

RESOLUTION NO. 2283

A RESOLUTION ADOPTING THE SUBCONTRACTING AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND OREGON PUBLIC EMPLOYEES UNION LOCAL #503 REGARDING THE CITY'S WASTEWATER TREATMENT PLANT

WHEREAS, the City of Wilsonville and the Service Employees International Union (SEIU) Local #503, Oregon Public Employees Union, have reached an agreement regarding the effects of the proposed contracting out of the wastewater treatment plant operations; and

WHEREAS, the current Collective Bargaining Agreement Section 10.3 requires the City to meet with the Union and engage in bargaining over the effects of the contracting out decision; and

WHEREAS, Resolution No. 2131 allowed for the City to pursue a design-build-operate procurement for the City's wastewater treatment plant that guaranteed employment for the current city employees working at the wastewater treatment plant; and

WHEREAS, the City engaged in bargaining with the Union for several months and reached agreement on the terms outlined in the attached agreement; and

WHEREAS, this agreement with the union is only valid if the City enters into a contract with a private company for operations of the wastewater treatment plant and any estimates in the Separation Agreement of if or when that may occur are estimates only and not meant to be a binding date or time.

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

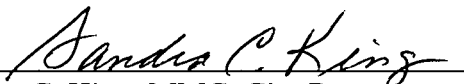
1. The City Manager Pro Tem is authorized on behalf of the City to enter into the Agreement with the Union regarding subcontracting of the wastewater treatment plant, which agreement provides that it will only go into effect if the City enters into a contract with a private company for operations of the wastewater treatment plant. The agreement has been marked Exhibit A, and is attached hereto and incorporated by reference herein.

2. This resolution becomes effective upon adoption.

ADOPTED, by the City Council of the City of Wilsonville at a regular meeting thereof this 18th day of April, 2011, and filed with the Wilsonville City Recorder this date.


TIM KNAPP, MAYOR

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp – Yes
Council President Núñez – Yes
Councilor Hurst – Yes
Councilor Goddard - Yes
Councilor Starr – Yes

Attachment: Exhibit A – Agreement Concerning Subcontracting

Exhibit A

Agreement Concerning Subcontracting Wilsonville's Wastewater Treatment Plant

This Agreement Concerning Subcontracting Wilsonville's Wastewater Treatment Plant ("Agreement") is entered into by and between the City of Wilsonville ("Employer" or "Wilsonville") and Service Employees International Union Local 503, Oregon Public Employees Union ("Union" or "Local 503"). As used in this Agreement, Wilsonville includes the City of Wilsonville and all of its current, past, and future City Council members, employees, representatives, and agents, in their individual and representative capacities.

WHEREAS, on or about August 18, 2008, Wilsonville resolved to subcontract its Wastewater Treatment Plant in Resolution No. 2131. The Resolution is to contract with a single Company ("Company") to design-build-operate the City's Wastewater Treatment Plant.

WHEREAS, since the spring 2007 through the present, the Union, Wastewater Treatment Plant employees, and the Employer have participated in joint informational meetings.

THEREFORE, the Union and the Employer desire to settle all matters and disputes fully, finally and completely without the potential for or necessity of time-consuming litigation and the parties have reached an understanding resolving all such disputes, grievances, claims, complaints on the following bases:

1. Wilsonville and the Union agree to the terms of the Separation Agreement attached hereto and by this reference made a part hereof.
2. The Company shall offer full time, regular employment to all Wilsonville Wastewater Treatment Plant employees ("Designated Employees") employed and holding the following classifications as of the contract date between the Company and Wilsonville:
 - a. Wastewater Lead Operator;
 - b. Wastewater Operator II;
 - c. Sludge Truck Driver; and
 - d. Wastewater Lab Technician.
3. Those Designated Employees who accept such offer will be treated as a voluntary quit from Wilsonville effective 11:59PM the day before their employment commences with the Company and become employees of the Company upon the Commencement Date of the contract between the Company and Wilsonville.

4. Those Designated Employees who decline such offer will be permanently laid off from Wilsonville with no recall rights. In this event, Wilsonville will not challenge any effort to secure unemployment compensation benefits.
5. Wilsonville will require the Company to agree as part of the contract between Wilsonville and the Company that the Company's offer of employment to include:
 - a. Hourly wages and health benefits which, as a package, are equal to or higher or better than the Designated Employee's combined hourly wages paid and health benefits provided by Wilsonville as of the contract date between the Company and Wilsonville;
 - b. A pension or retirement savings benefit program that will provide Designated Employees, upon retirement, with a pension or retirement savings benefit program the value of which, in the aggregate and taken together with the value of the Oregon Public Employees Retirement System ("PERS") account, if any, accrued by the Designated Employee from service with Wilsonville through the Commencement Date, is reasonably projected to equal or exceed the value of the pension or retirement savings benefits the Designated Employee would receive were he or she to remain in the employ of Wilsonville through the date upon which the Designated Employee retires from service to the Company. Any social security benefits due at the time of retirement, shall not be included in the calculation of such equivalent pension or retirement savings benefit program, and shall be for the benefit of the Designated Employee;
 - c. A post-retirement health benefit program equal to or better than that offered by Wilsonville;
 - d. A life insurance benefit program equal to or better than that offered by Wilsonville; and
 - e. A long-term disability benefit program equal to or better than that offered by Wilsonville.
6. Wilsonville will require the Company to agree as part of the contract between Wilsonville and the Company that those Designated Employees who become employees of the Company will remain employees of the Company throughout the term of the contract between Wilsonville and the Company, subject to the following:
 - a. The Designated Employee voluntarily quits;

- b. The Designated Employee voluntarily elects an early retirement, severance, or other incentive termination package sponsored and funded by the Company; or
 - c. The Designated Employee is dismissed for just cause.
7. Wilsonville will require the Company to agree as part of the contract between Wilsonville and the Company that those Designated Employees who become employees of the Company will not be involuntarily transferred to a Company location other than the facility subject to the contract between Wilsonville and the Company.
8. Wilsonville will require the Company to agree as part of the contract between Wilsonville and the Company that the Company's employee health benefits shall be made available to Designated Employees who become employees of the Company without any elimination periods, pre-existing condition provisions or other limitations on full and immediate coverage.
9. Wilsonville will require the Company to agree as part of the contract between Wilsonville and the Company that the Company will recognize years of service ("seniority") with Wilsonville as years of service with the Company for the following purposes:
- a. Any job-related matter based on seniority (such as, but not limited to, off-days, shift preference, and overtime) to the extent that the Company uses seniority for such job-related matters;
 - b. Determining eligibility for and vesting under (but not benefit accrual or contributions to) the Company's employee benefit plans; and
 - c. Determining eligibility for and the amount of vacation, sick leave, and any other payroll policies of the Company.
10. For paragraphs 5, 6, 7, 8 & 9, the Company shall be solely responsible for any breach of the obligations to the Designated Employees which may result from any claim, demand, grievance or legal proceeding made or filed, at any time during or after the term of the contract between Wilsonville and the Company by any Designated Employee or Union representing a Designated Employee. After the Company agrees with the City in the contract to perform the underlying obligations in paragraphs 5 through 9, the City will have exhausted its obligations under paragraphs 5 through 9. Accordingly, for paragraphs 5, 6, 7, 8 & 9 the Union and Designated Employees will look exclusively to the Company for compliance with the underlying obligations to Designated Employees.
11. The Union hereby releases Wilsonville from any past or present liability, claims, rights, actions, unfair labor practice charges, demands, and causes of action, whether known or

unknown, concerning the subcontracting of the Wastewater Treatment Plant, including claims involving negotiations, providing a cost-benefit analysis per Oregon statutes, any alleged breach of the Collective Bargaining Agreement between Wilsonville and the Union, the contract between Wilsonville and the Company, and any alleged breach of employment agreements between the Company and Designated Employees, if any.

12. Paragraphs 10 and 11 of this Agreement will be null and void and have no force and effect in the event that Wilsonville breaches its obligations set out in paragraphs 5 through 9 above. In the event that Wilsonville breaches its obligations in paragraphs 5 through 9, the Union and/or the employees may pursue a grievance as outlined in paragraph 14.
13. This Agreement along with the Separation Agreement which is a part hereof represents the entire agreement between Wilsonville and the Union and supersedes all prior or contemporaneous verbal or written understandings or representations. All parties agree they are not relying on any other representations or understandings not included in this Agreement.
14. Except for the underlying obligations between the Company and the Designated Employees contained in paragraphs 5, 6, 7, 8 & 9, any dispute involving the interpretation, application, or alleged violation of this Agreement shall be subject to the grievance/arbitration procedures in the Collective Bargaining Agreement between Wilsonville and the Union.
15. This Agreement is without precedent or prejudice and shall not be used against the other party in any future claims, negotiations, complaints, or grievances, arbitrations, or legal actions, suits, or proceedings between the parties.

City of Wilsonville

**Service Employees International Union
Local 503, Oregon Public Employees
Union**

By: _____

By: _____

Date: _____

Date: _____

SEPARATION AGREEMENT

HAND DELIVERED

TO: All Waste Water Employees

FROM:

RE: SEPARATION AGREEMENT

DATE:

As you know, the City has decided to subcontract its Waste Water Treatment Plant. As part of this closure, City Waste Water Treatment Plant employees in the following classifications: Wastewater Lead Operator, Wastewater Operator II, Sludge Truck Driver, and Wastewater Lab Technician ("Designated Employees") will be offered employment with the Company who will be responsible for the design-build-operate aspects of the project ("Company"). Designated Employees who accept the offer will become employees of the Company. Designated Employees who decline employment will be permanently laid off from the City. At the present time, we estimate that the permanent lay off will take place May 2011.

We appreciate your years of service and would like to offer you a separation package in order to ease your transition. Please understand that this offer is entirely voluntary. You may sign below and receive additional considerations that you would not otherwise be entitled to receive, or you may refuse to sign this Agreement. However, in order to receive the additional considerations, you must sign the Agreement.

Regardless of whether or not you sign, the City's Waste Water Treatment Plant is scheduled for subcontracting on the date noted above. If you have any questions, please direct them to Andrea Villagrana or your Union Representative.

TERMS OF SEPARATION PACKAGE

1. If you wish to accept the Company's offer of employment you will be treated as having voluntarily quit from Wilsonville effective 11:59PM the day before your employment commences with the Company and you become an employee of the Company upon the Commencement Date of the contract between the Company and Wilsonville.
2. If you decline the Company's offer of employment you will be permanently laid off from Wilsonville. Wilsonville will not challenge your effort to secure unemployment compensation benefits.
3. Regardless of whether you accept or decline the Company's offer, you will be paid accrued compensatory time and vacation leave upon the Commencement Date of the contract between the Company and the City.

4. If you accept the Company's offer of employment, you will be eligible to cash out fifty percent (50%) of your accrued sick leave bank. As of this date, your accrued sick leave available for cash out equals _____ hours or \$_____. From the remaining fifty percent (50%) of your accrued sick leave bank, you may transfer to the Company up to eighty (80) hours. As of this date, your accrued sick leave hours available for transfer equals _____. Should the remaining balance equal less than eighty (80) hours, and you wish to transfer to the Company eighty (80) hours, you may reduce the amount to be cashed and use those hours as part of your transferred amount (but not more than eighty (80) hours may be transferred). Your interest in transferring hours in lieu of cashing out must be provided to the City no later than 20 calendar days prior to the Commencement Date of the contract between the Company and the City.
5. If you become an employee of the Company and were not "vested" in PERS at the contract date, you may, consistent with law, rollover your IAP portion of the PERS account into an IRA, Roth IRA or other IRS qualified retirement program with the Company.
6. Should Wilsonville re-assume the operation of the Wastewater Treatment Plant after the contract date, you will remain eligible for recall to the City in the Waste Water Treatment Plant for two (2) years after the Commencement Date by inverse order of seniority, provided you accepted employment with the Company and remained employees with the Company.
7. In consideration of the above, you release and covenant not to sue the City, all of its current, past, and future City Council Members, employees, representatives, and agents, in their individual and representative capacities from and any and all claims arising out of your employment and the severance of that employment relationship. This release includes, but is not limited to, all claims for additional salary and other forms of compensation, for pain and suffering damages, punitive damages, reinstatement or re-employment, based upon state and federal statutes dealing with employment matters and discrimination in employment, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Post Civil War Civil Rights Acts, the Americans with Disabilities Act, the Family Medical Leave Act, the National Labor Relations Act, all as amended, the Collective Bargaining Agreement and all other applicable statutory, contract, tort or other theories.

Please understand, nothing in the offering or signing of this Agreement is intended to be considered as an admission of liability or wrongdoing on the part of anyone. Instead, this offer is intended to convey an offer to assist you in your transition to another job by providing additional compensation and benefits to you. Also, this Agreement is based on unique circumstances and is not intended to set a precedent for separation packages to be offered to employees of the City in the future.

The offer set forth in this Agreement shall remain open for forty-five (45) days after you receive it. You also have seven (7) days following your signature below to revoke this Agreement. All revocations must be in writing and must be sent to Andrea Villagrana, Human Resources Manager at 29799 SE Town Center Loop E, Wilsonville, OR 97070.

If you do not revoke this Agreement, it will become effective immediately upon expiration of the seven (7) day period. The terms of this Agreement will not be effectuated until you are actually displaced as an employee of the City and the seven (7) day revocation period has expired.

You are encouraged to consult with your Union representative and/or legal counsel before signing this Agreement. By signing below, you are acknowledging that you have had an opportunity to engage in such consultation and that you understand all of its provisions and have signed this Agreement voluntarily, knowing that it constitutes the full and entire agreement between you and the Company.

Date

Employee Printed Name

Employee signature