

**RESOLUTION NO. 2022**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING ADDITION OF A CAPITAL IMPROVEMENTS PROJECT A CREDIT AGAINST THE WATER SYSTEMS DEVELOPMENT CHARGES FOR A WATER LINE ADJACENT TO AND THROUGH THE PARK PAVILION PROJECT AND APPROPRIATING A BUDGET FOR THE WATER SYSTEMS DEVELOPMENT CHARGE CREDITS.**

WHEREAS, on September 8, 2003 the Development Review Board Panel A approved the amended conditions of approval for the Stage II Final Plan for the project which was known as Park Pavilion; and

WHEREAS, Condition PF10 stated as follows: *“PF10. There is an existing 12-inch waterline stubbed to the southwest property line of the subject parcel. The applicant shall be required to remove the existing blow-off assembly and extend the waterline through the subject property and connect to the existing 12-inch waterline located in Parkway Court. The applicant shall also be required to provide public waterline easements that meet Public Works Standards for the length of the line located on private property. This project may be eligible for SDC credits. The City is encouraged to extend SDC credits to any extent that this requirement benefits other property owners, not the applicant. (Amended and Adopted by DRB on 9/8/03); and*

WHEREAS, paragraph 11.040(9) Credits of the Wilsonville Code provides the following guidance with regards to credits. An applicant for a building permit is eligible for credit against the SDC for constructing a qualified capital improvement. A qualified capital improvement means one that meets all of the following criteria:

- “1) Required as condition of development approval by the Planning Commission or the City Council,*
- 2) Identified in an adopted Capital Improvements Plan, and*
- 3) Not located within or contiguous to the property or parcel that is subject to development approval except to the extent that the capital improvement(s) represent(s) a measurable provision for extra service capacity beyond the actual public facility requirements of the property or parcel approved for development.”; and*

WHEREAS, Mr. Doug Seely has constructed a 12-inch waterline along and across his property as required in the condition of approval; and

WHEREAS, the Seely project does not connect to this waterline; and

WHEREAS, the Seely project has sufficient domestic water capacity and fire flows without this waterline; and

WHEREAS, this is a provision for extra service capacity beyond the actual public facilities requirements of the property or parcel approved for development; and

WHEREAS, the project must be in an approved capital improvements plan to receive systems development charge credits and where it would be fair and equitable to add this project to a capital improvements plan so that SDC credits can be provided; and

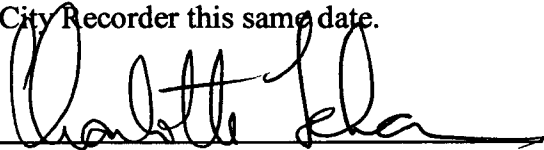
WHEREAS, Staff recommends that this project be added to the Water Capital Improvements Plan in FY2006-07 budget.

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

1. Based on the above recitals and the contents of the documents and actions set forth therein and the staff report of record in this matter, the City Council finds and concludes that adding this project to the FY2006-07 Water Capital Improvement Plan will substantially promote the public interest.
2. For this project Council authorizes addition to the adopted FY2006-07 budget as follows.  

**Water Projects: Supplemental Budget needed - \$41,000**
3. As required by state law and in keeping with annual budget appropriations this project shall be included in the FY2006-07 Supplemental Budget.
4. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a special meeting thereof this 7<sup>th</sup> day of September 2006, and filed with the Wilsonville City Recorder this same date.

  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
Sandra C. King, MMC, City Recorder

SUMMARY of Votes:

Mayor Lehan	<u>Yes</u>
Councilor Knapp	<u>Yes</u>
Councilor Holt	<u>Yes</u>
Councilor Kirk	<u>Yes</u>
Councilor Ripple	<u>Yes</u>

**DEVELOPMENT AGREEMENT BETWEEN PARK PAVILION, LLC (PARK  
PAVILION RETAIL CENTER-03DB20) AND THE CITY OF WILSONVILLE,  
OREGON**

This Development Agreement (this "Agreement"), dated as of the 25<sup>th</sup> day of January 2006, is made by and between Park Pavilion, LLC ("Developer") and the City of Wilsonville, an Oregon municipal corporation (the "City").

**RECITALS**

- A. Park Pavilion, LLC is developing the Park Pavilion Retail Center project in the City of Wilsonville (the "Project Property") on Parkway Court.
- B. "Developer" submitted a land use application to the City for a Stage I Preliminary Plan approval, Stage II Final Plan Approval, Site Design Review, Master Sign Plan, and a Public Works Permit for development of the Project Property (together, the "Application").
- C. The Application was approved by the City. A condition of approval, PF10, states "There is an existing 12-inch waterline stubbed to the southwest property line of the "Project Property" parcel. The applicant shall be required to remove the existing blow-off assembly and extend the waterline through the subject parcel and connect to the existing 12-inch waterline located in Parkway Court. The applicant shall also be required to provide waterline easements that meet Public Works Standards for the length of the line located on private property. This project may be eligible for SDC credits."
- D. In connection with the approval of the Application, "Developer" is required to make certain waterline infrastructure improvements. Some of the improvements required as conditions of approval and as required under this Agreement are necessary due to the projected impacts created by the development to City infrastructure and improvement (exactions). Other improvements required as conditions of approval and as required under this Agreement are not roughly proportional to the impacts created by the development (extra capacity). System Development Charges (SDCs) are collected from all new development. Eligible capital projects may be funded by collected SDCs. The extra capacity portion of the waterline capital improvements is eligible for SDC funding. "Developer" is allowed either credits against Water SDCs for the cost of the extra capacity improvements, or reimbursement from the City for the cost of constructing such improvements.
- E. The parties desire to set forth in this Agreement the obligations of "Developer" and the City with respect to the infrastructure improvements, SDC charges, SDC credits and reimbursements and land dedication for public right-of-way.
- F. The conditions of approval impose upon "Developer", PF10, and the obligation to construct a 12-inch waterline extension, which will run through the subject parcel. The

roughly proportional impacts of development of the subject parcel require "Developer" to install a waterline to meet the minimum requirements to provide adequate fire and life safety flows to the site. The over sizing of this minimum sized waterline is the obligation of the City, subject to funding from the Water SDC fund as an off site, qualified public improvement.

- G. "Developer" and the City desire to construct a single waterline meeting both the minimum fire and life safety requirements and the over sizing requirements because of the economics of having the onsite contractor do all the work. Rather than trying to separate the work on the waterline and have the City bid the extra capacity, it makes economic and practical sense to have the onsite contractor also do the extra capacity work as a sole source contract. To the extent "Developer" pays for the extra capacity work, it shall be entitled to Water SDC credits as set forth in the body of the Agreement. In the event the extra capacity work exceeds the credits provided in this Agreement, the City shall pay the excess as agreed in this Agreement.
- H. The parties acknowledge that under state law, if the cost of public works improvements exceeds \$50,000, prevailing wage laws and regulations must be followed in the construction contract for the public improvements. Submission of a certified payroll to the City shall constitute sufficient proof that "Developer" has complied with this requirement. The parties acknowledge that the Bureau of Labor and Industries (BOLI) maintains an informational website, including current prevailing wage information.

#### AGREEMENT

NOW, THEREFORE, in consideration of the above recited conditions of permit approvals to be satisfied and the mutual acknowledgments, duties, and obligations of the parties and the mutual promises and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### I. GENERAL PROVISIONS

##### A. Water SDCs

The Water SDCs for the development of the Project Property are \$34,999.00, based on the Water SDCs in effect at the time of approval of the Application. Water SDCs are subject to an annual construction inflation index adjustment, and the waterline and related improvements will overlap the annual adjustment. The City has agreed that Water SDCs for the development of the Project Property, both in terms of credits and charges shall remain at the 2005 rate until substantial completion of the improvements.

"Developer" shall receive Water SDC credits for all improvements in excess of those required for the development of the Project Property. The improvements eligible for Water SDC credits are as set forth in Part II of this Agreement. The amount of Water SDC credits for the eligible improvements shall be based on the actual costs incurred by "Developer" in the construction of such improvements, as evidenced by itemized invoices or other documentation satisfactory to Staff. Construction costs submitted for SDC credits shall be reviewed by Staff to determine the actual costs of construction,

comparison with prevailing construction rates in the area, and the appropriate credit therefore. Although not binding on the parties, the estimated Water SDC credits are in the amount of \$17,608.43 as set forth in the budget prepared by City staff based on estimated costs by Developer's Engineer, attached hereto as Exhibit A. "Developer" also receives Water SDC credits for design and engineering in connection with the construction of the eligible improvements in an amount equal to either 10% of the actual construction costs or, at City's option, as set forth in itemized invoices properly documenting an equitable share of the design and engineering costs. The documentation of the design and engineering costs must also include documentation of the breakdown of those costs between "Developer" and the City.

## **II. INFRASTRUCTURE IMPROVEMENTS**

### **A. Specific Improvements**

"Developer" shall be responsible for making the following waterline improvements. Remove the existing blow-off assembly and extend the waterline through the subject parcel and connect to the existing 12-inch waterline located in Parkway Court as more particularly identified on Public Works permit drawings approved by and on file with the City. All improvements shall comply with all applicable City standards.

### **B. Creditable Costs**

The following costs for the waterline improvements shall be eligible for Water SDC credits:

- All costs attributed to the upgrade for a 12-inch water main from the minimum waterline meeting the minimum fire and life safety requirements.

### **C. Value of SDC Credits**

The parties estimate that the cost of improvements eligible for Water SDC credits is \$17,608.43 as shown on Exhibit A.

## **III. CONTRIBUTION BY CITY**

After completion and acceptance of the construction work by the City, and within 30 days of approval of the final construction payment documentation by the City, the City agrees to refund to the Developer any SDCs collected up to the amount of any eligible SDC credits. The parties may also agree to a refund of collected SDCs in phases to match submission to and approval by the City of construction contract progress payments for extra capacity subject to statutory retainage.

#### **IV. GENERAL OBLIGATIONS**

##### **A. Plans and Construction**

"Developer" is solely responsible for the design and construction of all improvements required under this Agreement. The City shall be responsible for reviewing and approving all plans, which approval shall occur within 30 days after the City's receipt of satisfactory plans, and shall inspect the Project Property and all required improvements. By reviewing and approving the plans and design for all improvements required under this Agreement, and issuing permits for the construction of such improvements, the City shall be deemed to have concluded that the improvements identified as eligible for SDC credits under this Agreement are in fact eligible for such SDC credits. All such approved improvements shall be deemed eligible for SDC credits. "Developer" and the City shall share, in the same proportion as they share the cost of the waterline improvements as shown on Exhibit A, all materials testing costs, planning review fees, Public Works permit fees, and other miscellaneous costs associated with waterline improvements. The City's share of these additional costs shall be treated as Water SDC credits under this Agreement but are not shown in the attached Exhibit A because the amounts are uncertain at this time.

##### **B. Costs**

Both parties acknowledge that the costs set forth in this Agreement are estimates only and that the final costs of the improvements required under this Agreement may vary based on final design approval and actual construction costs.

#### **V. MISCELLANEOUS PROVISIONS**

##### **A. Easement Dedication**

Applicant is required to dedicate a 15-foot wide easement centered on the waterline improvements to the City.

##### **B. Further Assurances**

Each party shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the parties hereto.

##### **C. Modification or Amendment**

No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by the parties hereto.

##### **D. Relationship**

Nothing herein shall be construed to create an agency relationship or a partnership or joint

venture between parties.

**E. Burden and Benefit; Assignment**

The covenants and agreements contained herein shall be binding upon and insure to the benefit of the parties and their successors and assigns. "Developer" covenants and agrees that it shall notify any successor in interest or any tenant on the Project Property of "Developer's" obligations under this Agreement. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

**F. No Continuing Waiver**

The waiver of either party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

**G. Applicable Law**

This Agreement shall be interpreted under the laws of the State of Oregon.

**H. Legal Fees**

If either party commences legal proceedings, including arbitration or mediation, for any relief against the other party arising out of or related to this Agreement, or the breach thereof, the losing party shall pay the prevailing party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorneys' fees and expert witness fees as determined by the court or the arbitrator, at the trial level or on any appeal.

**I. Time of Essence**

Time is expressly declared to be the essence of this Agreement.

**J. Notices**

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

To City: Eldon Johansen,  
Interim Community Development Director  
City of Wilsonville  
30000 SW Town Center Loop East  
Wilsonville, OR 97070



To Developer's Representative:

Doug Seely  
1780 SW Advance Road  
West Lynn, OR 97068

**K. Rights Cumulative**

All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

**L. Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

**M. No Third Party Beneficiaries**

None of the duties and obligations of any party under this Agreement shall in any way or in any manner be deemed to create any rights in, any person or entity other than the parties hereto.

**N. Dispute Resolution**

**1. Mediation**

All disputes arising out of this Agreement, save and except for acquisition of property subject to eminent domain, shall first be submitted to mediation. Either party desiring mediation shall provide the other party with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the parties, in the parties' sole discretion, within twenty (20) days from the date of the Request to Mediate or such longer time frame as may be agreed upon in writing by parties, then either any party may make demand for arbitration pursuant to the following paragraph.

**2. Arbitration**

Any dispute arising under this Agreement, save and except for acquisition of property subject to eminent domain, and which is not resolved through mediation, may be submitted by either any party to arbitration conducted in Portland, Oregon before a single arbitrator selected by mutual agreement of the parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the parties are unable to mutually select an arbitrator within 20 days, then each party shall select an arbitrator and the two arbitrators

shall select a single arbitrator. Judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

O. Building Permit

The City is in the process of issuing the building permit for the development.

P. Indemnification

Developer agrees to indemnify the City, its Mayor and City Councilors, employees, agents and contractors (other than Developer's), herein after referred to as "Indemnified Parties", for any claim, demand, damage, or suit by third parties and any costs and attorney fees incurred in defending against any such claim, demand, damage, or suit which arises or results from Developer or its agents', members', officers', or employees willful misfeasance, bad faith, negligence in, or reckless disregard of, the performance of the services, obligations, or acts or omissions of the Developer, its agents, contractors, members, officers, and employees in connection with this Development Agreement, its performance, and the construction of the project described herein; provided, however, the Developer shall not be required to so indemnify any of such Indemnified Parties for damages caused solely by or resulting solely from the willful misfeasance, bad faith, negligence, or reckless disregard of the Indemnified Parties; provided further, that if such damages are caused by or resulting from the negligence of the Indemnified parties and of the Developer, its agents, contractors, members, officers, and employees, then the Developer's indemnity hereunder shall be limited to the extent of the negligence of the Developer, its agents, contractors, members, officers, and employees.

Q. Additional Concerns Regarding Exhibit A

The parties acknowledge that at the time this Agreement is executed, the cost items in Exhibit A are estimates only. Developer shall submit a revised, updated cost estimate prior to construction. The parties shall negotiate in good faith after the execution of this Agreement to resolve any outstanding cost items.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year first written above.

\_\_\_\_\_  
By Park Pavilion, LLC  
Doug Seely Member  
Its \_\_\_\_\_  
Date: 2/13/06

**CITY:**

City of Wilsonville, an Oregon Municipal  
Corporation

By Eldon Johansen  
Eldon Johansen

Its Interim Community Development Director

Date: 2/14/06

Approved as to form:

Michael E. Kohlhoff

Michael E. Kohlhoff

City Attorney

**EXHIBIT A**

**Park Pavilion**

	<b>Item</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Line Item Cost</b>
<b>WATER</b>					
	12" DIP	236	LF	\$55.09	\$13,000.53
	Tie-ins	2	EA	\$1,676.51	\$3,353.02
	Testing	236	LF	\$1.08	\$254.88
	Street repair	1	EA	\$1,000.00	\$1,000.00
					<u><u>\$17,608.43</u></u>

**SDC Creditable (from building files):**

**Water \$34,999.00 (\$24,825 + \$10,174)**

## COMMUNITY DEVELOPMENT STAFF REPORT

Date: August 29, 2006

To: Arlene Loble, City Manager

From: Interim Community Development Director

Subject: A Resolution of the City of Wilsonville Authorizing Addition of a Capital Improvements Project for a Credit against the Water Systems Development Charges for a Water Line Adjacent to and Through the Park Pavilion Project and Appropriating a Budget for the Water Systems Development Charge Credits

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### RECOMMENDATION:

That Council approve addition of a water capital improvements project to the FY2006/07 budget in the amount of \$41,000 for a credit against the water systems development charges, or if previously paid, a reimbursement of water systems development charge funds in an amount not to exceed \$41,000 for construction of a project which was required as a condition of development and which provides capacity in excess of the domestic water and fire flows needed to serve Park Pavilion development.

### BACKGROUND:

On September 8, 2003, the Development Review Board approved the conditions of approval for the Park Pavilion project 03DB20. This approval included an engineering condition which required connection of two stub outs with a line that crossed the Park Pavilion property. The developer has completed the construction and has requested a credit against the systems development charges.

The actual approval of the development agreement for this construction and credit against systems development charges is within the approval authority of the city manager or her designee. In this particular case, the project needs to be added to an approved Capital Improvements Plan before the development agreement can be approved. This action adds a project to an approved Capital Improvements Plan so the developer can be reimbursed for the cost of constructing a waterline. Attached is a copy of the development agreement. The cost figures are under final review but should not exceed \$41,000.

ERJ:bgs

Attachment: Draft Development Agreement between the City of Wilsonville and Park Pavilion, LLC