 49% ownership interest may be conveyed in whole or in part by TVWD, with prior approval by Wilsonville to WWSA for a period of one year (365 days) from the effective date of this Agreement, and thereafter without prior approval by Wilsonville; provided, however, WWSA's membership remains one of local governments and water districts. Neither Wilsonville nor TVWD shall convey to any person or entity which is not a local government or water district without the prior consent of the other. Each party's consent shall be based in its sole discretion on whether an allocation or conveyance to an entity other than a local government or water district is in the best interest of, in the case of Wilsonville, its citizens and, in the case of TVWD, its customers. Nothing in this paragraph is intended to prevent TVWD from conveying to Wilsonville or Wilsonville from conveying to TVWD its respective interest as the parties may agree in the future.
- 2.1.4 Partition. During the term of this Agreement, no Owner shall seek or obtain through any legal proceedings an administrative or judicial partition of the Property or sale of the Property in lieu of partition, without the prior written consent of the other Owner. Section 2.1.3 is not intended or meant to create a partition of the Property and this paragraph on partition is not intended or meant to prevent an allocation and conveyance of TVWD's interest as set forth in 2.1.3.

2.2 Purpose

The Owners declare that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied and improved subject to the limitations, restrictions, covenants and conditions set forth in this Agreement, all of which are declared to be in furtherance of constructing and operating the Supply Facilities for the treating and using waters of the Willamette River for domestic and municipal water supply purposes.

The Owners agree that except as provided herein, the Property is dedicated for domestic and municipal water supply purposes. The areas discussed in subsections 2.2.1 – 2.2.7 are as set forth on Exhibit 2, attached hereto and incorporated by reference as though fully set forth herein.

- 2.2.1 Area 1 is the Northern portion of the site as set forth on Exhibit 2 and shall include an access road and bicycle and pedestrian access to Areas 2 and 3. Area 1 may be used for park and recreational purposes at the sole risk and cost of Wilsonville, but upon one year notice by either party to the other, park and recreation usage shall terminate to accommodate use for future domestic and municipal water supply facility capacity in excess of the 70 mgd facilities in Area 2, subject to required land use approvals and such other governmental approvals as may be required. Nothing in the foregoing sentence is intended to limit or restrict the parties from agreeing to use the property in any manner in support of the Supply Facilities and/or such governmental regulations as may be imposed on the parties for the operation of up to a 70 mdg capacity plant. This right to terminate on one-year's notice as conditioned above shall be a covenant running with the land set forth on the Deed from Wilsonville to TVWD.
- 2.2.2 Area 1 Costs. So long as no improvements are built on Area 1 in addition to those built as part of the initial supply facility project, the Owners will share the costs of maintaining and insuring the development Area. The Owners will also share the costs of maintaining, insuring and improving or restoring, as needed, the natural areas directly impacted by the bridge built across Arrowhead Creek and the stormwater discharge at the southwest corner of Area 3. The costs of maintenance and insurance shall be allocated based on the property Owners ownership interests, as established in section 2.1.1.
- 2.2.3 Area 2 is that portion on the site which includes the multi-barrier treatment plant with expansion up to 70 mgd (the wall and area behind the wall) as set forth in Exhibit 2.
- 2.2.4 Area 2 Costs. The cost of maintenance shall be proportioned to each owner based on capacity used as set forth in Section 4.
- 2.2.5 Area 3 is the "Meadow Area" and Water Feature as set forth on Exhibit 2 and is to be developed for passive recreational use and will have bicycle and pedestrian use and access. This public bicycle and pedestrian access will also extend to the Plant.
- 2.2.6 Area 3 Costs. The costs of Maintenance of Area 3 including the park improvements and the water features shall be solely the responsibility of and at the cost to the City of Wilsonville.
- 2.2.7 Area 4 is the 60' access easement, together with such other property and/or easements necessary for the alignment of the access roadway from the property to Wilsonville Road and the water transmission line from the Treatment Plant to Wilsonville Road as set forth in Exhibit 2. Thereafter, the transmission line will be in Wilsonville Road right-of-way, which

right-of-way is not intended to be conveyed to TVWD as part of this agreement, until it joins the City's transmission system at or about Station 67+00[±], Kinsman Road.

- 2.2.8 The cost of the maintenance shall be proportioned to each owner on the basis of capacity used as set forth in Section 4.
- 2.2.9 Bicycle and pedestrian access way costs. The costs of the maintenance and insurance of the bicycle and pedestrian access as described in Section 2.2.1 or as may be required by the City's Development Review Board shall be allocated based on the property owner's ownership interest as established in Section 2.1.1.
- 2.2.10 Billing and Accounting: The City of Wilsonville shall be responsible for Annually submitting a report of actual expenses in connection with the property, including insurance, together with anticipated costs for the next fiscal year. TVWD shall be billed quarterly for its share of the costs as defined in this Section 2.2.

3. DESIGN AND CONSTRUCTION OF SUPPLY FACILITIES

3.1 Preliminary Planning and Design

TVWD and Wilsonville, by this Agreement, commit to design and construct the Supply Facilities, which shall include initially a 15 mgd Multi-barrier Regional Water Treatment Plant according to the design build contract between Wilsonville and Montgomery Watson Americas, Inc., Montgomery Watson Construction, Inc., and Montgomery Watson, Inc. ("Montgomery Watson"), dated December 22, 1999, and to such end, have or will immediately commence:

- 3.1.1 Joint Planning Participation. Participation in necessary joint planning sessions for the Supply Facilities.
- 3.1.2 Contribution of their proportionate share of costs of preliminary design, preliminary engineering, permitting, and other fees as necessary set forth on Exhibit 3, attached hereto and incorporated by reference as though fully set forth herein. The Supply Facilities, including the multi-barrier plant, shall accommodate expansion up to 70 mgd on Area 2 with Area 1 reserved for an additional expansion of 50 mgd. The general configuration map of Area 2 on the above referenced Exhibit 2 will allow the Owners to expand the treatment plant in the future as they may further agree. Wilsonville has retained the project team of Montgomery Watson only for permitting, design, and construction of the initial increment of the Supply Facilities described in 3.1.

- 3.1.3 Wilsonville is and will be the Project Manager for the design-build of the Supply Facilities and the permitting responsibilities of Wilsonville and TVWD are set forth in Section 3.2 below.
- 3.1.4 The Technical Committee consists of engineering representatives from Wilsonville and TVWD. The Technical Committee has reviewed all requests for proposals and recommended a design-build team of Montgomery Watson. Wilsonville has entered into a design-build contract with Montgomery Watson Americas, Inc., Montgomery Watson Constructors, Inc. and Montgomery Watson, Inc., referenced in paragraph 3.1 above.

3.2 Permit Applications

Wilsonville as Project Manager shall be the lead agency in negotiating required permits for construction of the Supply Facilities.

- 3.2.1 Point of Diversion TVWD Permit Responsibility. TVWD shall be responsible to obtain, at its sole cost and expense, the transfer of the point of diversion under its water rights permit No. 49240 to the subject property and any extension to develop its permit or relating to the application of the water to beneficial use.
- 3.2.2 Wilsonville Permit Responsibility. Except as provided in 3.2.1, Wilsonville shall be responsible to obtain all other required permits and approvals currently needed to construct the Supply Facilities, such as:
 - 3.2.2.1 Section 404 Permits under the Clean Water Act through the Division of State Lands and the Army Corps of Engineers;
 - 3.2.2.2 Any approval necessary from the Oregon Division of State Lands for use of submerged or submersible lands for the intake, if that is in addition to the 404 Permit;
 - 3.2.2.3 Any permit from the Water Resources Department for Wilsonville's point of diversion, time extension, or application of water to beneficial use;
 - 3.2.2.4 Any permit necessary from the Oregon Department of Fish & Wildlife, the United States Fish & Wildlife Service or the National Marine Fisheries Service through consultation; and
 - 3.2.2.5 Any other permit or approval required for the project.
- 3.2.3 Wilsonville Permit Process. Wilsonville's Development Review Boards and the City Council have approved a conditional use land development permit in the name of the Project. Wilsonville further agrees to, in good

faith, assist and support TVWD in the issuance of all permits or approvals for pumping and transmission facilities from Station 67+00^{+/-}, Kinsman Road north through the City limits and any area outside the Wilsonville city limits where it has a planning area agreement with Clackamas County, Washington County, or Metro, to enable TVWD to provide water from the Supply Facilities to users outside the City. Wilsonville agrees to expedite where and when practicable Wilsonville's approval to any permits, plans, specifications, or detailed drawings which may be required for the construction of TVWD only water facilities beyond those described as Supply Facilities.

- 3.2.4 Expedited Design and Construction; Cooperation. TVWD also understands and acknowledges that Wilsonville must have the design and construction of the Supply Facilities expedited in order to meet Wilsonville's emergency of lack of municipal water supply and to meet Wilsonville's obligations under Senate Bill 686 and its contract with the Department of Corrections ("DOC") to supply water to DOC's new prison site. TVWD agrees to cooperate in an expeditious manner to assist in design and construction of the Supply Facilities.

3.3 Construction

- 3.3.1 Project Management. During construction, Wilsonville will, as Project Manager, convene the Technical Committee at least weekly to review project schedules and performing progress payment requests, change orders and punch list items
- 3.3.2 Progress Payments. Progress payments, during design and construction, will be billed by Wilsonville according to the allocation of assigned capacity of individual components of the system as set forth on Exhibit 3 and the schedule for payments set forth in the above referenced design-build contract and the exhibits thereto. The total payment of a party will not exceed the allocated cost of Exhibit 3 unless the governing body of that party has approved. TVWD shall establish an interest bearing account, with interest to TVWD, from which the Finance Director of the City of Wilsonville will be authorized to withdraw TVWD's share for design/build progress payments on such estimated payment schedule as the Owners agree. Money shall be deposited monthly on the basis of the estimated draw required for the next month's payment. At no time prior to substantial completion shall there be less than \$1 million in the account.
- 3.3.3 Dispute resolution; maintaining construction. Any disputed amount shall be resolved in accordance with the Dispute Resolution Procedures of Section 11.15 below. However, notwithstanding the foregoing resolution procedures, during construction, no participant dispute will cause cessation or delay of work by the contractor. If the contractor threatens to

suspend or terminate work because of a dispute over nonpayment, the parties hereto agree to make such payments to Wilsonville to resolve contractor issues and will expressly reserve all rights regarding the ultimate allocation of costs or obligations paid to the contractor which will be resolved by dispute resolution.

3.3.4 Post Construction. Following construction, the Technical Committee or the Owners' representatives, as the case may be, shall meet as needed to review and recommend to the Owners on matters related to warranty or other contract performance issues.

4. ALLOCATION OF COSTS FOR SUPPLY FACILITIES CONSTRUCTION AND OPERATIONS

4.1 Initial Participating Interests

Except as otherwise provided herein, Owners shall have an equal right and obligation to use and operate the Supply Facilities. The initial Supply Facilities project will be designed so that Wilsonville and TVWD, as the initial Parties to this Agreement, shall have the following Participating Interests:

	Wilsonville in mgd	TVWD in mgd	Total in mgd
First phase plant capacity	10	5	15
River intake screens	20	50	70
Intake line and structures	20	100	120
Intake initial pump capacity	10	5	15
Raw waterline and plant piping	20	50	70
Finished water transmission main to Wilsonville Road	20	50	70
Access Road, Bikeway and Pedestrian Paths	20	50	70

The interests of the owners in each of the project elements are further identified in Exhibit 3 attached to this Agreement.

4.1.1 Adjustment for Regulations Capital Improvements. The plant has been designed to meet all existing and anticipated Environmental Protection Agency and State Health Division Requirements for operation of water treatment plants. Nevertheless, it is possible that changing requirements will require additional construction to meet new regulatory requirements. The Managing Owner will coordinate the financing design and construction of the required improvements. The cost of these improvements will be distributed based on ownership of capacity in the facility requiring mandatory improvements. If a new facility is required,

then costs will be prorated based on an overall distribution of cost based on their ownership in the entire treatment plant.

4.1.2 Adjustments for Capacity. It is recognized that the capacity of the Actiflow system and the mixed media filters are based on conservative historical comparisons. Any subsequent adjustment in capacity of the Actiflow system or the mixed media filters will be distributed based on a pro rata share of the then existing capacity ownership.

4.2 Adjustments for Development Review Board Improvements.

The parties agree that improvements imposed by the City's Development Review Board will be a Project cost. Additional amenities not required by the Development Review Board will be paid for at the sole expense of the party requesting such amenities.

4.3 Construction Costs and Ownership Capacity; TVWD Total Costs.

Exhibit 3, attached hereto and incorporated by reference as though fully set forth herein, identifies the proportionate share of the construction costs based on ownership capacity for each of project elements of the initial Supply Facilities, the finished transmission and accessory facilities extending to Station 67+00^{+/}, Kinsman Road, and the associated public roadway, bicycle and pedestrian access. The total cost to TVWD of the supply facilities shall not exceed \$17,000,000.

5. FUTURE AGREEMENTS

In addition to the negotiation in good faith of a future Operational and Management agreement reference in Section 6.2.3, Wilsonville and TVWD agree to negotiate in good faith to reach an accord within one year (365 days) from the effective date of this Agreement with regard to the following subject matters: Leasing of Supply Capacity, Future Expansion, Transfer of Ownership Interests in Supply Facilities, Right of First Offer, Future Voting Rights, Cooperation in Financing for Future Expenses, and Defaults Regarding the Subject Matters of this Section 5 on Future Agreements.

**6. OPERATION AND MANAGEMENT OF THE SUPPLY FACILITIES;
FUTURE AGREEMENT**

6.1 Managing Owner

Wilsonville shall have the initial responsibility as Managing Owner to manage, operate, repair and replace the Supply Facilities. In the event that Wilsonville's water treatment plant capacity usage becomes less than 50% of annual plant production usage, TVWD may assume the Managing Owner function by delivering to Wilsonville notice of its election. The election shall become effective on July 1 following delivery of the election no less than one year in advance. Failure by TVWD to exercise this election in any year does not constitute a waiver of its right to exercise the election in a following

year, provided that Wilsonville's water treatment plant usage remains below 50% of annual plant production usage.

6.2 Duties of the Managing Owner

The Managing Owner shall manage the operation and maintenance of the Property and of the Supply Facilities, and shall have the responsibility and authority to perform the following functions and may make decisions with respect to such matters, unless otherwise provided in this Agreement:

- 6.2.1 **Operation, Maintenance, Repair, and Replacement.** To contract or perform work with its own forces for operation, maintenance, repair and cleaning of Area 2 and Area 4, and those shared portions of Areas 1 and 3 described in Section 2.2 pursuant to an approved budget, or other approval of the Owners.
- 6.2.2 **Managing Owners use of own work forces.** The Managing Owner may perform work with its own forces and charge the other Owner therefor or by contract with another party. However, TVWD and Wilsonville are in the process of moving forward to select a third party for operation and maintenance of the supply facilities. To the extent that any Owner uses its own employees in the performance of its duties under this Agreement, that entity shall be responsible for complying with all applicable state and federal laws and for all employment related benefits and deductions, workers' compensation premiums and pension contributions.
- 6.2.3 **Future Agreement.** It is contemplated that a more detailed agreement between Wilsonville and TVWD for managing and governing the operation will be entered into and the provisions of this section will either be incorporated or replaced in whole or in part in such agreement.
- 6.2.4 **Coordination of Water Treatment Plant Operations with Owners' requirements.** As necessary, the Managing Owner for the water treatment plant will coordinate meetings between the Supply Facilities operators and the owners to coordinate ongoing water demands, water quality concerns and any other ongoing operational considerations.
- 6.2.5 **Insurance.** To obtain or renew a policy of property insurance insuring the Supply Facilities against loss or damage by fire and other hazards covered by a standard policy of fire insurance with extended coverage endorsements written for the full replacement value of the Supply Facilities. TVWD and Wilsonville will also obtain or renew a policy of public liability and property damage insurance with a single limit of not less than \$1,000,000. The policies will name Wilsonville and TVWD as insureds and such other Owners as may from time to time become a party to this Agreement.

- 6.2.6 **Charges.** To collect and deposit the charges due from Owners into an account established for the Property; to mail written notice to any Owner who is more than 30 days delinquent in payment of any charges; and to mail written notice to the Owners for additional charges whenever it appears that the funds on hand will be insufficient to cover future expenses.
- 6.2.7 **Payment of expenses.** To pay when due the expenses of the Property, and all other expenses or payments duly authorized by the Owners.
- 6.2.8 **Records.** To maintain complete and accurate records of all receipts and expenditures for the Owners.
- 6.2.9 **Improvements or Fixtures.** No improvements or fixtures shall be made or attached to the Property which could cause interference with the operation of the Supply Facilities or be an obligation of a fiscal nature for the Owners without the prior written consent of the Owners.
- 6.2.10 **Meter Calibration.** The Managing Owner will ensure that for operation of the Willamette River water treatment plant all flow meters are calibrated annually.

6.3 Annual Budget, Expenses, and Reporting

- 6.3.1 **Books, Reports and Accounting.** Quarterly, and at other times as may be requested in writing by the Owners, statements shall be prepared by the Managing Owner, which shall show all income, receipts, expenses and costs in connection with the Property and Supply Facilities. The quarterly statement shall be delivered to each Owner within thirty (30) days of the end of each quarter. All such books of account or other records may be examined and copies of books and records may be made by any Owner at reasonable times upon reasonable notice. Additionally, by January 31 of each year, the Managing Owner shall provide to the Owners a budget for anticipated expense for the next fiscal year for approval of each owner's governing body.

6.4 Damage Claims

It is recognized there may be claims for damages arising out of the operation of these jointly used facilities or that there may be litigation or other unforeseen costs or expenses incurred in connection with these Supply Facilities that is not covered by the previously mentioned insurance. Accordingly, it is agreed that all such damages, costs and expenses not specifically provided for elsewhere herein shall be shared by the Owners in pro-ratio to their participating interests.

6.5 Separate Accounts

The Managing Owner shall maintain one or more separate funds/accounts for the Property and Supply Facilities on which the Managing Owner is the authorized signatory. Reserves for the Property and Supply Facilities shall be invested in legally authorized investment vehicles.

7. INVOLUNTARY LIENS AND ENCUMBRANCES

7.1 Any involuntary lien or encumbrance on an Owner's undivided interest including, but not limited to, any judicial attachment, any judgment lien, any lien arising out of the order or judgment of any court, and any lien arising under federal or state bankruptcy or insolvency laws, shall be discharged by the Owner, and the undivided interest released, within thirty (30) days after such lien or encumbrance attaches to the Owner's undivided interest. The failure to discharge the lien and obtain the release of the undivided interest as required above, or to post security in lieu thereof, within the stated time shall constitute a default of this Agreement. With respect to such default and the lien or encumbrance causing the same, the Non-Defaulting Owner shall have the rights granted Non-Defaulting Owner under the laws then and there existing.

7.2 The Owner against whose interest an involuntary lien or encumbrance attaches may, within thirty (30) days after attachment, deposit cash, a corporate surety bond or other security satisfactory to the other Owner; the deposit shall be in an amount sufficient to discharge the lien or encumbrance, costs, attorney fees and other charges which could accrue as a result of a foreclosure sale under the lien or encumbrance. Upon making the deposit, the Owner shall not be considered in default and shall be entitled to contest the lien in a legal proceeding, and any appeal thereof. Any deposit made by Owner herein shall go into an escrow account with a third party mutually agreed on by Owners with instructions that said deposit shall be released to the depositing Owner upon discharge of the lien or encumbrance requiring the deposit, or, if said lien or encumbrance is not discharged within a reasonable period of time, not to exceed one (1) year, the deposit shall be applied to the payment of the lien or encumbrances. Provided, however, the one year period shall be extended to the date of final judgment in the case of any contested lien, including of appeal.

8. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Parties as follows:

8.1 That it is a legal entity duly organized under the laws of the State of Oregon;

8.2 That it has the capacity and authority to enter into and perform this Agreement and all transactions contemplated in this Agreement pursuant to the laws of the state of Oregon and its charter;

8.3 That all actions required to authorize it to enter into and perform this Agreement have been properly taken;

8.4 That it will not breach any other Agreement or arrangement by entering into or performing this Agreement and that this Agreement has been duly executed and delivered by it and is valid and binding upon it in accordance with its terms;

8.5 That Wilsonville has determined upon reasonable inquiry the Property does not have violations of any environmental law which cannot be reasonably mitigated during construction and that all contingencies prior to Property purchase have been satisfied; and

8.6 That TVWD has received a copy of the preliminary title report No. 216629 from Chicago Title Insurance Company, and acknowledges and accepts the exceptions and encumbrances thereon.

9. INDEMNITY AND INSURANCE

9.1 In addition to insurance which is obtained under Section 4.6, each Owner may maintain liability insurance insuring their respective operations on the Property or Supply Facilities.

9.2 Each Owner shall, within the limits of the Oregon Tort Claims Act, ORS 30.260-30.300, save, defend and hold harmless the other Owner or Owners from any claim for damages or injury arising from or alleged to have arisen from the sole negligence or willful act of the Owner in the performance of this Agreement. Each Owner shall be solely liable for any fine or penalties attributable to its performance of its duties under this Agreement and that are caused by its willful conduct or gross negligence.

10. TERM

The term of this Agreement shall commence on the Effective Date and shall be perpetual, unless the Owners otherwise agree in writing.

11. GENERAL

11.1 Notices

All notices, payments and other communications to the Parties under this Agreement must be in writing, and shall be addressed respectively as follows:

Wilsonville: **City of Wilsonville**
Attention: City Manager
30000 SW Town Center Loop E.
Wilsonville, OR 97070
Telecopy No. 503-682-1015

TVWD: **Tualatin Valley Water District**
Attention: General Manager
PO Box 745
Beaverton, OR 97075
Telecopy No. 503-649-2733

All notices shall be given by (i) personal delivery to the Owner, (ii) certified or registered mail, return receipt requested, or (iii) electronic communication followed immediately by registered or certified mail return receipt requested. All notices shall be effective and shall be deemed delivered (a) if by personal delivery, on the date of delivery, (b) if by certified or registered mail on the date delivered to the United States Postal Service as shown on the receipts; and (c) if by electronic communication, on the date the confirmation is delivered to the United States Postal Service as shown on the actual receipt. Upon a change in ownership, a new Owner shall, upon entering into this Agreement, notify the other Owner or Owners of their contact person, address and telecopy number. An Owner may change its address from time to time by notice to the other Owners.

11.2 Waiver

The failure of an Owner to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision of this Agreement shall not constitute a waiver of any provision of this Agreement or limit the Owner's right thereafter to enforce any provision or exercise any right.

11.3 Modification

No Modification of this Agreement shall be valid unless made in writing and duly executed by the Owners. As the context may require, reference to the singular shall mean the plural and the plural shall mean the singular.

11.4 Force Majure

The obligations of an Owner, other than the payment of money, shall be suspended to the extent and for the period that performance is prevented by any cause, whether foreseen, foreseeable or unforeseeable, beyond the Owner's reasonable control if the Owner is making a good faith effort to resolve or avoid the cause, including without limitation labor disputes (however arising and whether or not employee demands are reasonable or within the power of the Owner to grant); acts of God, laws, regulations, orders, proclamations, instructions or requests of any government or governmental entity; judgments or orders of any court; inability to obtain on reasonably acceptable terms any public or private license, permit or other authorization; curtailment or suspension of activities to remedy or avoid an actual or alleged, present or prospective violation of

federal, state, or local environmental standards; acts of war or condition arising out of or attributable to war, whether declared or undeclared; riot, civil strife, insurrection or rebellion, fire, explosion, earthquake, storm, flood, sinkholes, drought or other adverse weather conditions out of the ordinary; material delay or failure by suppliers or transporters of materials, parts, supplies, services or equipment or by contractors' or subcontractors' shortage of, or material inability to obtain, labor, transportation, materials, machinery equipment, supplies, utilities or services; accidents, breakdown of equipment, machinery or facilities, or any other cause whether similar or dissimilar to the foregoing, provided that the affected Owner shall give notice to the other Owner within 30 days of the suspension of performance or as soon as reasonably possible, stating in such notice the nature of the suspension, the reasons for the suspension and the expected duration of the suspension. The affected Owner shall resume performance as soon as reasonably possible.

11.5 Implied Covenants

The Owners agree that in construing this Agreement no covenants shall be implied between the Owners except the covenants of good faith and fair dealing.

11.6 Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

11.7 Interpretation of Law

This Agreement will be interpreted by the laws of the State of Oregon and any interpretation and any court action will be initiated through the County court in which the water treatment plant is located, i.e., Clackamas County Circuit Court.

11.8 Remedies Not Exclusive

Each and every power and remedy specifically given to the Non-Defaulting Owner shall be in addition to every other power and remedy now or hereafter available at law or in equity (including the right to specific performance), and each and every power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission in the exercise of any such power or remedy and no renewal or extension of any payments due under this Agreement shall impair any such power or remedy or shall be construed to be a waiver of any default.

11.9 Survival of Terms and Conditions

The provisions of this Agreement shall survive its termination to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

11.10 Successors and Assigns

This Agreement shall bind and inure to the benefit of the Owners and their successors and assigns.

11.11 Time is of the Essence

A material consideration of the Owners for entering into this Agreement is that each Owner will make all payments as and when due and will perform all other obligations under this Agreement in a timely manner. Time is of the essence of each and every provision of this Agreement.

11.12 Counterparts

This Agreement may be executed in counterparts, all of which taken together shall constitute a single Agreement.

11.13 Limitations

This Agreement shall not be construed to create a partnership between the Owners or to authorize any Owner to act as agent for any other Party or Parties except as expressly provided in this Agreement.

11.14 Attorneys' Fees

If any suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing Owner shall be entitled to recover from the other Owner such sums as a court may adjudge reasonable as attorneys' fees at trial, on appeal, or on any petition for review, and in any proceedings in bankruptcy or arbitration, in addition to all other sums provided by law.

11.15 Dispute Resolution

If a dispute arises between the parties regarding this Agreement, the parties shall attempt to resolve the dispute through the following steps:

Step One – Negotiation: The Managers or such other persons designated by each of the disputing Owners will negotiate on behalf of the entity they represent. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each Manager or designated person and ratified by their respective governing body, which shall be binding upon the Owners.

Step Two – Mediation. If the dispute cannot be resolved within 30 days of commencing Step One, the parties shall submit the matter to non-binding mediation before the United States Arbitration and Mediation Service of Portland, Oregon. The Owners shall attempt to agree on a mediator. If they cannot agree, then the Owners shall request a panel according to the USA&M Rules. The cost of mediation shall be borne equally between the Owners. Each Owner shall be responsible for its own costs and fees therefor. The Owners agree to mediate in good faith. If the issues are resolved at this Step, a written determination of such resolution shall be signed by each Manager and ratified by their respective Board or Council.

Step Three – Arbitration. If the Owners are unsuccessful at Steps One and Two, then the dispute shall be settled by arbitration in accordance with the rules, then obtaining, of the United States Arbitration and Mediation Service of Portland, Oregon, and judgment upon the award rendered may be entered in any court having jurisdiction

thereof. The decision of the arbitration board shall be final and binding upon all Owners hereto, and there shall be no appeal to any court therefrom. Expenses of arbitration shall be borne by the losing Owner. Each Owner shall pay its own attorney fees in such arbitration unless the arbitration board orders otherwise.

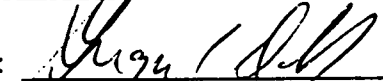
The Owners stipulate that the remedies at law in the event of any default or threatened default by either Owner hereto are not and will not be adequate, that such terms may be specifically enforced by a decree for the specific performance thereof or by an injunction against a violation thereof or otherwise, and that the remedies of specific performance and injunction will not impose undue hardship upon either Owner. The Owners agree that any arbitrator shall have the authority to order specific performance or to issue an injunction as provided for herein.

11.16 Entire Agreement

This Agreement, including all attached exhibits, contains the entire and final understanding of the Owners and supersedes all prior Agreements and understandings between the Owners related to the subject matter of this Agreement.

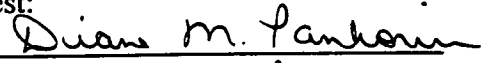
IN WITNESS WHEREOF, the Owners have executed this Agreement as of the Effective Date.

TUALATIN VALLEY WATER DISTRICT

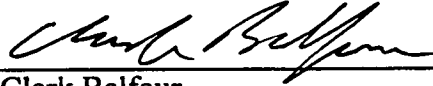
By: 
GREGORY E. DiLORETO
General Manager

CITY OF WILSONVILLE

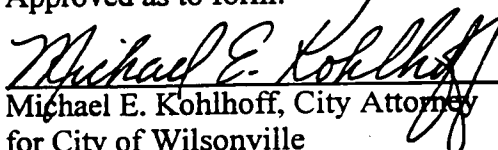
By: 
ARLENE LOBLE
City Manager

Attest:

Diane M. Pantorin
Acting City Recorder

Approved as to form:


Clark Balfour,
Attorney for Tualatin Valley Water Dist.

Approved as to form:


Michael E. Kohlhoff, City Attorney
for City of Wilsonville

EXHIBITS:

- Exhibit 1** **Warranty Deed**
- Exhibit 2** **General Configuration of Supply Facilities and Areas 1, 2, 3 and 4**
- Exhibit 3** **Allocation of Construction Costs Between Owners**

SPECIAL WARRANTY DEED

City of Wilsonville, an Oregon Municipal corporation, Grantor, grants, conveys and specially warrants to Tualatin Valley Water District, a water supply district, Grantee, an undivided forty-nine percent (49%) interest as tenant in common, and the City of Wilsonville reserves to itself the remaining fifty-one percent (51%) interest as tenant in common, in and to the following described real property free of encumbrances created or suffered by the Grantor except as specifically set forth herein, situated in Clackamas County, Oregon, to-wit:

Parcels I and II, together with Parcel III, an easement, as described in the attached Exhibit A and incorporated by reference herein.

The true consideration for this conveyance is \$1,291,350.00.

The said property is free of all encumbrances created or suffered by Grantor, except easements, access agreements, roadway agreements, and maintenance agreements of record, and changes (if any) in the location of the Willamette River and shall be subject to the following covenants to run with the land:

- 1. The above described real property is dedicated, conveyed and granted for domestic and municipal water supply purposes and such accessory uses as may be necessary and convenient thereto, together with the following purposes:**
 - 1.1 Area 1, which is the northern portion of the property as set forth in Exhibit B, attached hereto and incorporated herein, shall include an access road and bicycle and pedestrian access to Areas 2 and 3. The Grantor reserves Area 1 for park and recreational purposes at the sole risk and cost of Grantor; provided, however, upon one-year notice by either Grantor or Grantee to the other, park and recreation usage shall terminate to accommodate use for future domestic and municipal water supply facility capacity in excess of the 70 mgd facilities in Area 2, subject to required land use approval and such other governmental approvals as may be required. Nothing in the foregoing sentence is intended to limit or restrict the parties from agreeing to use the property in any manner in support of the Supply Facilities and/or such governmental regulations as may be imposed on the parties for the operation of up to a 70 mgd capacity plant.**

After recording, return to:
City Recorder, City of Wilsonville
30000 SW Town Center Loop E.
Wilsonville, OR 97070

Until requested otherwise, send tax statements to:
No Change

- 1.2 Area 2 is that portion on the site which includes the multi-barrier treatment plant with expansion up to 70 mgd (the wall and area behind the wall) as set forth in Exhibit B.
 - 1.3 Area 3 is the "Meadow Area" and Water Feature as set forth on Exhibit B and is to be developed for passive recreational use and will have bicycle and pedestrian use and access. This public bicycle and pedestrian access will also extend to the Plant.
 - 1.4 Area 4 is the 70' access easement, together with such other property and/or easements necessary for the alignment of the access roadway from the property to Wilsonville Road and the water transmission line from the Treatment Plant to Wilsonville Road as set forth in Exhibit B. Thereafter, the transmission line will be in the Grantor's Wilsonville Road right-of-way until it joins the City's transmission system at or about Station 67⁰⁰^{+/-} of the Grantor's Kinsman Road right-of-way. The Grantor's Wilsonville Road and Kinsman Road right-of-ways are not intended to be conveyed to Grantee as part of this deed or otherwise.
2. Grantee's 49% ownership interest may be conveyed in whole or in part by Grantee, with prior approval by Grantor to the Willamette Water Supply Agency (WWSA) for a period of one year (365 days) from June 30, 2000, and thereafter without prior approval by Grantor; provided, however, WWSA's membership remains one of local governments and water districts. Neither Grantor nor Grantee shall convey to any person or entity which is not a local government or water district without the prior consent of the other. Each party's consent shall be based in its sole discretion on whether an allocation or conveyance to an entity other than a local government or water district is in the best interest of, in the case of Grantor, its citizens and, in the case of Grantee, its customers. Nothing in this paragraph is intended to prevent Grantee from conveying to Grantor or Grantor from conveying to Grantee its respective interest as the parties may agree in the future.
 3. Neither Grantor nor Grantee shall seek or obtain through any legal proceedings an administrative or judicial partition of the Property or sale of the Property in lieu of partition, without the prior written consent of the other. Paragraph 2 above is not intended or meant to create a partition of the Property and this paragraph on partition is not intended or meant to prevent an allocation and conveyance of Grantee's interest as set forth in paragraph 2 above.
 4. Nothing in the above covenants is intended to prevent a deletion, amendment, or modification of the above covenants if expressly agreed to by Grantor and Grantee, their respective successors in interest, if any, in writing and duly recorded.

Grantee has inspected the said property and accepts the condition of the said property as is.

This Deed fully satisfies paragraphs 2.1 and 2.2 of that certain Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership, which document is a matter of record and on file with both the Grantor and Grantee.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

IN WITNESS WHEREOF, the Grantor has executed this instrument this ____ day of _____, 2000.

GRANTOR: CITY OF WILSONVILLE

By _____
Charlotte Lehan

Title: Mayor

ATTESTED TO:

By _____

Date: _____

STATE OF OREGON)
) ss
County of Clackamas)

On this ____ day of _____, 2000, before me, a notary public in and for said County and State, personally appeared Charlotte Lehan, known to me to be the Mayor of the City of Wilsonville and whose name she subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

Notary Public for Oregon
My Commission Expires: _____

Order No: 216629

LEGAL DESCRIPTION

PARCEL I:

Being a part of the R. V. Short Donation Land Claim in Township 3 South, Range 1 West, Willamette Meridian, in the County of Clackamas and State of Oregon, bounded and described as follows, to-wit:

Beginning at a point on the line between Sections 22 and 23, said township and range, 792.23 feet South 0°03' East of the Northwest corner of said Section 23; running thence South 0°03' East on said section line 604.99 feet to the Southwest corner of M.A. Holbrook Tract as recorded in Book 159, Page 546, Records of Deed for Clackamas County, Oregon; thence North 89°50' East 1239.0 feet along the South boundary of the said Holbrook Tract to the East line of the above mentioned Short DLC; thence North 0°17' West along the East boundary of the said Short DLC 545.7 feet to a point; thence North 87°25' West 1237.9 feet to the place of beginning.

EXCEPT the West 20 feet thereof conveyed for private roadway.

AND FURTHER EXCEPTING THEREFROM that portion included in Quit Claim Deed to Joe Bernert Towing Co., Inc. recorded December 29, 1987 as Recorder's Fee No. 87057703.

PARCEL II:

A tract of land in a portion of the Robert V. Short DLC No.46 located in the Northwest and Southwest one-quarters of Section 23, Township 3 South, Range 1 West of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point on the North line of said Section 23, that bears East a distance of 20.00 feet from the Northwest corner of said Section 23; thence South 0°03'00" East, parallel with and 20 feet Easterly of the West line of said Section 23, a distance of 1397.22 feet to an interior angle corner in the Northerly line of that tract of land conveyed to Hardy S. Young by Deed, described in and recorded under Fee Number 74-10618 Clackamas County Deed Records; thence North 89°51' East, along said Young's North line, a distance of 580.00 feet to a 5/8 inch iron rod at the Northwest corner of that tract of land conveyed as a Tract I to Joe Bernert Towing Company, Inc., in a contract recorded under Fee Number 75-9882, Deed Records; thence South 0°03' East, along the Westerly line of said Towing Company Tract, a distance of 220.00 feet to a 5/8 inch iron rod at the Northeast corner of that tract of land conveyed to Joe Bernert Towing Company, Inc., by a contract described in and recorded under Fee Number 90-2243, Deed Records; thence South 89°51' West, along the Northerly line of last said tract, a distance of 60.00 feet to a 5/8 inch iron rod; thence South 77°08'26" West, along last said Towing Company Tract, a distance of 492.25 feet to a 5/8 inch iron rod; thence South 0°03' East, along the Westerly line of last said tract, a distance of 141.69 feet to a 5/8 inch iron rod; thence South 49°54'37" East, along a Westerly line of last said tract, a distance of 659.97 feet to a 5/8 inch iron rod at an angle corner in said Westerly line; thence South 9°47'13" East, along said Westerly line, a distance of 747.37 feet to a 5/8 inch iron rod, being the South corner of said Fee Number 90-2243, said South corner being on the West line of said Tract I of Fee Number 75-9882; thence South 0°03' East, along the West line of said Tract I, a distance of 225.18 feet, more or less, to the South line of said Fee Number 74-10618; thence South 83°31'40" West, along the South line of said Fee Number 74-10618, a distance of 517.54 feet, more or less, to the mouth of a ravine; thence

LEGAL DESCRIPTION

South 77°46'41" West, continuing along the South line of Fee Number 74-10618, a distance of 79.72 feet to the Southwest corner thereof; thence North, along the Westerly line of said Fee Number 74-10618, a distance of 966.90 feet to a point; thence North 58°00' West, a distance of 117.48 feet to a point on the West line of said Section 23; thence North 0°03" West, along said West section line, a distance of 2299.44 feet to the Northwest corner of said Section 23; thence East a distance of 20.00 feet returning to the point of beginning.

PARCEL III:

TOGETHER WITH an easement for road and utility purposes over the following described parcel:

A tract of land situated in Section 23, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Clackamas and State of Oregon, being more particularly described as follows, to wit:

A strip of land 60.00 feet in width and heretofore known as the Industrial Way Road easement, the centerline intersection of said 60.00 foot strip of land with the centerline of Market Road No. 6 (also known as Wilsonville Road), which intersection is North 89°56' East along the centerline of Market Road No. 6, 1278.43 feet from the Northwest corner of said Section 23, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Clackamas and State of Oregon, from said place of beginning; thence leaving said centerline of Market Road No. 6, South 31°36' East along the centerline of said 60.00 foot strip of land 263.90 feet; thence South 17°48' East 64.49 feet; thence South 10°22' West, 145.34 feet to the intersection of the North line of the Bailey D.L.C. No. 45; the same point of intersection being South 89°55' East 163.15 feet from the Northwest corner of the Thomas Bailey D.L.C. No. 45; thence South 10°22' West 906.74 feet along the centerline of said 60.00 foot strip of land South to the point of intersection of said centerline with the West line of said Thomas Bailey D.L.C.

File: prd/willamette_river/willamette_river_willamette_river.dwg Plot Date: 07-23-2009 12:57

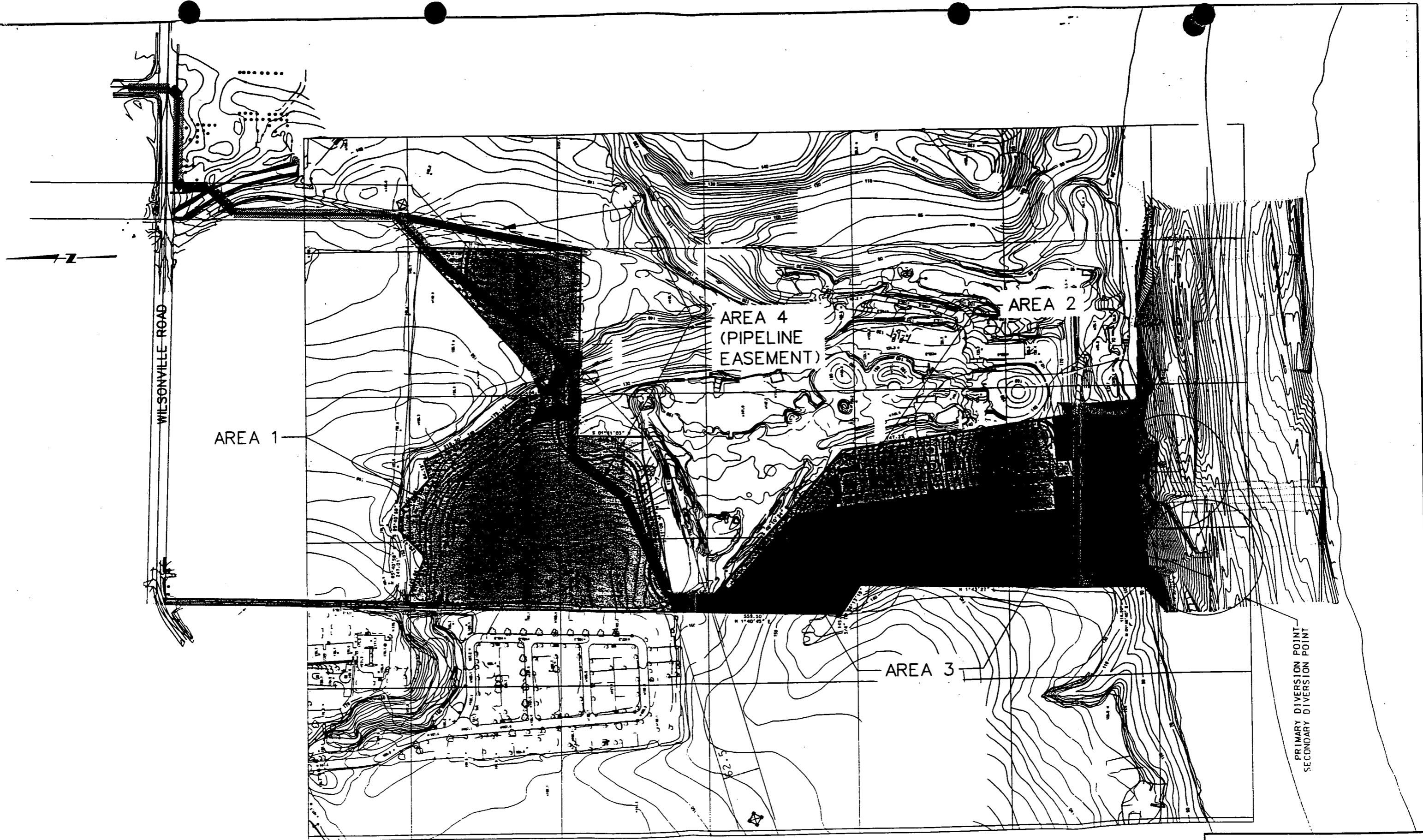


PRIMARY DIVERSION POINT
SECONDARY DIVERSION POINT

NOTE:
 AREA 4 - OFF-SITE LOCATION FOR ACCESS AND PIPELINE IS OWNED BY THE CITY WITHIN THE INDUSTRIAL WAY EASEMENT, BUT IS SHOWN NEARBY IN CONTEMPLATION OF A PROBABLE LOCATION ADJUSTMENT BY DEVELOPMENT REVIEW BOARD AND ACQUISITION FROM PROPERTY OWNERS.

CITY OF WILSONVILLE
 WILLAMETTE RIVER WATER TREATMENT PLANT

EXHIBIT B
 GENERAL AREA MAP



NOTE:
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CITY OF WILSONVILLE
 WILLAMETTE RIVER WATER TREATMENT PLANT

EXHIBIT 2
 GENERAL AREA MAP

Exhibit 3

Cost Estimate with \$17,000,000 from TVWD for Supply facilities

7/3/00 This sheet has GMP Numbers

PROJECT ELEMENT	TOTAL CAP. in MGD	WV in %	TVWD in %	TOTAL COST	WV COST	TVWD COST
SUBTOTAL				\$32,716,571	\$24,507,319	\$8,209,252
FINISHED WATER PIPELINE						
Meter/PRV to Wilsonville	10	100.0%	0.0%	\$163,740	\$163,740	\$0
WTP to Kinsman Rd.	70	28.6%	71.4%	\$2,726,399	\$778,971	\$1,947,428
SUBTOTAL				\$2,890,139	\$942,711	\$1,947,428
TOTAL GMP				\$43,097,341	\$27,481,125	\$15,616,216
<i>Additional contingency in D-B contract</i>						
Total contingency in D-B contract				\$955,000	\$489,760	\$465,240
Total in D-B contract				\$44,052,341	\$27,970,885	\$16,081,456
Other project expenses						
Owner's rep services estimate				\$1,141,000	\$724,474	\$416,526
Operator svces during construction				\$150,000	\$95,242	\$54,758
SDC's for plant				\$43,000	\$27,419	\$15,581
City & TVWD control contingency				\$802,500	\$622,814	\$179,686
Subtotal for other project expenses				\$2,136,500	\$1,469,949	\$666,551
Subtotal				\$46,188,841	\$29,440,834	\$16,748,007
City supervision, administration & overhead				\$692,833	\$441,613	\$251,220
TOTAL PROJECT		63.7%	36.3%	\$46,881,674	\$29,882,447	\$16,999,227

Exhibit 3

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