

RESOLUTION NO. 2649

A RESOLUTION OF THE CITY OF WILSONVILLE ESTABLISHING THE METHODOLOGY FOR THE PRELIMINARY FROG POND WEST INFRASTRUCTURE SUPPLEMENTAL FEE AND THE BOECKMAN BRIDGE TRANSPORTATION MITIGATION FEE, AND ESTABLISHING A FUND

WHEREAS, the City adopted the Frog Pond West Master Plan (“Master Plan”) on July 17, 2017 through Ordinance No. 806; and

WHEREAS, the Master Plan identifies certain Master Plan projects, three of which are the responsibility of developers under the City’s current development process: (1) the local portion of the north half of SW Boeckman Road and associated utilities and amenities; (2) the local portion of the west half of SW Stafford Road and associated utilities and amenities; and (3) the Neighborhood Park (“Unfunded Projects”); and

WHEREAS, development within Frog Pond West is responsible to pay its proportionate share of a bridge to be constructed over Boeckman Creek along SW Boeckman Road, adjacent to Frog Pond West (“Boeckman Bridge”); and

WHEREAS, at its March 8, 2017 meeting, the Planning Commission of the City of Wilsonville recommended approval of the Master Plan to the City Council and, as part of that action, recommended the equitable distribution of the costs associated with the Unfunded Projects and the Boeckman Bridge throughout Frog Pond West development; and

WHEREAS, upon the recommendation of the Planning Commission, the City developed an Infrastructure Funding Plan as a component of the Master Plan that provides for equitable distribution of the costs for the Unfunded Projects through payment of an infrastructure supplemental fee (“Infrastructure Supplemental Fee”) by new development within Frog Pond West; and

WHEREAS, the Infrastructure Funding Plan also provides that development within Frog Pond West pay a Boeckman Bridge transportation mitigation fee (“Boeckman Bridge Fee”) for the unfunded portion of Boeckman Bridge that is proportional to Frog Pond West’s share of the long-range trip forecast for the bridge; and

WHEREAS, Ordinance No. 806 included the Infrastructure Funding Plan, which outlines and authorizes an Infrastructure Supplemental Fee and a Boeckman Bridge Fee (collectively, “Frog Pond West Fees”) to be imposed on all new development within Frog Pond West; and

WHEREAS, the Wilsonville City Council adopted the Infrastructure Funding Plan, which included an Infrastructure Supplemental Fee methodology with estimated project costs, estimated housing units and the resultant estimated fee, and a Boeckman Bridge Fee methodology, as part of the City’s adoption of the Master Plan; and

WHEREAS, in order to construct the Unfunded Projects and Boeckman Bridge, the City requires funding from development within Frog Pond West for the Unfunded Projects and Boeckman Bridge that are separate from the City’s standard system development charges and applies only to development in Frog Pond West; and

WHEREAS, the City contracted with GEL Oregon and FCS Group to review the existing methodologies and determine the best strategy to incorporate a Frog Pond West Infrastructure Supplemental Fee for the Unfunded Projects and the Boeckman Bridge Fee for the unfunded portion of the Boeckman Bridge; and

WHEREAS, **Exhibit A**, attached hereto and incorporated herein, provides methodology and preliminary estimates for the Frog Pond West Fees required to be paid by development within Frog Pond West; and

WHEREAS, the current estimated per-door Infrastructure Supplemental Fee, based on preliminary engineering estimates for the cost of unfunded infrastructure, is \$15,814 per door (2017 dollars), subject to change based on actual project costs, equivalent dwelling units that may be built, inflation as provided in the Engineering News-Record Seattle Construction Cost Index, and other circumstances that may materially impact the fee; and

WHEREAS, the current estimated per-door Boeckman Bridge Fee for the cost of the unfunded portion of Boeckman Bridge is \$161.00 per \$1 million unfunded costs of Boeckman Bridge (e.g., if \$2 million of Boeckman Bridge is unfunded, then Frog Pond West development pays \$322 per door (2 x \$161)), subject to change based on actual project costs, equivalent dwelling units that may be built, inflation as provided in the Engineering News-Record Seattle Construction Cost Index, and other circumstances that may materially impact the fee; and

WHEREAS, the City hereby establishes a new fund to collect the Frog Pond West Fees, and to make disbursements therefrom to construct the Unfunded Projects and other related items in Frog Pond West, as set forth below; and

WHEREAS, the City has identified the need to ensure Frog Pond West developers' financial commitment and obligation to the Frog Pond West Fees; and

WHEREAS, **Exhibit B**, attached hereto and incorporated herein, provides a general template for a development and annexation agreement ("Development Agreement") that will be required of each development within Frog Pond West at the time the developer requests annexation into the City and obligates the developer to pay the Frog Pond West Fees equal to the amount effective at the date of issuance of each building permit, which Development Agreement may be refined by the City Attorney prior to implementation; and

WHEREAS, the City will work with the West Linn-Wilsonville School District ("School District") to enter into an agreement whereby the School District will be obligated to pay the Frog Pond West Fees equal to the amount effective at the time of each building permit issuance date.

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

ARTICLE I

PURPOSE

Section 1. Purpose

- A. The purpose of this Resolution is to provide a comprehensive funding strategy by charging developers an Infrastructure Supplemental Fee, in addition to the City's standard fees and system development charges, for the Unfunded Projects adopted by the City in the Frog Pond Master Plan and a Boeckman Bridge Fee.
- B. The Frog Pond West Fees ensure that funding on these projects is directly tied to the development of Frog Pond West and funding is in place for the efficient completion of the Frog Pond West Master Plan projects.

Section 2. Definitions

- A. "Boeckman Bridge" means a bridge to be constructed over Boeckman Creek along Boeckman Road, adjacent to Frog Pond West, at a location commonly referred to as the Boeckman Road dip, approximately 700 feet east of Canyon Creek Road.

- B. “Boeckman Bridge Fee” means the additional proportionate fee that development within Frog Pond West is required to pay for the design and construction of Boeckman Bridge. The amount of the Boeckman Bridge Fee may be adjusted based on the factors listed Article II, Section 3 below and/or may be reduced or eliminated depending on other revenue sources.
- C. “Construction Cost Index” means the most recent Engineering News-Record (ENR) Seattle Construction Cost Index (CCI) published, or other index that replaces the ENR Seattle CCI.
- D. “Development Agreement” means the development and annexation agreement that developers within Frog Pond West will be required to enter into with the City, a sample general template is attached hereto as **Exhibit B**. The Development Agreement template (Exhibit B) is subject to refinement by the City Attorney prior to implementation.
- E. “Equivalent Dwelling Unit (EDU)” means an approximation of the infrastructure demand generated by one single family dwelling unit, as more particularly described in **Exhibit A** attached hereto. EDUs are estimated for residential and non-residential development.
- F. “Frog Pond West” is the area delineated in the map attached hereto as **Exhibit C**.
- G. “Frog Pond West Fees” means the Infrastructure Supplemental Fee and the Boeckman Bridge Fee, collectively.
- H. “Infrastructure Supplemental Fee” means the additional per-door fee that development with Frog Pond West is required to pay for the Unfunded Projects. The amount of the Infrastructure Supplemental Fee may be adjusted based on the factors listed Article II, Section 3 below.
- I. “Master Plan” means the Frog Pond West Master Plan adopted on July 17, 2017 through Ordinance No. 806.
- J. “Neighborhood Park” means the local park identified by the same name in the Master Plan.
- K. “Unfunded Projects” means (1) the twenty-four (24) foot section from face of curb toward the center of the street of the north half of SW Boeckman Road and associated utilities, bicycle facilities, striping and signage, landscaping, irrigation, street lights, sidewalk, and other amenities installed from the curb to the edge of public right of way, which twenty-four (24) feet are identified in **Exhibit D** attached hereto and incorporated

herein, that is the responsibility of the adjacent developer under current City development policy; (2) the twenty-four (24) foot section of the west half of SW Stafford Road and associated utilities, bicycle facilities, striping and signage, landscaping, irrigation, street lights, sidewalk, and other amenities installed from the curb to the edge of public right of way that is the responsibility of the adjacent developer under City development policy at time of project design (*see Exhibit D*); and (3) the Neighborhood Park.

ARTICLE II

METHODOLOGY

Section 1. Infrastructure Supplemental Fee and Boeckman Bridge Fee Calculation

The methodologies for calculating the Frog Pond West Fees was calculated by City staff, with guidance from the Frog Pond West Infrastructure Funding Plan, and are set forth in **Exhibit A** of this Resolution. The resulting fees displayed in **Exhibit A** is based upon the best information available at the time and will be valid up to, but not including, July 15, 2018, at which time it will adjust as set forth below. The fees will adjust bi-annually each January and July, as set forth below.

Section 2. Separate Fees

The Frog Pond West Fees are each separate from and in addition to any system development charges or other payments or fees required by the City.

Section 3. Bi-Annual Adjustments

The fees in **Exhibit A** are derived from preliminary planning, preliminary cost estimates, and preliminary assumptions as to the total build out of Frog Pond, and will be refined as more detailed information becomes available. The Frog Pond West Fees will adjust bi-annually on July 15 and January 15 of each year, beginning on July 15, 2018, in order to ensure that the fees continue to meet the demands of the Unfunded Projects. In determining fee adjustments, the City may consider one or more of the following:

- A. The Construction Cost Index;
- B. Any interest or financing costs the City may incur, or may have incurred but not allocated, in the construction of the Master Plan projects;

- C. New cost estimates from advanced planning and design;
- D. Actual design and construction costs as projects are completed;
- E. Revisions to City of Wilsonville Public Works Standards;
- F. The number of EDUs by which the supplemental fees are allocated; and
- G. Other unanticipated costs or revenue offsets.

ARTICLE III

PAYMENT AND RECORDING

Section 1. Time of Building Permit Issuance

The Frog Pond West Fees are non-refundable and are due in full at the time of each building permit issuance by the City, and shall be equal to the fee in effect at the time the permit is issued. Advance payments will not be accepted.

Section 2. Non-Sufficient Funds

In the event the Frog Pond West Fees are paid and a building permit has been issued, but there are non-sufficient funds, the building permit will be immediately revoked and the permittee will be issued a stop work order.

Section 3. Annexation

At the time of annexation, parties, other than the School District, will enter into a development and annexation agreement, in similar form to the development and annexation agreement template attached as **Exhibit B**, which obligates payment of the Frog Pond West Fees at the time of each building permit issuance. The City and the School District will enter into an agreement at time of annexation that obligates the School District to pay the Frog Pond West Fees at the time of each building permit issuance.

Section 4. Personal Obligation

The Frog Pond West Fees liability will survive and be a personal obligation of the permittee.

Section 5. Frog Pond West Fund

A fund entitled “Frog Pond West Fund (FPWF)” is hereby created for recording the collection of the Frog Pond West Fees and to make disbursements therefrom to construct the Unfunded Projects and the Boeckman Bridge, and other improvements as set forth in Section 6.

Section 6. Exhaustion of Funds

At the conclusion of construction of all Unfunded Projects and the Boeckman Bridge, if funds remain within FPWF from whatever source, they will be used for public capital projects within, adjacent to, or for the benefit of Frog Pond West until all funds are exhausted. Upon the exhaustion of funds within FPWF, the fund will be closed.

ARTICLE IV

SEVERABILITY

Section 1. The invalidity of any section, subsection, paragraph, sentence, or phrase of this Resolution, or the exhibits attached hereto which are incorporated herein, will not affect the validity of the remaining portions thereof.

ARTICLE V

INCORPORATION OF RECITAL

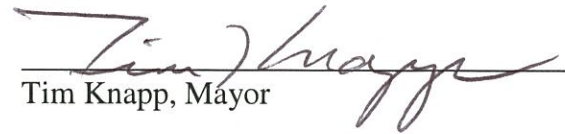
Section 1. The City Council hereby adopts the above recitals as findings and incorporates them by reference as if fully set forth herein in support of this Resolution. The City Council also incorporates and adopts **Exhibit A, Exhibit B, Exhibit C, and Exhibit D** attached to this Resolution.

ARTICLE VI

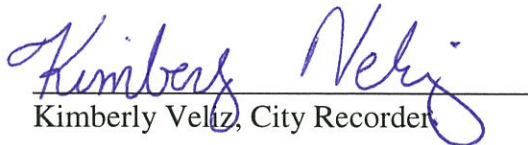
EFFECTIVE DATE

Section 1. This Resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 7 day of August, 2017, and filed with the Wilsonville City Recorder this date.


Tim Knapp, Mayor

ATTEST:


Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Excused

Attachments:

- Exhibit A – Infrastructure Supplemental Fee and Boeckman Bridge Fee Methodology and Example Calculation
- Exhibit B – Development Agreement Template
- Exhibit C – Map of Frog Pond West
- Exhibit D – Illustration of “Local” Developer Portion of Boeckman Road and Stafford Road

EXHIBIT A

Methodology

Infrastructure Supplemental Fee:

Figure 1 below summarizes the Frog Pond West Infrastructure Supplemental Fee, including associated projects, preliminary cost estimates, and allocation per equivalent dwelling unit (EDU). All costs shown assume that projects will be built by the City and, therefore, public-sector construction cost estimates are used. Cost estimates in Figure 1 include hard (construction) costs, plus external engineering (25% of hard costs), contingency (30% of hard costs), and city overhead (12% of all costs, to account for internal City engineering, finance, and related services). The initial per door Infrastructure Supplemental Fee for development within Frog Pond West is \$15,814. This Infrastructure Supplemental Fee will be adjusted as provided in the Resolution.

Figure 1. Frog Pond West Initial Infrastructure Supplemental Fee

Projects	Total Project Cost Public Sector Construction	Oversize Components (City SDCs)	City Share	Net Project Cost to Recover (rounded)	Number of EDUs	Allocation per EDU	Admin Overhead 12.0%	Total Allocation per EDU
Boeckman Rd	3,747,161	122,986	2,026,941	1,597,000	538	2,970	356	3,326
Boeckman Rd sanitary sewer	690,625	265,756	-	425,000	490	870	104	974
Stafford Rd	2,585,548	439,544	-	2,146,000	538	3,990	479	4,469
Stafford Rd sanitary sewer	213,281	20,312	-	193,000	490	390	47	437
Stafford Rd water	365,625	71,094	-	295,000	472	630	76	706
Neighborhood parks	2,407,221	-	-	2,407,000	457	5,270	632	5,902
Total	10,009,461	919,692	2,026,941	7,063,000		14,120	1,694	15,814

EDUs. An EDU is an approximation of the infrastructure demand generated by one dwelling unit, and is useful since EDUs can also be estimated for non-residential (e.g., school, commercial, or industrial) development. In the case of the Neighborhood Park, costs are allocated across 457 EDUs in Frog Pond West, which is 80% of the 571 total homes allowed in the Master Plan, and accounts for a potential 20% “underbuild.” Assuming that 80% or more of the allowed homes in Frog Pond West are built, they will generate adequate Infrastructure Supplemental Fees for the Neighborhood Park, along with the other Master Plan infrastructure projects. Over the course of development within Frog Pond West, the number of EDUs may be adjusted. In the case of other

infrastructure elements (roads, sewer, water), the proposed school will generate infrastructure demand in addition to demand from residential development. For that infrastructure, the City and project team have estimated school demand (in EDUs) based on comparable past projects, and added this to the housing demand. Therefore, the road, sanitary sewer, and water projects are allocated across a greater number of EDUs. The methodology to be used for the School District development will be based on the number of EDUs displaced by the School District facility.

Boeckman Bridge Fee:

Traffic generated by Frog Pond West is expected to make up a modest portion of the total traffic carried by Boeckman Bridge. The average daily trips (ADT) forecast for Boeckman Bridge in 2035 is 12,750. Frog Pond West's 571 housing units are expected to generate 1,170 ADT over Boeckman Bridge, or 9.2% of the total forecast ADT. The school is estimated to generate 645 ADT, or 5% of the total. In all, the estimated ADT generated by Frog Pond West, at full build out, is 1,815, or 14.3% of total forecasted trips.

The current cost estimate for Boeckman Bridge is \$14.0 million. The amount to be raised by housing development in Frog Pond West will be 9.2% of the total unfunded portion, divided equally between 571 units. For each \$1 million of "net unfunded" bridge cost (not covered by the Urban Renewal Agency or other citywide sources), the fee will be \$161 (9.2% times \$1,000,000, divided by 571 housing units). The actual fee will depend on the unfunded portion of Boeckman Bridge; for example:

- If \$2 million unfunded, the fee per EDU will be \$322.
- If \$10 million unfunded, the fee per EDU will be \$1,610.
- If \$14 million unfunded, the fee per EDU will be \$2,254.

For additional information regarding the methodology of the Infrastructure Supplemental Fee and the Boeckman Bridge Fee, consult the Infrastructure Funding Plan within the Frog Pond West Master Plan, which is incorporated as if fully set forth herein.

EXHIBIT B

DEVELOPMENT AND ANNEXATION AGREEMENT BETWEEN [DEVELOPER] AND THE CITY OF WILSONVILLE, OREGON

This Development and Annexation Agreement (“Agreement”) is entered into by and between the **City of Wilsonville**, an Oregon municipal corporation (“City”), and **[Developer]**, a(n) _____ [state] _____ [corporation/limited liability company, etc.] (“Developer”). The effective date of this Agreement is the ____ day of _____, 20____ (“Effective Date”). The City and Developer may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. Developer proposes to construct residential housing within the area commonly referred to as Frog Pond West, which residential housing to be constructed by Developer is depicted on the map attached hereto and incorporated herein as **Exhibit A** (“Developer Property”). A map of the entire area of Frog Pond West is depicted on the map attached hereto and incorporated herein as **Exhibit B** (“Frog Pond West”).
- B. Developer presented to the City a proposed site plan for development of the Developer Property, as depicted in **Exhibit C** (“Proposed Development”) attached hereto and incorporated herein. The Proposed Development includes, but is not limited to, the following improvements: *[state any key infrastructure improvements and oversizing to be done by Developer]*. Developer accepts all responsibility of the Proposed Development as amended and approved by the City.
- C. The Infrastructure Funding Plan (“Funding Plan”), a component of the Frog Pond West Master Plan (“Master Plan”), identifies four (4) off-site infrastructure projects: (1) Memorial Park pump station; (2) Boeckman Creek sanitary sewer trunk line; (3) west side water reservoir; and (4) Boeckman Bridge, which will be west of Frog Pond West over Boeckman Creek (“Boeckman Bridge”). These four (4) off-site infrastructure projects serve the broader City community, will be constructed by the City, and are funded through City system development charges (“SDC”), with possible contributions from other sources. In particular, Boeckman Bridge may be paid partially through a Boeckman Bridge transportation mitigation fee discussed herein in **Section IV** (“Boeckman Bridge Fee”). Developer will be responsible for paying the Boeckman Bridge Fee, to the extent required, at issuance of building permit.
- D. The Funding Plan also identifies four (4) on-site infrastructure projects: (1) local streets and sidewalks; (2) sanitary sewer lines; (3) water lines; and (4) stormwater management (“Developer Improvements”). Unless expressly identified otherwise herein, the construction and cost of these four (4) Developer Improvements are the responsibility of developers

within Frog Pond West.

- E. The Funding Plan lists five (5) Master Plan infrastructure projects, which are the focus of the Funding Plan. These Master Plan infrastructure projects are: (1) the north side of SW Boeckman Road adjacent to Frog Pond West, including sanitary sewer (“Boeckman Road”); (2) the west side of SW Stafford Road adjacent to Frog Pond West, including sanitary sewer and water (“Stafford Road”); (3) the Neighborhood Park within Frog Pond West (“Neighborhood Park”); (4) the Trailhead Park in the western area of Frog Pond West (“Trailhead Park”); and (5) the Boeckman Trail along the west edge of Frog Pond West (“Boeckman Trail”).
- F. Trailhead Park and Boeckman Trail are accounted for in the Parks SDCs and are included in the Parks and Recreation Master Plan. These regional park facilities will be constructed by the City unless otherwise stated herein.
- G. Under current City policy, the cost and construction of part of Boeckman Road, part of Stafford Road, and Neighborhood Park (“Unfunded Projects”) are the responsibility of developers within Frog Pond West. Attached hereto and incorporated herein as **Exhibit D** is a depiction of the “local portion” of Boeckman Road (which similarly applies for Stafford Road) that is the responsibility of the adjacent developer to construct under current City policy.
- H. Due to the size and expense of these three (3) Unfunded Projects and the multiple property ownerships within Frog Pond West, the City will take responsibility for constructing the Unfunded Projects and acquiring land as needed for the Neighborhood Park. Developer is responsible for paying system development charges (SDCs) and an additional infrastructure supplemental fee provided in **Section IV** (“Infrastructure Supplemental Fee”) at issuance of building permit in exchange for the City taking responsibility for constructing the Unfunded Projects.
- I. The City and Developer have agreed that this allocation for the work between the City and Developer is fair and equitable and is a proportional allocation between benefit to the public and benefit to Developer’s development.
- J. Developer will be solely responsible for all up-front costs associated with Developer’s particular Developer Improvements as described in **Section III** below.

AGREEMENT

In consideration of the foregoing Recitals, and incorporating all of the above Recitals by reference in this Agreement as if fully set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all of the above-named Parties agree as follows:

I. NEW DEVELOPMENT

Developer intends to construct residential development *[and other ancillary amenities]* within Frog

Pond West. Developer's Proposed Development has been approved by the City's Development Review Board, and Developer is currently refining construction plans to be submitted in the permitting processes required by the City for residential development. Developer will pay all fees required by the City for such residential development, including the Infrastructure Supplemental Fee and the Boeckman Bridge Fee described herein (collectively referred to as "Frog Pond West Fees"), in order to obtain the appropriate permits to move forward with Developer's Proposed Development ("Development Approval").

II. CITY'S IMPROVEMENTS (City Obligations)

In consideration for Developer paying certain additional fees described in **Section IV**, the City agrees to construct the Unfunded Projects and to acquire certain real property necessary for development of the Neighborhood Park. The City retains sole and absolute discretion regarding the means, manner, timing, materials, phasing, and all other aspects of acquisition and construction of the Unfunded Projects. Developer agrees to cooperate with the City with regard to the City's construction of the Unfunded Projects, including, but not limited to, providing access to project sites, allowing tie-in to existing and future infrastructure, and coordinating Developer Improvements with construction of the Unfunded Projects. The City may also elect, in its sole and absolute discretion, to assign its responsibility to construct any of the Unfunded Projects.

III. DEVELOPER'S IMPROVEMENTS (Developer Obligations)

Section 3.1 – Description of Developer Improvements

Developer agrees to perform the Developer Improvements, as provided in the Proposed Development (**Exhibit C**), which Developer Improvements are generally described as follows:

[Describe specific improvements to be performed by Developer.]

Section 3.2 – Developer Improvement Costs

[The foregoing Developer Improvements shall be constructed by Developer at Developer's sole expense. The foregoing Developer Improvements must be completed, inspected by the City, and deemed complete by the City before the City will issue any temporary occupancy permits to Developer, assuming Development Approval.]

-OR-

The foregoing Developer Improvements shall be constructed by Developer at Developer's sole expense, except Developer will receive SDC credit or reimbursement relating to _____ [including some potential soft costs]. The foregoing Developer Improvements must be completed, inspected by the City, and deemed complete by the City before the City will issue any temporary occupancy permits to Developer, assuming Development Approval.]

Section 3.3 – Reimbursement of Expense

If Developer is entitled to SDC credit or reimbursement pursuant to **Section 3.2**, Developer must submit a request for SDC credit or reimbursement to the City within ninety (90) days of written acceptance of the improvements by the City. A cover page invoice with Developer's letterhead shall accompany the request for SDC credits or reimbursement. Developer must submit sufficient documentation for specific costs related to construction of such improvements and in a format acceptable by the City. Developer shall also submit a signed letter of completion certifying payment in full to all subcontractors and suppliers. If Developer fails to submit an acceptable request for SDC credit or reimbursement within ninety (90) days from the City's letter of acceptance issuance date, Developer forfeits its right to receive the SDC credit or reimbursement unless the Parties agree in writing.

The City will pay the reimbursement within thirty (30) days of receiving the approved final construction costs request documents for reimbursement, provided there is mutual agreement on any true-up charges. If there is a disagreement on any or all of the true-up charges, that true-up sum(s) may be withheld until such time as any such disagreement is resolved, with that sum(s) being paid within seven (7) days of resolution.

Section 3.4 – Developer Bonds

Prior to commencement of construction of the infrastructure set forth in this Agreement, Developer must provide to the City performance and payment bonds, satisfactory to the City. Prior to commencement of construction, Developer shall also cause the City to be named as an additional insured on the applicable contractor's insurance policy for the construction of the respective infrastructure provided for in this Agreement, in amounts and coverages reasonably satisfactory to the City.

Section 3.5 – Developer Compliance with Frog Pond West Master Plan and City Code

Developer agrees to adhere to the purpose, terms, conditions, guidance, regulations, and requirements contained in the Frog Pond West Master Plan and related Wilsonville Code. Developer is further obligated to act in good faith and pursuant to the City of Wilsonville Public Works Standards in providing access to infrastructure for other development within Frog Pond West. Developer will not prohibit, block, or otherwise impede another developer's ability to access and tie into infrastructure within Frog Pond West. If the City determines, in its sole and absolute discretion, that Developer is engaging in conduct or behavior to prevent, inhibit, or otherwise deter other development from accessing or tying into infrastructure within Frog Pond West, the City may withhold occupancy permits, building permits that are in process, future building permits, and SDC credits or reimbursements unless and until Developer allows other development to access the infrastructure within Frog Pond West.

IV. ADDITIONAL FEES

Section 4.1 – Infrastructure Supplemental Fee

In addition to SDCs required to be paid, Developer will pay an Infrastructure Supplemental Fee of \$_____ per single-family home, as adjusted pursuant to City Resolution No. _____, at issuance of each building permit. If Developer constructs duplexes, the Infrastructure Supplemental Fee is required for each of the two units within the duplex. Developer is not required to pay the Infrastructure Supplemental Fee for any accessory dwelling units, which are defined in Wilsonville Code 4.001.

Section 4.2 – Boeckman Bridge Fee

Developer will also pay the Boeckman Bridge Fee of \$_____ per single-family home, as adjusted pursuant to City Resolution No. _____, for the construction of Boeckman Bridge, which costs are not funded through other sources such as urban renewal or SDCs. The Boeckman Bridge Fee must be paid at issuance of each building permit. If Developer constructs duplexes, the Boeckman Bridge Fee is required for each of the two units within the duplex. Developer is not required to pay the Boeckman Bridge Fee for any accessory dwelling units, which are defined in Wilsonville Code 4.001.

V. DISPUTE RESOLUTION

Section 5.1 – Dispute of Frog Pond West Fees

5.1.1 If Developer disputes the City’s adjustment of either of the Frog Pond West Fees, Developer must submit a letter of appeal (“Appeal Letter”) no later than ten (10) calendar days after the date of issuance of each building permit addressed to the City’s Community Development Director and the City’s Finance Director. Developer cannot appeal the base Frog Pond West Fees of \$_____ (Infrastructure Supplemental Fee) and \$_____ (Boeckman Bridge Fee) listed in **Sections 4.1 and 4.2** above. The Appeal Letter contesting the adjusted amount must include the following information:

- 5.1.1.1 The name of the Developer;
- 5.1.1.2 The location of the parcel;
- 5.1.1.3 The amount of the adjustment that Developer disputes; and
- 5.1.1.4 Reasons why Developer disputes the adjustment.

If Developer fails to provide any of the above-listed information in the Appeal Letter within the allowed ten (10) day period, the Community Development Director will send a letter dismissing the appeal for failure to comply with this Section.

5.1.2 Upon receipt of an Appeal Letter submitted in compliance with **Section 5.1.1**, the Community Development Director and Finance Director will review the Appeal

Letter, will obtain and review any City information regarding the disputed adjustment, and may ask for additional information from the Developer. No later than thirty (30) calendar days after the date of the Appeal Letter, the Community Development Director and Finance Director will issue an opinion of the Community Development Director and Finance Director (“Directors’ Opinion”) regarding whether Developer is entitled to a refund of any portion of the adjusted amount.

- 5.1.3** If Developer disputes the Directors’ Opinion, then Developer may submit a notice of appeal (“Appeal Notice”) no later than fourteen (14) calendar days after the date of the Directors’ Opinion to the City Manager to have the matter reviewed by the City Council. The Appeal Notice must include the information listed in **Section 5.1.1.1 through 5.1.1.4** as well as following information:

5.1.3.1 Reasons why Developer disputes the findings in the Directors’ Opinion.

If Developer fails to provide any of the above-listed information in the Appeal Notice within the fourteen (14) day period, the City Manager will send a letter dismissing the appeal for failure to comply with this Section.

- 5.1.4** Upon receipt of an Appeal Notice submitted in compliance with **Section 5.1.3**, the Community Development Director and Finance Director may supplement their Directors’ Opinion with additional information (“Directors’ Supplement”) to be reviewed by the City Council, which Directors’ Supplement must be submitted to the City Manager no later than fourteen (14) calendar days after the Appeal Notice. The City Council will review the entire record and may, in its sole discretion, request oral testimony. Such review must be held no later than thirty (30) calendar days after the Directors’ Supplement or no later than forty-five (45) calendar days after the Appeal Notice if no Directors’ Supplement is provided. City Council will issue a decision (“Council Decision”) at the review meeting or at later meeting if the City Council decides to continue the review to obtain additional information from the Developer and/or the City.

- 5.1.5** If Developer disputes the Council Decision, Developer will have a statutory right to a writ of review to Clackamas County Circuit Court pursuant to Oregon Revised Statutes 34.010 through 34.100.

Section 5.2 – All Other Disputes

- 5.2.1** **Mediation.** All disputes arising out of this Agreement, other than disputes subject to **Section 5.1** above, shall first be submitted to mediation. Any 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 the Parties, any Party may make demand for arbitration pursuant to the following paragraph.

5.2.2 Arbitration or Litigation. Any dispute arising under **Section 5.2.1** of this Agreement which is not resolved through mediation, upon mutual agreement of the Parties may be submitted to arbitration, to be conducted in Wilsonville, 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 agree upon and select an arbitrator within twenty (20) days, then any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate unless otherwise required by Oregon law. If arbitrated, judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

5.2.3 Equitable Remedies. Even if the parties undergo mediation or arbitration, the City may still request immediate equitable remedies of either specific performance or injunctive relief to occur while mediation or arbitration is pending or ongoing. The parties will otherwise agree to abate the court case pending completion of the mediation or arbitration.

VI. RECORDING

This Agreement runs with Developer's land that is subject to this Agreement as identified in Exhibit A. Either this Agreement or a memorandum of this Agreement will be recorded by the City with the Clackamas County Recorder's Office for all real property subject to this Agreement.

VII. MISCELLANEOUS PROVISIONS

Section 7.1 – Further Assurances

Each Party will cooperate and perform such 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. Developer understands and agrees that no occupancy permit will be granted for the Proposed Development until the Developer Improvements have been completed and approved by the City as meeting the requirements set forth herein.

Section 7.2 – Modification or Amendment

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

Section 7.3 – Relationship

Nothing herein may be construed to create an agency relationship or a partnership or joint venture between the Parties.

Section 7.4 – Maintenance

Developer is responsible for maintenance of the Developer Improvements as provided in the 2015 City of Wilsonville Public Works Standards, Section 101.8.18 *Maintenance and Warranty*, and any amendments thereto. Developer remains responsible for submitting a maintenance bond, per Public Works Standards, to the City for all of its required Developer Improvements within the public right-of-way or public easements. If Developer fails to maintain the Developer Improvements during the applicable period, the City may do so and make a claim on the bond and directly against Developer. Any work required to be performed by the City will bear interest at a rate of twelve percent (12%) per annum.

Section 7.5 – Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

Section 7.6 – No Continuing Waiver

The waiver of any Party of any breach of this Agreement will not operate or be construed to be a waiver of any subsequent breach.

Section 7.7 – Applicable Law

This Agreement shall be governed by and construed under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

Section 7.8 – Legal Fees

If any Party commences legal proceedings, including arbitration or bankruptcy, for any relief against any 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 attorney fees, and expert witness fees, as determined by the court or the arbitrator at the trial level or on any appeal.

Section 7.9 – Time of Essence

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

Section 7.10 – Notices

All notices, demands, consents, approvals, and other communications which are required or

desired to be given by any Party to each 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 (3) days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: City of Wilsonville
 Attn: _____, City Attorney
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Developer: [Developer]
 Attn: _____
 [Street Address]
 [City, State, Zip Code]

Section 7.11 – 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.

Section 7.12 – 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.

Section 7.13 – No Third-Party Beneficiaries and No Assignment

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 or their respective heirs, successors, and assigns. Developer may not assign its rights under this Developer Agreement without the prior express written consent of the City.

Section 7.14 – Representations and Warranties

Each Party signing on behalf of Developer and the City hereby warrants actual authority to bind their respective Party. The Parties signing below also hereby warrant that entry into this Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted hereby.

Section 7.15 – Legal Review

All of the Parties to this Agreement hereby affirm that they have been represented in the negotiation hereof by their own independent legal counsel who have reviewed this Agreement and advised their respective client concerning the same. Therefore it shall be interpreted accordingly and shall not be construed against the drafter.

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

[DEVELOPER],
a[n] _____ [limited liability company/corporation]

CITY OF WILSONVILLE,
a municipal corporation

By: _____
Print Name: _____
As Its: _____

By: _____
Print Name: _____
As Its: City Manager

APPROVED AS TO FORM:

By: _____
_____, City Attorney

EXHIBIT A

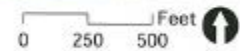
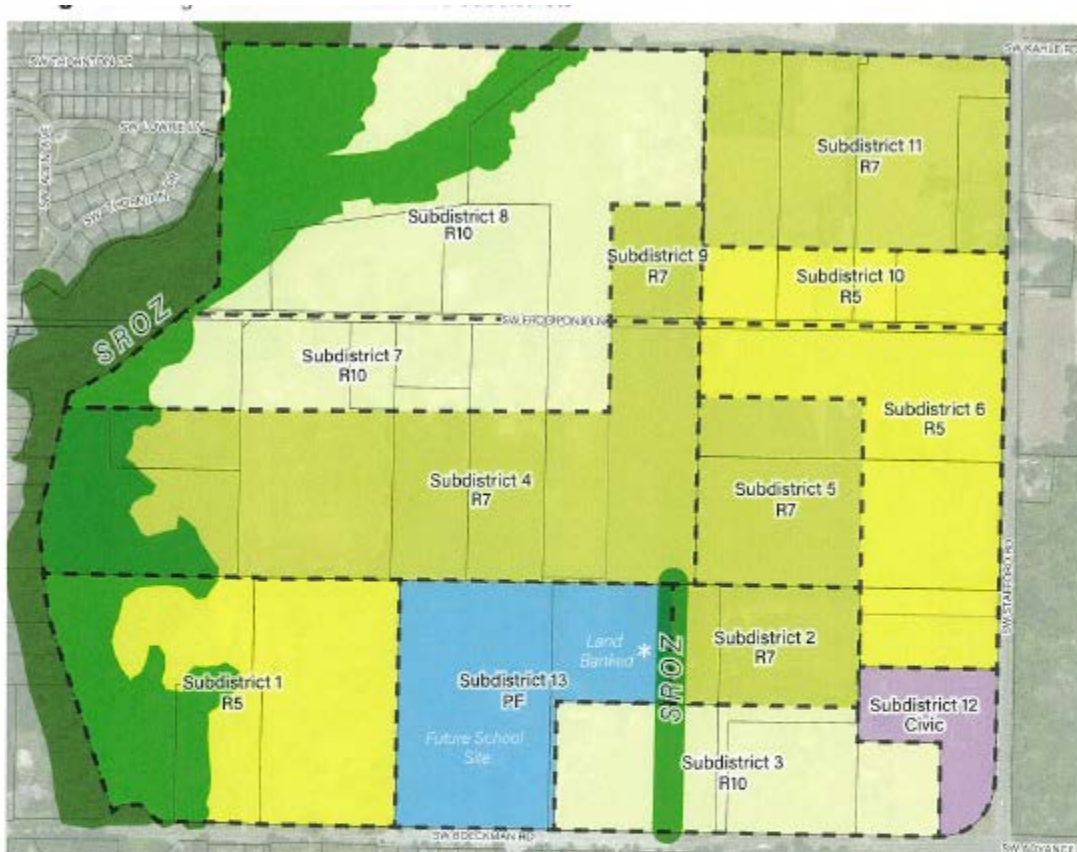
Map of Developer Property

[To be inserted]

Sample

EXHIBIT B

Map of Frog Pond West



- | | | | |
|--|-------------------------------|--|---|
| | R5 - Small Lot Single Family | | Public Facilities |
| | R7 - Medium Lot Single Family | | Civic |
| | R10 - Large Lot Single Family | | Significant Resources Overlay Zone (SROZ) |

* Land banked for school facilities, a neighborhood park, and/or residential use.

EXHIBIT C

Proposed Development

[To be inserted]

Sample

EXHIBIT D

Illustration of “Local Portion” of Boeckman Road (Applicable for Stafford Road)

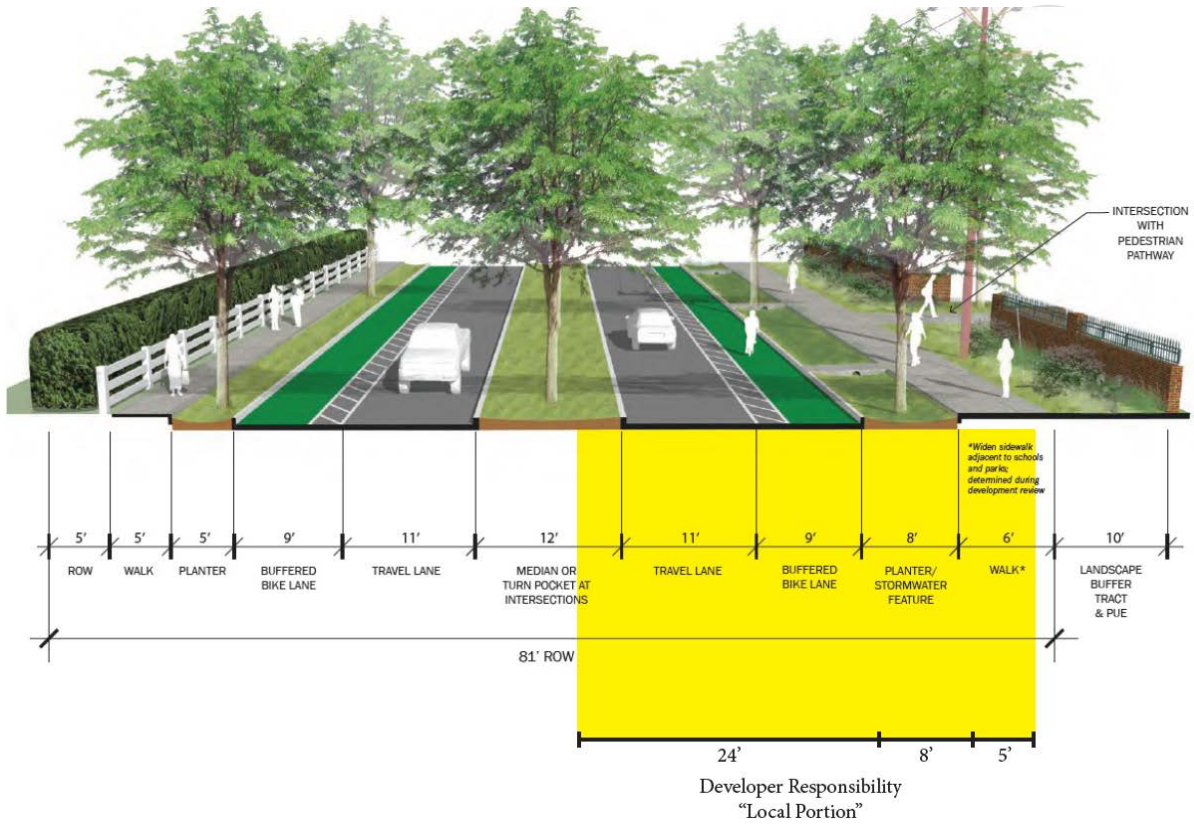
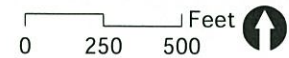
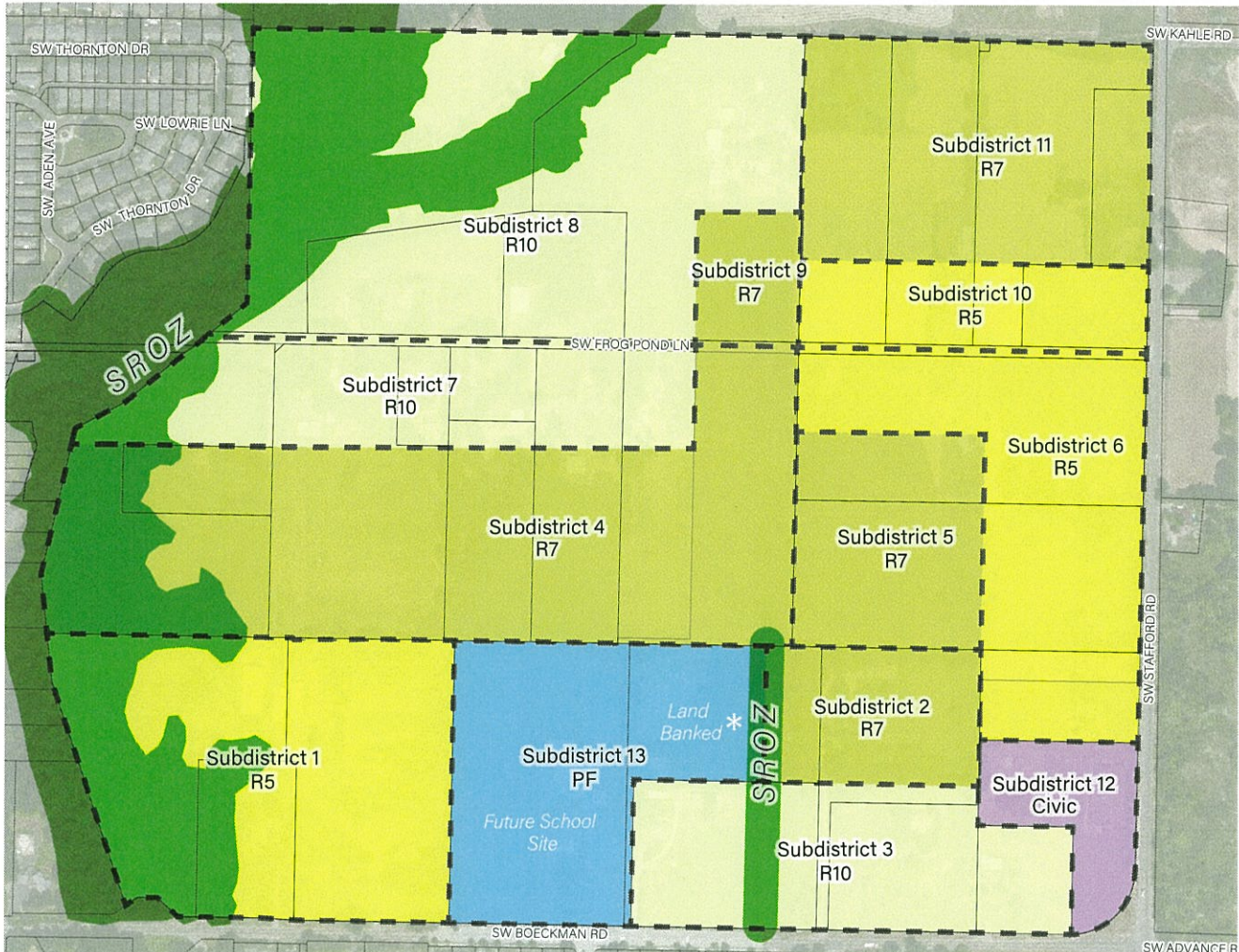



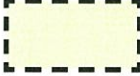



Figure 6. Frog Pond West Land Use and Subdistricts



- | | | | |
|---|-------------------------------|--|---|
|  | R5 - Small Lot Single Family |  | Public Facilities |
|  | R7 - Medium Lot Single Family |  | Civic |
|  | R10 - Large Lot Single Family |  | Significant Resources Overlay Zone (SROZ) |

* Land banked for school facilities, a neighborhood park, and/or residential use.

