

RESOLUTION NO. 2743

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH TUALATIN VALLEY WATER DISTRICT AND THE CITY OF HILLSBORO TO JOINTLY DESIGN AND CONSTRUCT THE GARDEN ACRES ROAD PROJECT (CIP #4201) AND WILLAMETTE WATER SUPPLY PLM_1.2 GARDEN ACRES TO 124TH PIPELINE PROJECT.

WHEREAS, ORS 190.003 - 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all activities and functions that a Party to the agreement has the authority to perform; and

WHEREAS, the City of Wilsonville (WILSONVILLE) has jurisdiction over a network of roads and streets serving Wilsonville-wide travel needs, including Garden Acres Road; and

WHEREAS, WILSONVILLE's Transportation System Plan, adopted by the Wilsonville City Council, identifies the Garden Acres Road Urban Upgrade (UU-08) as a high priority transportation improvement, hereafter referred to as "Road Work."

WHEREAS, Tualatin Valley Water District (TVWD) and City of Hillsboro (Hillsboro), collectively doing business as and referred to herein as Willamette Water Supply Program (WWSP), desire to construct a large diameter water supply transmission line and related improvements in coordination and association with the Road Work, and such improvements are hereinafter referred to as "Waterline Work," which is generally coincident with the Road Work; and

WHEREAS, WILSONVILLE (Lessor), TVWD and Hillsboro (collectively Lessee) entered into a Ground Lease for Raw Water Pipeline, dated March 21, 2018, hereinafter referred to as "Ground Lease," which includes, among other things, the goal and objective to complete the design and construction of the Waterline Work; and

WHEREAS, Section 7.33 of the Ground Lease, **Joint Construction Projects Between Lessee and Lessor**, stipulates the development of a separate agreement for construction or maintenance projects that are to be jointly undertaken between Lessor and Lessee; and

WHEREAS, it is the mutual understanding of the Parties that incorporation of the design and construction of the Waterline Work into the design and construction of the Road Work is mutually beneficial to Lessor and Lessee, and Lessee agrees to pay all of the Waterline Work and a proportionate share of the road construction work; and

WHEREAS, the terms of the Intergovernmental Agreement are to be interpreted to be consistent with the requirements of the Ground Lease, with the exception of the agreed upon modification to the referenced Ground Lease term(s) made specifically for this Project as stated in the Intergovernmental Agreement.

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

1. WILSONVILLE and WWSP agree to jointly design and construct the Garden Acres Road and PLM_1.2 Garden Acres to 124th Pipeline projects in accordance with the Intergovernmental Agreement, substantially in the form attached as **Exhibit A**.
2. WWSP will provide design and construction documents for the PLM_1.2 Garden Acres to 124th Pipeline Project.
3. WILSONVILLE will provide design and construction documents for the Garden Acres Road Project and will prepare a joint project bid package and will administer the project bidding.
4. WILSONVILLE will enter into a construction contract with the successful bidder and will be responsible for overall management and administration of the joint construction project and agrees to coordinate and work collaboratively with WWSP in the delivery of the joint project.
5. WWSP will reimburse WILSONVILLE for all costs associated with incorporation of the Waterline Work into the design documents and creation of joint contract documents.
6. WWSP will reimburse WILSONVILLE for all costs associated with construction, construction management and administration of the Waterline Work as part of the joint construction project.
7. WWSP is responsible for all costs associated with the Waterline Work and a fixed percentage of the Road Work construction costs, calculated to be 21.6%.

8. They Manager is authorized to sign the Intergovernmental Agreement in substantially the form attached hereto but, with latitude to make minor revisions, as determined by the City Engineer, to reflect construction variances and clarifications.
3. This Resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 1st day of April 2019, 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 Akervall	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor West	Yes

Exhibit:

- A. Intergovernmental Agreement for Joint Design and Construction of Garden Acres Road and PLM_1.2 Garden Acres to 124th Pipeline Projects.

Exhibit A

INTERGOVERNMENTAL AGREEMENT

BETWEEN

**THE CITY OF WILSONVILLE AND
TUALATIN VALLEY WATER DISTRICT AND THE CITY OF HILLSBORO
FOR THE WILLAMETTE WATER SUPPLY PROGRAM**

JOINT DESIGN AND CONSTRUCTION OF

**GARDEN ACRES ROAD AND
PLM_1.2 GARDEN ACRES TO 124TH
PIPELINE PROJECTS**

THIS INTERGOVERNMENTAL Agreement ("Agreement") is made and entered into between the City of Wilsonville, a political subdivision of the State of Oregon, acting by and through its City Council, hereinafter referred to as "WILSONVILLE"; the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264, acting by and through its Board of Commissioners, hereinafter referred to as "TVWD"; and the City of Hillsboro, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY"; TVWD and CITY joined together in the Willamette Water Supply Program, hereinafter referred to as "WWSP"; WILSONVILLE and WWSP are jointly referred to hereinafter as the "Parties."

RECITALS

- A. WHEREAS, ORS 190.003 - 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all activities and functions that a Party to the agreement has the authority to perform; and
- B. WHEREAS, WILSONVILLE has jurisdiction over a network of roads and streets serving Wilsonville-wide travel needs, including Garden Acres Road; and
- C. WHEREAS, WILSONVILLE's Transportation System Plan, adopted by the Wilsonville City Council, identifies the Garden Acres Road Urban Upgrade (UU-08) as a high priority transportation improvement, hereafter referred to as "Road Work," and as shown generally on the attached project map in Exhibit 1, Project Map (Exhibit 1), attached hereto and incorporated by reference; and
- D. WHEREAS, TVWD, as WWSP Lead Agency, and CITY, as a WWSP Partner, along with other municipal water supply agencies, are participating in the WWSP and have entered into intergovernmental agreements to establish responsibilities and obligations for the planning and design of proposed water system improvements; and
- E. WHEREAS, WWSP desires to construct a large diameter water supply transmission line and related improvements in coordination and association with the Road Work, and such WWSP improvements are hereinafter referred to as "Waterline Work," which is generally coincident with the Road Work; and
- F. WHEREAS, WILSONVILLE and WWSP have entered into a separate Ground Lease for Raw Water Pipeline, dated March 21, 2018, hereinafter referred to as "Ground Lease," which includes, among other things, the goal and objective to complete the design and construction of the Waterline Work; and

- G. WHEREAS, Section 7.33 of the Ground Lease, Joint Construction Projects between Lessee and Lessor, stipulates the development of a separate agreement for construction or maintenance projects that are to be jointly undertaken between WILSONVILLE (Lessor) and WWSP (Lessee); and
- H. WHEREAS, it is the mutual understanding of the Parties that incorporation of the design and construction of the Waterline Work into the design and construction of the Road Work is mutually beneficial to WWSP and WILSONVILLE, and WWSP agrees to pay for the Waterline Work and a proportionate share of other Road Work costs as provided herein; and
- I. WHEREAS, the terms of this Agreement are to be interpreted to be consistent with the requirements of the Ground Lease, with the exception of the following agreed upon modification to the referenced Ground Lease term(s) made specifically for this Project as follows: Section 2.1 defines the Lease Area to be a minimum of eight feet below ground surface. Section 3.3 provides that in the Garden Acres Road, the depth may need to be greater and that Lessee may be required to modify the installed depth as needed by Lessor and as determined by Lessor. Finally, Section 3.3 also allows that Lessor, in its sole discretion, may elect to allow portions of the pipe to be located less than eight feet below the surface but that determination will be made during Lessor's design and Plan review, as described in Section 7.5; and
- J. WHEREAS, for a portion of the segment of Waterline Work covered by this Agreement, Lessor has agreed to allow for a lesser depth than is required in the Ground Lease, as outlined in Exhibit 4, Construction Costs (Exhibit 4). In consideration of this allowance, WWSP agrees to pay WILSONVILLE for its increased costs associated with accommodating this lesser depth and allowing portion of the water transmission pipeline to go over utilities WILSONVILLE will be placing in the road, or has placed in the road; and
- K. WHEREAS, it is the mutual desire of the Parties to enter into this Agreement to cooperate in the design and construction of the Waterline Work in conjunction with the Road Work, with the allocation of responsibilities as described below.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth below, and the recitals set forth above, which are incorporated into this Agreement as if fully set forth herein, the Parties agree as follows:

ARTICLE I - PROJECT GOALS

1.1 The Parties are coordinating the design and construction of the Road Work and Waterline Work to maximize the benefits to their constituents and the community at large. Road Work and Waterline Work shall hereinafter be referred to jointly as the "Project." The Parties desire to work in collaboration and as integrated work groups where possible to achieve Project goals and timelines. Pursuant to Section 7.32 of the Ground Lease, the Project timeline is defined by the design and construction milestones set forth in Exhibit 2, Milestones (Exhibit 2).

1.2 The Project is intended to achieve the following goals:

WILSONVILLE: To design and construct Road Work to upgrade the existing roadway to an urban street cross-section in support of future development

within the Coffee Creek Industrial Areas, part of WILSONVILLE's ongoing capital program.

WWSP: To design and have portions of the water transmission pipeline constructed to further the objectives of WWSP in increasing water supply, reliability, redundancy, and resiliency to its member service areas. The Waterline Work under this Agreement is part of that effort.

- 1.3 The Parties understand that the Road Work and the Waterline Work must be completed according to the key milestones identified in Exhibit 2 and agree to work collaboratively to meet the established milestones. Further, Parties understand that if either Party is unable to proceed with or construct the Project in accordance with aforementioned milestones, the Party who is ready to move forward retains the right to independently move forward with the design and construction of that Party's part of the Project and the other Party will have to move forward at a later date or in a way that does not impede or interfere with the work of the Party who has already begun construction.

ARTICLE II - PROJECT DESCRIPTION

- 2.1 WILSONVILLE Road Work consists of design and construction of the road improvements on Garden Acres Road, including the design, construction, and responsibility for permits, utilities, and appurtenances, as depicted in Exhibit 1.
- 2.2 The WWSP Waterline Work consists of design and construction of a large diameter water transmission line and appurtenances according to design, plans, and technical specifications within the Road Work limits and beyond the Road Work limits, crossing Day Road and connecting to the WWSP PLM_3.0 (124th Pipeline) pipeline, as depicted in Exhibit 1.
- 2.3 The Project consists of one Contract Document inclusive of two schedules of work: Schedule A Garden Acres Road and Schedule B WWSP PLM_1.2 Waterline Work covering work within the Project Area, as depicted on Exhibit 1.

ARTICLE III - WILSONVILLE OBLIGATIONS FOR DESIGN

- 3.1 WILSONVILLE hereby designates Zach Weigel, P.E. as WILSONVILLE Project Manager for the Road Work and the WILSONVILLE representative responsible for coordination of the Waterline Work with WWSP pursuant to this Agreement. Patty Nelson, P.E. is WILSONVILLE's Principal Engineer for the Project.
- 3.2 WILSONVILLE will perform or cause to be performed all tasks needed to design and construct the Road Work and temporary access to Cahalin Road, including all permitting, real estate acquisition, public outreach, and developing construction documents suitable for bidding the Road Work.
- 3.3 WILSONVILLE will make all Road Work design and construction plans and information available to WWSP, as needed to coordinate the Waterline Work with the Road Work. Such information will include: Project

milestones; permitting; specifications; opinions of probable construction costs; plans, applications, and permit documents; ROW and easement acquisition plans; utility relocation plans and agreements; health and safety plans; stakeholder input; and other information as required for successful coordination and collaboration. The documentation will be available electronically and hosted by WILSONVILLE.

- 3.4 WILSONVILLE will prepare design plans and technical specifications for the Road Work. WILSONVILLE will provide the design topographical survey and Road Work base maps to WWSP. WILSONVILLE will provide WWSP the opportunity to review and comment on the Road Work design prior to final design documents. Design documents include plans/drawings, specifications, standard details, engineer's opinion of probable construction costs, and other documents that are required for each milestone shown in Exhibit 2. WILSONVILLE will incorporate WWSP comments that do not unreasonably impact the Road Work, including, but not limited to, cost, scope, or configuration, or interfere with the WILSONVILLE design standards and performance goals. In the event WWSP requests any changes that increase the cost of the Road Work, WILSONVILLE will advise WWSP if the changes are acceptable and, if so, of the estimated cost increase and will require that WWSP agree, in writing, to pay the additional costs before the changes are agreed to.
- 3.5 WILSONVILLE will prepare the Project bid package inclusive of the 'front-end' documents, including Bidding Information, Bid Forms, Contract Forms, Standard General Conditions, Special Provisions, Technical Specifications, design plans and others as required for successful bidding and construction of the Road Work and the Waterline Work (collectively, "Contract Documents"). The Contract Documents will have two schedules of work: Schedule A Road Work and Schedule B Waterline Work.
- 3.6 WILSONVILLE will prepare the draft Contract Documents and provide them to WWSP for review and comment. WILSONVILLE will incorporate or address/respond to review comments in a manner acceptable to both Parties' Project Managers.
- 3.7 WILSONVILLE will administer the Project bidding and solicit bids in compliance with all public contracting laws. Prequalification requirements for the Project will be included in the bid documents and will be a requirement of award of the bid. Minimum insurance requirements for the construction contractor shall be set in accordance with WILSONVILLE's standard minimum requirements but may be increased by mutual agreement of the Parties prior to bid solicitation and will be included in the Contract Documents. A minimum four-week bid period will be provided. A mandatory pre-bid meeting will be held with representatives of both the Road Work and Waterline Work. Bidder questions will be responded to by the WILSONVILLE Project Manager, incorporating technical responses from the representative technical leads. Bidder questions relating to Waterline Work will be directed to the WWSP Project Manager for response back to the WILSONVILLE Project Manager, who will issue the final response. Final responses will be copied to the WWSP Project Manager.

- 3.8 **WILSONVILLE will administer all addenda to the Contract Documents and related bidding activities, subject to the Administrative Charge, as identified in Exhibit 3, Design Costs (Exhibit 3), to the WWSP including the costs to incorporate any addenda into the Contract Documents.**
- 3.9 **WILSONVILLE will be responsible for right-of-way and easement acquisition; regulatory and land use permits and approvals, permit compliance, mitigation measures, and permit enforcement; and public information for the Road Work. WWSP will be responsible for obtaining any permits and right-of-way over and above those required for the Road Work for the Waterline Work.**

ARTICLE IV - WWSP OBLIGATIONS FOR DESIGN

- 4.1 **WWSP hereby designates Eric Ward, P.E. as WWSP Project Manager for the Waterline Work and the WWSP representative responsible for coordination of the Waterline Work with WILSONVILLE pursuant to this Agreement. Mike Britch, P.E. will be the WWSP Principal Engineer for the Waterline Work.**
- 4.2 **WWSP will perform or cause to be performed all tasks needed to design and construct the Waterline Work, including preparation of plans/drawings, standard details, technical specifications, engineer's estimate, and other documents required for completion of the Contract Documents and design milestones described in Exhibit 2. WWSP will provide WILSONVILLE a minimum of fourteen (14) Business Days to complete a design review of the Waterline Work at each significant milestone: 90-, and 100-percent design documents. Design documents include plans/drawings, specifications, standard details, engineer's estimate, and other documents that are required for each milestone. Documents will be prepared in a format agreeable to WILSONVILLE. As provided in Section 3.3 of the Ground Lease, WWSP must work with WILSONVILLE to coordinate the pipeline design to be consistent with WILSONVILLE'S planned utilities and must either modify pipe depth in those areas of the right-of-way, as required by WILSONVILLE, as needed or adjust the location within those segments of the right-of-way that may conflict with WILSONVILLE utilities which take priority.**
- 4.3 **WWSP will coordinate and will cause its consultants to coordinate with WILSONVILLE and its consultants, including attendance at all design team meetings, permit team meetings, real estate meetings, public information/outreach meetings, and other scheduled meetings. WILSONVILLE and WWSP Project Managers will mutually determine the type, frequency and timing of meetings in order to meet the needs of a well-coordinated Project.**
- 4.4 **WWSP will share and coordinate updates on the Waterline Work schedule with the WILSONVILLE Project Manager.**
- 4.5 **WWSP will provide necessary design coordination to advance the design and construction of the Project to achieve the key milestones described in Exhibit 2. This coordination includes timely review of Road Work design plans, additional geotechnical studies, survey, and other available**

documents as required and as described herein. As the design plans and studies are prepared, WWSP will propose any requested revisions to the Road Work design and/or Waterline Work design, plans, and specifications and consult with WILSONVILLE to resolve differences to the mutual benefit of WWSP and WILSONVILLE. The Principal Engineers from each agency will meet as needed to consult and resolve the differences.

- 4.6 WWSP will make its Waterline Work information available to WILSONVILLE and its consultants for the Project.
- 4.7 WWSP will provide the design and design coordination for all Waterline Work, including impacts to the existing roadway, utilities, and adjacent properties for the portion of the pipeline outside of the Road Work area, as shown in Exhibit 1.
- 4.8 WWSP will provide to WILSONVILLE a prequalified pipeline construction contractor list, developed in accordance with Oregon public contracting laws, for inclusion in Project. WWSP will provide WILSONVILLE upon request, supporting documentation demonstrating the creation of the prequalified pipeline construction contractor list has been developed in accordance with Oregon Public contracting laws.
- 4.9 Ten business days prior to the bid advertisement date set by WILSONVILLE, WWSP will provide to WILSONVILLE a complete design for the Waterline Work previously approved by WILSONVILLE, including design drawings, plans, bid items, quantities, and technical specifications in a format acceptable to WILSONVILLE to be incorporated in the Contract Documents as a separate bid schedule. WWSP will participate in the mandatory pre-bid meeting and provide timely responses to bidder's questions about the Waterline Work during the advertisement period.
- 4.10 For Waterline Work outside the right of way acquired by WILSONVILLE for the Road Work portion of the Project, as shown in Exhibit 1, WWSP is responsible for any other additional land and permits it may need for its Waterline Work, including but not limited to, permanent easement and temporary construction easement acquisition; regulatory and land use permits and approvals, permit compliance, mitigation measures, and permit enforcement; public information; and contract administration. WWSP will provide secured right-of-way and permits for WILSONVILLE and its agents and contractors to perform work for the Project. WILSONVILLE must review and approve the form of easements to ensure WILSONVILLE has the ability to enter to perform any required work within any easement area of the Project.

ARTICLE V - JOINT OBLIGATIONS FOR DESIGN

- 5.1 To minimize Project delays or cost increases, the Parties agree to work together diligently to identify and jointly resolve any design or constructability issues with the Road Work and Waterline Work at the earliest possible stage of the design process. When such issues arise, the Parties agree to work together to find mutually acceptable solutions in furtherance of the stated Project Goals.

- 5.2 The Parties will hold a public information strategy meeting in accordance with Exhibit 2 to jointly develop and agree on the approach to be used for public information communications, publications, presentations, events, or signage.
- 5.3 The Parties will coordinate and identify those technical specifications that apply to both the Road Work and the Waterline Work. Project Managers will agree on how to coordinate the specifications. The author of the technical specifications will be responsible for updating to reflect agreed upon updates for coordination of the specifications. WILSONVILLE is the author of the Road Work technical specifications and WWSP is the author of the Waterline Work technical specifications. Both Parties will have adequate opportunity to review and revise the specifications as needed to meet both Parties' requirements and objectives.
- 5.4 The Parties agree that performance of the work by a prequalified contractor is imperative. As such, the Parties agree that the basis of award for of the bid will require confirmation that the contractor performing the work is prequalified for the work, as identified in the sealed bids.
- 5.5 The Parties agree to jointly develop and maintain a Project schedule and Project Managers shall work collaboratively to achieve Project milestones. These schedule milestones are included in Exhibit 2.
- 5.6 The location of the pipeline and pipeline appurtenances related to the Waterline Work shall be mutually agreed to by both Parties during the design of the Project. If mutual agreement cannot be reached, WILSONVILLE shall have final determination of the pipeline and pipeline appurtenances.
- 5.7 The Parties will jointly perform a constructability review of the Contract Documents at 90-percent design completion of the Project and incorporate comments into final Contract Documents.
- 5.8 The Parties will coordinate and attend regular design coordination meetings, regular permit team meetings, public information and outreach team meetings, and other meetings as required for successful coordination and completion of the Project. The Parties' Project Managers will determine the anticipated frequency and timing of meetings depending on the needs of the Project.
- 5.9 The Parties will work collaboratively in developing Project schedules, milestones, reviews, health and safety plans, Project performance metrics, and other activities as required for the successful coordination and completion of the Project. WILSONVILLE will manage Road Work and WWSP will manage Waterline Work to achieve the design milestones described in Exhibit 2.

ARTICLE VI - COMPENSATION FOR DESIGN

- 6.1 The Parties agree WWSP will reimburse WILSONVILLE for Administrative Costs, as defined in Exhibit 3, attached, for work related to the design, coordination, and incorporation of the Waterline Work.

- 6.2 The Parties agree WWSP will reimburse WILSONVILLE for costs associated with coordination of the Road Work and incorporation of the Waterline Work in the Project design documents and creation of the Contract Documents. Costs for this effort shall include WILSONVILLE's staff and consultant team.
- 6.3 The Parties will each be solely responsible for the fully burdened labor costs of their individual staff on their respective portions of work: WILSONVILLE for Road Work and WWSP for the Waterline Work.
- 6.4 The Parties agree WILSONVILLE will be responsible for overall administration of the Project but will receive financial contribution from WWSP for its share of actual costs related to the Waterline Work as provided in Exhibit 3. WWSP will also reimburse WILSONVILLE for the cost of coordinating and incorporating the Waterline Work to ensure a cohesive contract document for the Project.

ARTICLE VII - WILSONVILLE OBLIGATIONS FOR CONSTRUCTION PHASE

- 7.1 WILSONVILLE hereby designates Zach Weigel, P.E. as WILSONVILLE Project Manager and Construction Manager for the Road Work and WILSONVILLE representative responsible for coordination of the Waterline Work with WWSP pursuant to this Agreement. Patty Nelson, P.E., is WILSONVILLE's Principal Engineer for the Project to handle dispute resolution.
- 7.2 WILSONVILLE will be responsible for the overall management and administration of the construction contract for the Project.
- 7.3 WILSONVILLE is responsible for engineering, inspection, construction management, and administration for the Road Work.
- 7.4 WILSONVILLE will include the WWSP in regular construction coordination meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project.
- 7.5 WILSONVILLE is solely responsible for managing the Project schedule, including established milestones. WILSONVILLE will provide construction contractors' baseline schedule and monthly schedule updates for WWSP review and comments. WILSONVILLE will consider and incorporate WWSP review comments that do not significantly impact Road Work costs or Project schedule.
- 7.6 WILSONVILLE will provide WWSP a minimum of ten (10) calendar days to evaluate the bid results for the Waterline Work and shared costs prior to issuing notice of intent to award for the Project.
- 7.7 WILSONVILLE will receive, catalog, and route to WWSP requests for information (RFIs), requests for substitutions, submittals, and any other documents pertaining to the Waterline Work for review and comment using e-Builder as administered by the WWSP for the Parties. WILSONVILLE will defer to WWSP for the disposition and/or response for all RFIs, substitutions, and submittals related to the Waterline Work. Access to all

Project documents, including, but not limited to, submittals, RFIs, contract correspondence, QA/QC, daily reports, and photos will be available to the Parties through e-Builder.

- 7.8 **WILSONVILLE will cause the construction contractor to name and endorse WILSONVILLE and WWSP (or TVWD and CITY if no legal entity between them has been formed) their elected or appointed officials, staff, employees, consultants, and agents as additional insureds on all policies provided by the construction contractor under the contract. The endorsements to policies shall provide for not less than thirty (30) days written notice of cancellation. WILSONVILLE will provide WWSP a copy of the certificates for its records. WILSONVILLE will cause the construction contractor to extend indemnity and hold harmless provisions given to WILSONVILLE to WWSP (or to TVWD and CITY if no legal entity between them has been formed) its members, officers, boards, agents, employees, and consultants.**
- 7.9 **WILSONVILLE will have overall responsibility for Project administration and inspection of Road Work and at all times be responsible to monitor and manage the construction contractor's work as provided in the construction contract documents. With respect to the Waterline Work and subject to the provisions of the Ground Lease providing the Waterline Work cannot negatively impact the Road Work, WILSONVILLE will defer to the Waterline Construction Manager for decisions, recommendations, and interpretations regarding the construction of the Waterline Work to meet the quality, timelines, and performance of the water system design as long as such decisions do not negatively impact the Road Work or cost. WILSONVILLE will communicate and direct the contractor performing the Waterline Work consistently with the decisions of the Waterline Construction Manager. WILSONVILLE will have sole and total decision-making authority on Road Work.**
- 7.10 **WILSONVILLE agrees and will provide in the construction contract that the Waterline Construction Manager or designated onsite inspectors may also stop the construction contractor's work if they observe, in their sole judgment, a situation involving safety issues that threaten life or bodily harm. Further, the Waterline Construction Manager shall notify the WILSONVILLE Project Manager of the need to stop the Waterline Work based on observations that the Waterline Work is not being performed according to the Contract Documents. The WILSONVILLE Project Manager will stop the Waterline Work at the request of the Waterline Construction Manager. WILSONVILLE's Construction Manager shall also have the authority to issue a stop work order at any time and will notify WWSP's Construction Manager or designated onsite supervisor as soon thereafter as reasonably possible.**
- 7.11 **WILSONVILLE will review the monthly estimate of Waterline Work performed by the construction contractor prepared by the Waterline Construction Manager and onsite inspectors based on their inspection of the work performed to date, the method of payment and schedule of values specified in the contract, and other matters deemed appropriate for payment. The monthly estimate shall be provided to WILSONVILLE for**

WILSONVILLE to meet its requirements to maintain the schedule and for periodic pay request process under the construction contract.

- 7.12 WILSONVILLE will provide a final cost accounting for the Waterline Work and WWSP's proportion of shared cost items, including all internal and external costs, to WWSP within forty-five (45) days of Final Completion of the Project and payment to the construction contractor.**
- 7.13 WILSONVILLE will require the construction contractor to complete and submit Exhibit 5, Quarterly Net Spend Report. This report shall include, at a minimum, the following information:**

Total amount spent by construction contractor and each subcontractor, vendor, and supplier for the quarter;

Subcontractor/subconsultant name, address, and type of service(s) provided; and

Other business attributes that may be required by WWSP.

WILSONVILLE will require the construction contractor to submit the Quarterly Net Spend Report to WILSONVILLE by the fifteenth (15th) day of the last month for each calendar quarter for the entire duration of its contract. WILSONVILLE will forward the construction contractor's Quarterly Spend Report to WWSP when it receives it from the construction contractor. WWSP may change the content and frequency of spend reporting and would incur the cost of such changes.

- 7.14 WILSONVILLE will submit to WWSP all contract construction Change Order, Work Change Directive, or other proposed revisions to the Project for review to determine if the change impacts the Waterline Work. WILSONVILLE will endeavor to provide notice of potential Project Change Orders, claims, or disputes at the earliest possible time. If it is determined by the Parties that the change is related to or impacts the Waterline Work, then written approval from the WWSP Construction Manager must be received prior to approval of a written Change Order or Work Change Directive.**
- 7.15 WILSONVILLE will coordinate with WWSP on any disagreements, disputes, delays, or claims with the construction contractor related to or as a result of the Waterline Work as provided by Section 11.6.**
- 7.16 WILSONVILLE will perform actions regarding compensation as set forth in Article X, Compensation for Construction.**
- 7.17 WILSONVILLE will provide a potable water source for use by the WWSP during construction for testing of the Waterline Work as well as use of storm drain or sanitary sewer infrastructure, as directed by the WILSONVILLE Project Manager, for disposal of water following testing.**

Upon completion of the Waterline Work and acceptance of the Project, WWSP, as Lessee as defined in the Ground Lease, shall operate, inspect,

maintain, replace, and access the Waterline as provided in the Ground Lease for the duration of the Ground Lease.

7.18 WILSONVILLE and the construction contractor shall participate in WWSP monthly health and safety meetings.

7.19 WILSONVILLE will not authorize or consent to construction contractor's changes to Waterline Work key milestones, as shown in Exhibit 2, without written approval by WWSP, except in the case of a force majeure as defined in the Contract Documents.

7.20 Claims

WILSONVILLE will promptly notify WWSP of any construction contractor claim or request for Change Order. If a claim or request for Change Order would increase the proportionate share of shared costs, or if it affects the WWSP-only cost for Waterline Work, WWSP will respond to WILSONVILLE within ten (10) business days regarding whether it approves or disapproves of the claim or request for Change Order. WILSONVILLE will not resolve or settle a claim for extra compensation or schedule adjustment for such claims without WWSP approval in writing. If WILSONVILLE proceeds to resolve the claim or issue a Change Order without WWSP written approval, WWSP reserves all rights to contest responsibility for payment and to seek indemnity for all costs and impacts resulting from WILSONVILLE's action.

In the case of a claim or Change Order related to the proportionate share of shared costs, WILSONVILLE, as the contract holder, may need advice from WILSONVILLE legal counsel. WILSONVILLE will notify WWSP that it is seeking advice of legal counsel. WWSP will reimburse WILSONVILLE for reasonable attorneys' fees incurred by WILSONVILLE for counsel advice based on the proportionate share of the responsibility.

7.21 Bonds and Warranties

WILSONVILLE agrees to assign all rights under performance and payment bonds, warranties, and claims arising out of the construction contract related to the Waterline Work to WWSP so that WWSP has a direct cause of action against the construction contractor.

7.22 Litigation with Contractor

In the event of a dispute with any contractor or consultant that results in litigation, WWSP will reimburse WILSONVILLE for all costs and attorney fees associated with all claims based on the Waterline Work, including but not limited to any claims for delay damages or Change Orders. If the claim is based on a contract term not specifically relating to either the Waterline Work or the Road Work, the parties will share the cost equally (example a weather-related delay damage force majeure claim). WILSONVILLE will pay all costs and Attorney fees for all claims based on the Road Work that do not involve the Water Work, including but not limited to claims for delay damages or Change Orders.

ARTICLE VIII - WWSP OBLIGATIONS FOR CONSTRUCTION

- 8.1 **WWSP will designate a WWSP Construction Manager, _____.** The WWSP Construction Manager shall be the designated point of contact with the WILSONVILLE Project Manager. The WILSONVILLE Project Manager shall have authority to accept and act upon the written directions and decisions of the WWSP Construction Manager relating to the Waterline Work during solicitation and construction and to instruct the construction contractor and incur costs based on those decisions. Mike Britch, P.E., will be the WWSP Principal Engineer and the WWSP representative to handle dispute resolution for this Project.
- 8.2 **WILSONVILLE and WWSP will establish an account and Irrevocable Limited Power of Attorney Agreement with the Local Government Investment Pool (“Account”) which will authorize WILSONVILLE’s Director of Finance to make monthly withdrawals from an account established by WWSP for WWSP’s monthly share of each invoice submitted by the construction contractor for the Project. The Power of Attorney Agreement will be signed, an account will be opened, and the amount of the WWSP deposit will be agreed upon when Bids are opened. The account will be fully funded by WWSP including a contingency as shown in Exhibit 4 on or before the date the bids are opened by WILSONVILLE. The Account funding amount reflected in Exhibit 4 shall be modified to reflect actual bid amounts prior to Notice to Proceed. If Change Orders for which WWSP is fully or partially responsible cause there to be insufficient funds remaining to pay for all of WWSP’s share of the work in the Account, WWSP will deposit additional funds, as required within thirty (30) days of written notice and supporting documentation thereof from WILSONVILLE.**
- 8.3 **WWSP will monitor permit compliance and coordinate with WILSONVILLE for compliance with the requirements of the Ground Lease and this Agreement related to the Waterline Work.**
- 8.4 **WWSP will provide review of shop drawings, submittals, RFIs, and other requested clarifications related to the Waterline Work. WWSP shall provide a response to WILSONVILLE within the timeframe required by the Contract Documents.**
- 8.5 **WWSP will reimburse WILSONVILLE for construction contractor mobilization based on bid amounts of the value of the Waterline Work and shared items. Mobilization for the Project shall not exceed eight percent (8%). WWSP will provide materials testing, independent of construction contractor testing requirements of the Contract Documents, and construction inspection for Waterline Work. WWSP may require additional or corrective work to be completed for the Waterline Work if, in the sole judgment of WWSP, the work is not complete in accordance with the Contract Documents, or it is in the public interest to do so. If WWSP determines the Waterline Work is not in compliance with the Contract Documents, the Waterline Construction Manager shall inform WILSONVILLE at the earliest opportunity following discovery, and WILSONVILLE will require construction contractor to perform corrective actions as necessary. The method of enforcement will be agreed upon and the cost of enforcement will be reimbursed in full by WWSP. If WWSP believes litigation is required, WILSONVILLE will assign its rights to litigate the claim to WWSP. Further, if a change is required not because of a**

breach of contract, but for some other reason, WWSP will be fully responsible for any additional charge incurred as a result thereof. The provisions of this Section are independent of the authority granted to WWSP set forth in Section 7.11 above.

- 8.6 WWSP will provide WILSONVILLE with the following Waterline Work construction documentation:**
- Daily progress reports;**
 - Quantity documentation used for monthly payment estimates;**
 - Quality documentation and test results as specified in the construction contract; and**
 - Any other documentation reasonably requested by WILSONVILLE to administer the contract.**
- 8.7 WWSP will promptly review invoices from WILSONVILLE. WWSP will provide notice of any disputed amount within seven (7) business days from the day WILSONVILLE provides the invoice to WWSP. Parties will then meet to resolve the disputed amounts. Undisputed amounts shall be paid as provided in Article X, Compensation for Construction, and disputed amounts shall be resolved as provided therein. Payment from the Account will be made unless the payment is disputed by WWSP within seven (7) business days.**
- 8.8 WWSP will determine, in its reasonable discretion, when Waterline Work has achieved Substantial Completion and Final Completion. The Waterline Construction Manager shall provide a construction punch list to WILSONVILLE upon Substantial Completion of the Project and participate with the WILSONVILLE Project Manager for inspection and Final Completion of the Waterline Work.**
- 8.9 WWSP must review and approve any Change Orders and/or Work Change Directives relating to the Waterline Work prior to issuance to the construction contractor. Within five (5) business days of receiving the proposed Change Order or Work Change Directive, WWSP will notify WILSONVILLE in writing of any concerns or disputes with a proposed Change Order or Work Change Directive. WILSONVILLE may proceed to direct its construction contractor to perform work only if it deems an emergency or other circumstance requires immediate action to prevent adverse health and safety conditions. In such a case, WWSP reserves all rights to dispute responsibility for payment of the Change Order or Work Change or to modify a Change Order or Work Change Directive for consistency with the Waterline Work scope and design. In no event shall WILSONVILLE authorize any change in the Waterline Work that affects the quality, integrity, or operational attributes of the Waterline Work. WILSONVILLE will have no liability to WWSP for any contract delays as a result thereof or for any other damages or claims by WWSP. WWSP will only be entitled to seek relief from the construction contractor. WILSONVILLE will assign all contractual rights necessary for WWSP to seek relief from the construction contractor.**

- 8.10 **WWSP will coordinate and meet with WILSONVILLE to resolve any disagreements, disputes, delays, or claims related to, or as a result of, the Waterline Work or WWSP's share of shared costs of the Waterline Work as provided by Section 11.6.**
- 8.11 **WWSP will perform actions regarding compensation as set forth in Article X, Compensation for Construction.**
- 8.12 **WWSP, its consultants, and its construction contractors shall coordinate with WILSONVILLE and its consultants, including jointly attending regular construction coordination meetings, regular permitting and environmental meetings, real estate meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project. The WILSONVILLE Project Manager and WWSP Construction Manager shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project.**
- 8.13 **The Ground Lease requires that unless otherwise agreed to, in writing, by WILSONVILLE, all WWSP pipe must be located below all WILSONVILLE utility pipes, including in Garden Acres Road. WILSONVILLE has agreed to allow the WWSP pipe to be above WILSONVILLE pipe in Garden Acres Road and shallower than the required 8 feet, as shown on the approved Construction Documents. In consideration of this Agreement and the challenges and expense WWSP would face if it were required to go below all of WILSONVILLE utility work in Garden Acres Road and maintain a minimum 8-foot depth, WWSP agrees to payment of the sum and other requirements, as set forth in Exhibit 4.**

ARTICLE IX - JOINT OBLIGATIONS FOR CONSTRUCTION

- 9.1 **The Parties' Project Managers shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project.**
- 9.2 **The Parties will coordinate and work collaboratively in developing Project milestones, constraints, work sequences, construction administration requirements, quality control and assurance requirements, and other activities as required for successful coordination and completion of the Project.**
- 9.3 **The Parties will coordinate and work collaboratively in coordination of the construction work, including work sequences, construction administration requirements, quality control and assurance requirements, and other activities as required for successful coordination and completion of the Project.**
- 9.4 **To minimize potential Project schedule delays, construction contractor cost increases, or other Project issues, the Parties agree to work together diligently to identify and jointly resolve any construction issues with the Road Work and Waterline Work at the earliest possible stage, including those issues that involve the construction contractor. When such issues arise, the Parties agree to work together to find mutually acceptable solutions in furtherance of the stated Project goals. WILSONVILLE will lead**

the resolution with the construction contractor as mutually agreed by the Parties.

- 9.5 The Parties agree to include health and safety requirements in the Contract Documents that meet the objectives of both Parties for their portions of the Project.
- 9.6 The Parties agree that the construction contractor shall be required to develop and maintain a Project baseline schedule on which the WILSONVILLE Project Manager and WWSP Construction Manager shall collaboratively review and comment. The construction contractor shall provide monthly schedule updates electronically (in PDF and native format) using Primavera P6 or Microsoft Project. The schedule shall be Critical Path Method and have Type C requirements as defined by the Oregon Department of Transportation. These schedule obligations shall include milestones as jointly agreed upon by the Parties. Each Party shall allow the other Party to comment on schedule revisions.
- 9.7 The Parties agree to co-manage complaints, including, but not limited to, general public complaints and complaints related to environmental and/or land use permitting.
- 9.8 The Parties agree to the following guidelines for handling public/media interactions:

Social media includes all means of communicating or posting information or content of any sort on the Internet, including to one's own or someone else's web log or blog, journal or diary, personal website, social networking or affinity website, web bulletin board, chat room, whether or not associated or affiliated with WWSP or WILSONVILLE, or any other form of electronic communication.

Posting of social media content related to Waterline Work by WWSP or WILSONVILLE staff, consultants, or construction contractors is prohibited unless approved, in writing, by WWSP.

Posting of social media content related to Road Work by WWSP or WILSONVILLE staff, consultants, or construction contractors is prohibited unless approved, in writing, by WILSONVILLE.

- 9.9 The Parties agree to coordinate on outreach efforts such as signage, groundbreaking, and ribbon cutting.

ARTICLE X - COMPENSATION FOR CONSTRUCTION

- 10.1 Exhibit 4 summarizes the construction cost sharing for the Project. Parties will proportion actual cost for construction as shown in Exhibit 4 and as described below:

Construction management - WWSP responsible for actual cost of Road Work consultant for coordination between Waterline Work during construction. Costs will be tracked separately by WILSONVILLE's Road Work consultant. WWSP will be allowed to

review and comment on Road Work consultant fee prior to the Road Work consultant contracting with WILSONVILLE.

Construction administration - WWSP responsible for WILSONVILLE actual costs plus Administrative Charge as shown in Exhibit 4.

Mobilization (Schedule A) - WWSP is responsible for the proportionate share between cost of the Waterline Work (Schedule B) and the total cost for construction plus WWSP portion of the Road Work (Schedule A) identified below. Mobilization for the Project shall be limited to a maximum of 8 percent.

Cahalin Temporary Road Bid Item (Schedule A) – WWSP is responsible for the costs of construction, demolition, and restoration of a temporary access road during construction of the Waterline Work, limited to and as detailed in the following sheets of the Road Work 95% Design drawing set: DM-07, EC-09, EC-16, SP-05, RD-13, and LA-08.

Road Work (Schedule A) – WWSP responsible for the fixed percentage Road Work share as shown in Exhibit 4. The amount of the Road Work share shall be determined based on the Road Work bid amount and applying the fixed percentage Road Work share. The responsibility includes payment for the increased depth of city utilities due to the WWSP pipeline being less than that prescribed in the Ground Lease per Section 8.13 of this Agreement.

Waterline Work (Schedule B) - WWSP responsible for 100 percent.

10.2 Subject to WWSP's requirements to pay WILSONVILLE Administrative Costs, the Parties will otherwise each bear the fully burdened labor costs of their individual staffs on the Road Work and the Waterline Work. The Parties agree WWSP will pay to WILSONVILLE actual costs of overall administration of the Project related to the Waterline Work an administration charge to administer the construction contract, as shown in Exhibit 4. Aside from the Administrative Charge, there shall be no markup on construction contractor payment amounts, Road Work consultant actual costs, or other costs outside those incurred by WILSONVILLE staff. The costs to invoice WWSP shall be included as part of WILSONVILLE's Administrative Charge.

10.3 WILSONVILLE will submit invoices monthly as described below:

Account withdrawals shall follow issuance of invoices.

Prior to issuance of each invoice, the Parties will agree on construction contractor pay request amounts, design consultant Road Work fees, and other compensable costs.

Each invoice shall be accompanied with documentation supporting all requested costs for compensation or reimbursement.

Prior to withdrawal from the Account the above activities shall be

completed. WILSONVILLE's invoice shall show the actual cost and percentage allocation between WWSP and WILSONVILLE for the shared costs.

- 10.4 WILSONVILLE will submit a final billing statement within forty-five (45) days of the completion of the work authorized herein.
- 10.5 WWSP will pay WILSONVILLE the amount due within thirty (30) days of its receipt of billing statement for costs not withdrawn from the Account.
- 10.6 Work Change Directives and Change Orders shall use the following protocol:

Work Change Directives will be defined in the construction agreement between WILSONVILLE and the construction contractor. WILSONVILLE can direct work that is considered minor that does not impact, delay, or affect Waterline Work. Work Change Directives shall not affect administrative or shared costs and shall be paid according to Exhibit 4. WWSP will have sole responsibility to prepare Work Change Directives related to Waterline Work. All Work Change Directives shall be issued through WILSONVILLE.

All modifications to the construction contract that will change shared costs or impact the schedule will not be effective until approved by a written Change Order, signed by the Parties. The Party causing the change in shared costs shall be responsible for those costs.

Change Orders to the Project that do not affect the Waterline Work or Waterline Work Schedule will be managed and approved by WILSONVILLE. If WWSP or WILSONVILLE dispute a shared cost Change Order, WILSONVILLE may still elect to proceed with the Change Order and the Parties reserve all rights to contest and determine responsibility for payment under the dispute resolution and remedy provisions below. The Party causing the change in any costs shall be responsible to pay those costs.

As provided in Section 8.10, Change Orders that affect the cost, schedule, quality of performance, workmanship, or material of the Waterline Work must be approved in writing by both Parties. Except as provided in Section 10.6.6, WWSP will respond with approval or disapproval for Waterline Work Change Orders to WILSONVILLE within five (5) business days following receipt of the proposed Change Order. WILSONVILLE may direct the construction contractor to perform the Waterline Work if it deems emergency conditions exist or action is necessary to prevent adverse health or safety issues. In emergency circumstances, WILSONVILLE will provide notice reasonable under the circumstances, and WWSP will respond in a timely manner reasonable under the circumstances.

WWSP may initiate Change Orders for the Waterline Work by providing WILSONVILLE a requested Change Order with supporting documents to negotiate the cost and time impact with the

construction contractor, which shall be paid by WWSP. WILSONVILLE will participate in discussions with the WWSP and the construction contractor to negotiate an agreeable Change Order.

Any Change Order that increases the combined value of all prior Change Orders to a cost to WWSP of \$875,000 or more shall require approval by the CITY Utilities Commission. No Change Order shall be binding upon WWSP while approval is pending, subject to WILSONVILLE's power under Section 10.7.4.

- 10.7 Within forty-five (45) days after the Final Completion of the Project, WILSONVILLE will provide WWSP a final statement of Waterline Work to be withdrawn from the Account. If insufficient funds remain, WWSP will pay the difference within thirty (30) days of receipt of the invoice and supporting documentation. Upon the completion of the construction and completion of record drawings, WILSONVILLE will deliver one set of redline as-built drawings for Waterline Work. WWSP will be responsible for producing record drawings and will provide electronic copies (PDF and native format) related to the Waterline Work to WILSONVILLE. WILSONVILLE will be responsible for producing record drawings for the Road Work. The record drawings provided by WILSONVILLE will satisfy the requirements of Section 7.24, As-Built Survey, of the Ground Lease. The record drawing information will be relied upon by WWSP to provide a portion of the metes and bounds description of the Lease Area to WILSONVILLE as described in Section 2.4 of the Ground Lease. Upon Final Acceptance of the Project by WILSONVILLE and verification that all contractors and suppliers have been paid WILSONVILLE will release any remaining Account funds to the WWSP within forty-five (45) days.

ARTICLE XI - GENERAL PROVISIONS

11.1 Laws of Oregon

Parties agree to abide by all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be governed by the laws of the State of Oregon. The construction contract shall contain all required public contract provisions of ORS Chapter 279A and 279C.

11.2 Default

Either Party will be deemed to be in default if it fails to comply with any term, condition, or covenant in this Agreement. Parties agree time is of the essence in the performance of this Agreement. The non-defaulting Party will provide the defaulting Party with written notice of default and allow thirty (30) days within which to cure or diligently commence to cure the defect within a reasonable time. If a defaulting Party fails to cure or fails to diligently commence to cure the default, the non-defaulting Party may elect to terminate this Agreement. In the event this Agreement is terminated, Parties will pay for costs incurred for satisfactorily completed and authorized work up to the time of termination. Each Party will be liable for all costs and damages arising from its individual default.

11.3 Indemnification

This Agreement is for the benefit of Parties only and there are no third-party beneficiaries. Subject to the limitations related to government agencies under the Oregon Constitution, each Party agrees to indemnify and hold the other harmless, including their respective officers, employees, agents, and representatives, from and against all claims, demands, causes of action, and suits of any kind or nature for personal injury, death, or damage to persons or property on account of any acts or omissions arising out of this Agreement. Indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each Party shall be solely responsible for any contract claims, delay damages, permit compliance, permit violations, or similar items arising from or caused by the action or inaction of the Party.

11.4 Documents are Public Records

All records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with this Project shall be subject to the applicable provisions of the Oregon public records law.

11.5 Modification of Agreement

No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing, signed by both Parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given.

11.6 Dispute Resolution

Parties will attempt to informally resolve any dispute concerning any Party's performance, acts, omissions or decisions under this Agreement, or regarding the terms, conditions, or meaning of this Agreement. Dispute resolution will conform to the requirements of Section 15, Dispute Resolution, of the Ground Lease, which are incorporated herein as if fully set forth in this Agreement.

11.7 Remedies

Subject to the provisions of Article X - Compensation for Construction, and the dispute resolution process set forth in Section 11.6, any Party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Clackamas County Circuit Court. Parties, by signature of their authorized representative below, consent to the personal jurisdiction of that court.

11.8 Severability

If any term(s) or provision(s) of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court to be invalid or unenforceable, the remainder of this Agreement and the

application of those terms and provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

11.9 Nondiscrimination

No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, or marital status. Any violation of this provision shall be considered a material defect and shall be grounds for cancellation, termination, or suspension in whole or in part by WILSONVILLE or WWSP.

11.10 Excused Performance

In addition to the specific provisions of this Agreement, no default shall be deemed to have occurred where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance that are not within the reasonable control to the Party to be excused.

11.11 Integration

Except for the Ground Lease, which remains the controlling document, this Agreement supersedes any prior discussions or agreements regarding the Project.

11.12 Assignment/Additional Parties

This Agreement may be assigned in accordance with the assignment provision of the Ground Lease (Section 20.2).

11.13 Access to Books, Records, and Accounting

WILSONVILLE will maintain books, records, and reports of the Road Work and Waterline Work showing all income, receipts, expenses, and costs. These records shall be maintained for a period of three (3) years following Final Completion. All such books, records, and reports may be examined, and copies made by WWSP at reasonable times upon reasonable notice.

ARTICLE XII - TERM OF AGREEMENT

12.1 The term of this Agreement shall be from the date of execution through the end of the Project warranty period, two (2) years following Final Acceptance of the Project, unless mutually agreed to by both Parties in writing.

12.2 This Agreement may be amended or extended for periods of up to one (1) year at a time by mutual written consent of Parties, subject to provisions of this Agreement. In the event of default of this Agreement, the non-

defaulting Party may terminate this Agreement after giving thirty (30) days written notice specifying the nature of the default with reasonable particularity and the defaulting Party fails to cure within that 30-day period. If the default is of such a nature that it cannot be completely remedied within the 30-day cure period, this provision shall be complied with if the defaulting Party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. In the event of termination or cancellation, Parties will pay all costs due and owing for work performed prior to termination or cancellation. Parties will, in good faith, agree to such reasonable provisions for completing the Project and paying for any additional costs as necessary.

12.3 IN WITNESS WHEREOF, Parties hereto have set their hands as of the day and year hereinafter written.

CITY OF WILSONVILLE, OREGON

TUALATIN VALLEY WATER DISTRICT

By

CHIEF EXECUTIVE OFFICER

Date _____

Date _____

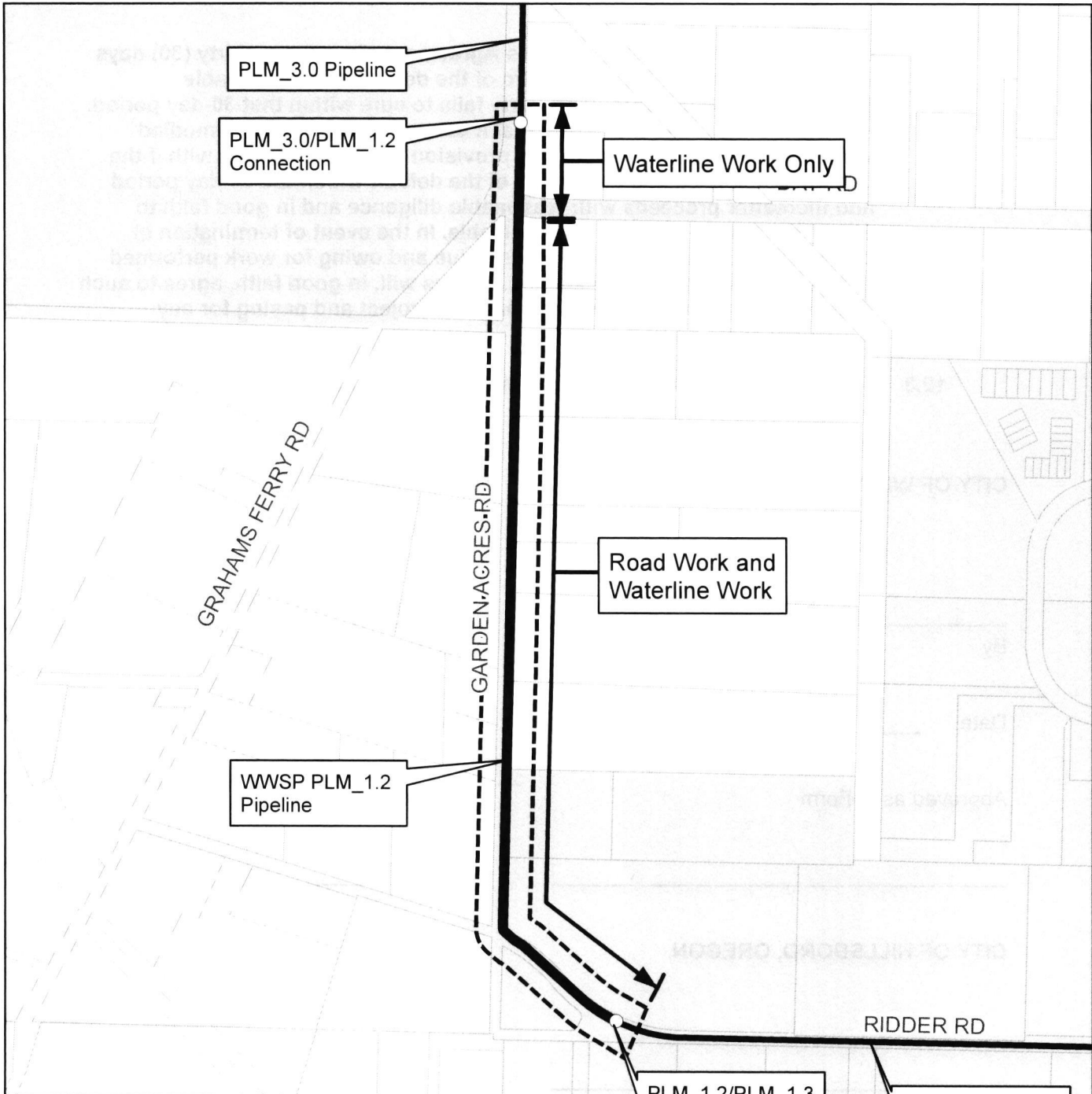
Approved as to Form

Approved as to Form





CITY OF HILLSBORO, OREGON

By

Date _____



Legend

-  WWSP Approximate Pipeline Alignment
-  Approximate Project Area
-  Tax Lot
-  Wilsonville City Limit

NOTE: WWSP Pipeline Alignment is approximate
 Date: 09/06/2018

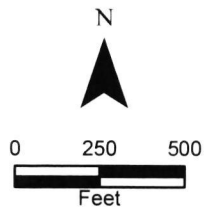


Exhibit 1 - Garden Acres Road And PLM_1.2 Projects

GARDEN ACRES ROAD AND PLM_1.2 TO 124TH PIPELINE PROJECTS

Exhibit 2

Scheduled Design and Construction Milestones

Design Milestones	Date
100% Garden Acres Road/PLM_1.2 Constructability Review	April 2019
Bid Documents Complete	April 2019
Public Information Strategy Meeting	June 2019
Construction Milestones	Date
Invitation to Bid Published (Key Milestone)	April 2019
Bids Due	May 2019
WWSP Consent to Award	June 2019
Notice of Intent to Award	June 2019
Bid Award	June 2019
Construction Notice to Proceed (Key Milestone)	July 2019
Utilities Relocation (coordinated by Wilsonville) Complete (Key Milestone)	March 2020
Substantial Completion of the Project (Key Milestone)	November 2020
Final Completion of the Project	March 2021
Warranty Starts	March 2021
Final Invoice	May 2021
Record Drawings	May 2021

GARDEN ACRES ROAD AND PLM_1.2 TO 124TH PIPELINE PROJECTS

Exhibit 3

Wilsonville Compensation for Design Costs

Description	Costs
Wilsonville Staff Coordination and Review of Waterline Design and Construction Documents and Incorporation of Waterline Construction Documents into Garden Acres Contract Documents	Actual Cost + 8%
Garden Acres Consultant Team Coordination and Review of Waterline Design and Construction Documents and Incorporation of Waterline Construction Documents into Garden Acres Contract Documents	Actual Cost

GARDEN ACRES ROAD AND PLM_1.2 TO 124TH PIPELINE PROJECTS

Exhibit 4

Wilsonville Compensation for Construction Costs

Description	Costs
Wilsonville Staff Administration of Waterline Work portion of the Garden Acres Construction	Actual Cost + 8%
Garden Acres Consultant Team Construction Management or Inspection of Waterline Work portion the Garden Acres Construction	Actual Cost
WWSP share of the Road Work	21.6%* of the awarded bid total of Schedule A (Road Work) less Mobilization & Cahalin Temporary Roadway bid items.
WWSP share of Schedule A Mobilization Bid Item	Proportionate share between cost of the Schedule B (Waterline Work) plus 21.6% of the Schedule A (Road Work) and the Total Cost of Construction
WWSP share of Schedule A Cahalin Temporary Roadway bid item.	100%
Local Government Investment Pool Deposit	WWSP share of the Road Work plus WWSP share of Schedule A Mobilization Bid Item plus WWSP share of Schedule A Cahalin Temporary Roadway bid item plus 100% of Schedule B (Waterline Work) plus 10% Contingency

*The cost basis determination of the fixed percentage of WWSP Road Work share is based on the 90% construction cost estimate attached as part of Exhibit 4.

Exhibit 4 - Garden Acres Intergovernmental Agreement - WWSP Cost Share Basis

February 22, 2019

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	WWSP QUANTITY	WWSP SHARE TOTAL	Methodology for WWSP Share and WWSP Added
Mobilization and Traffic Control								
1	Mobilization (8%)	L.S.	1	\$390,000	\$390,000	21.6%	\$84,360	Based on percentage of the summation of WWSP Cost Share items below divided by the total Garden Acres Road Project Total Costs.
2	Temporary Work Zone Traffic Control, Complete (4%)	L.S.	1	\$200,000	\$200,000	50%	\$100,000.00	WWSP pipeline requires extension into second construction season. One season for WWSP work & one season for Wilsonville work. Share 50/50.
3	Erosion Control	L.S.	1	\$20,000	\$20,000	50%	\$10,000.00	Same project limits with same impacts, share 50/50.
4	Compost Filter Berm	L.F.	5170	\$7	\$36,190	50%	\$18,095.00	Same project limits with same impacts, share 50/50.
5	Construction Entrance	Each	2	\$2,500	\$5,000	50%	\$2,500.00	Same project limits with same impacts, share 50/50.
6	Concrete Washout Facility	Each	2	\$2,000	\$4,000	50%	\$2,000.00	Same project limits with same impacts, share 50/50.
7	Inlet Protection, Type	Each	36	\$125	\$4,500	50%	\$2,250.00	Same project limits with same impacts, share 50/50.
8	Construction Signing	L.S.	1	\$1,500	\$1,500	50%	\$750.00	Same project limits with same impacts, share 50/50.
Mobilization and Traffic Control Subtotal								
					\$661,190			
Roadwork								
9	Clearing and Grubbing	Acres	4.9	\$7,000	\$34,300	0.89	\$6,230.00	Includes area between edge of pavement and edge of trench plus an additional 6 inches.
10	Tree Protection Fencing	L.F.	1,000.0	\$5	\$5,000	50%	\$2,500.00	Same project limits with same impacts, share 50/50.
11	Removal of Structures and Obstructions	L.S.	1	\$100,000	\$100,000	19%	\$19,000.00	1.2 feet of pipeline trench width over 63.5 feet removal width (includes PUE).
12	General Excavation	C.Y.	6,360.0	\$24	\$152,640	19%	\$29,001.60	12 feet of pipeline trench width over 63.5 feet removal width (includes PUE).
13	12 Inch Subgrade Stabilization	S.Y.	750	\$26,250	\$19,687.50	22%	\$5,775.00	Portion under roadway. 7 feet wide trench width over 32 roadway width.
14	Subgrade Geotextile	S.Y.	12,120.0	\$2	\$24,240	3105	\$6,210.00	9' wide AC and concrete pavement and curb within 12' Project Area width for
					\$342,430			
Drainage and Sewers								
15	8 Inch Storm Pipe	L.F.	235	\$80	\$18,800	148	\$11,840.00	Portion of pipe crossing over WWSP pipeline trench width.
16	10 Inch Storm Pipe	L.F.	500	\$65	\$32,500	197	\$12,805.00	Portion of pipe crossing over WWSP pipeline trench width.
17	12 Inch Storm Pipe	L.F.	123	\$70	\$8,610			
18	18 Inch Storm Pipe	L.F.	554	\$120	\$66,480			
19	21 Inch Storm Pipe	L.F.	23	\$2,990	\$69,270			
20	30 Inch Storm Pipe	L.F.	783	\$150	\$117,450	12	\$11,560.00	Portion of pipe crossing over WWSP pipeline trench width.
21	36 Inch Storm Pipe	L.F.	1018	\$180	\$183,240			
22	42 Inch Storm Pipe	L.F.	1034	\$225	\$232,650			
23	48 Inch Storm Pipe	L.F.	1093	\$250	\$273,250			
24	6 Inch Sanitary Pipe	L.F.	606	\$70	\$42,420			
25	18 Inch Sanitary Pipe	L.F.	1568	\$200	\$313,600			
26	Concrete Manholes, 48" Sanitary	Each	6	\$5000	\$30,000			
27	Concrete Manholes, 60" Storm w/ Inside Drop	Each	9	\$10,000	\$90,000			
28	Concrete Manholes, 72" Storm w/ Inside Drop	Each	9	\$14,000	\$126,000			
29	Concrete Manholes, 72" Storm w/ Office	Each	1	\$15,000	\$15,000			
30	Catch Basin, Ditch Inlet	Each	3	\$7,500	\$22,500	12	\$30,000.00	12 catch basins are within the WWSP pipeline trench (12' width)
31	Catch Basin, CG-30	Each	12	\$2,500	\$30,000			
32	Catch Basin, CG-48	Each	1	\$3,500	\$3,500			
33	Catch Basin, Beehive	Each	21	\$1,800	\$37,800	15	\$27,000.00	15 area drains are within the WWSP pipeline trench (12' width)
34	Sanitary Sewer Cleanout	Each	14	\$900	\$12,600			
35	Minor Adjustment of Manholes	Each	3	\$500	\$1,500			
36	Major Adjustment of Manholes	Each	1	\$1,200	\$1,200			
37	Adjusting Boxes	Each	26	\$300	\$7,800			
38	Connect to Existing Structures	Each	15	\$500	\$7,500			
					\$1,662,390			
					\$83,205.00			

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	WWSP QUANTITY	WWSP SHARE TOTAL	Methodology for WWSP Share and WWSP Added
Base								
39	3/4"-0" Aggregate Base	C.Y.	3,672	\$45	\$165,240	175	\$7,875.00	183' at 12' width @ 2' depth and 2907' at 9' width @ 2' depth
40	1 1/2"-0" Aggregate Base	C.Y.	2,708	\$45	\$121,860	622	\$27,990.00	183' at 12' width @ 11' depth and 323' at 9' width @ 11' depth and 2454' at 9' width @ 6' depth and 128' at 9' width @ 11' depth
Base Subtotal					\$287,100		\$35,865.00	
Wearing Surfaces								
41	Level 3, 1/2 Inch ACP Mixture	Ton	2,118	\$85	\$180,030	281	\$23,885.00	183' at 12' width @ 8.5" depth and 323' at 7' width @ 8.5" depth at 128' at 7' width @ 8.5" depth
42	Plain Concrete Pavement, Dowelled, 9 inches Thick	S.Y.	8,324	\$75	\$624,300	1909	\$143,175.00	2454' length at 7' width of WWSP pipeline trench.
43	Extra for Asphalt Approaches	Each	20	\$1,000	\$20,000			
44	Extra for Asphalt Drainage Curb	Each	162	\$3,240	\$529,666	2454	\$63,804.00	Curb and gutter are within the 12' WWSP pipe trench for 2454 feet.
45	Concrete Curb, Concrete Street Curb and Gutter	L.F.	2441	\$26	\$63,466	451	\$11,726.00	Asphalt street curb is within the 12' WWSP pipe trench for 323' + 128'.
46	Concrete Curb, Asphalt Street Curb and Gutter	L.F.	1,030	\$26	\$26,780	690	\$6,900.00	11 Concrete driveways of varying widths, 3' within 12' WWSP pipe trench
47	Concrete Driveways	S.F.	6026	\$10	\$60,260			
48	Concrete Walks	S.F.	17,410	\$7	\$121,870			
49	4 Inch Concrete Surfacing	S.F.	20735	\$8	\$165,880			
50	Extra for Curb Ramps	Each	4	\$500	\$2,000			
51	Truncated Domes on New Surfaces	Each	4	\$300	\$1,200			
Wearing Surface Subtotal					\$1,269,026		\$249,490.00	
Permanent Traffic Control & Illumination								
52	Pavement Line Removal	L.F.	1,750	\$1	\$1,750			
53	Pavement Legend Removal	Each	2	\$100	\$200			
54	Mono-Directional White Type 1 Markers	Each	14	\$70	\$980			
55	Bi-Directional Yellow Type 1 Markers	Each	93	\$5	\$465			
56	Pavement Legend, Type B-HS: Arrows	Each	4	\$275	\$1,100			
57	Pavement Legend, Type B-HS: Bicycle Lane Stencil	Each	11	\$275	\$3,025			
58	Pavement Bar, Type B-HS	S.F.	300	\$10	\$3,000			
59	Pavement Legend, Type B-HS: Green Bike Path Driveway Marking	S.F.	1400	\$12	\$16,800			
60	Remove Existing Signs	L.S.	1	\$650	\$650			
61	Remove and Reinstall Existing Signs	L.S.	1	\$1400	\$1400			
62	Sign Support Footings	L.S.	1	\$4140	\$4140			
63	Perforated Steel Square Tube Anchor Sign Supports	L.S.	1	\$7707	\$7707			
64	Signs, Standard Sheeting, Sheet Aluminum	S.F.	105	\$25	\$2,625			
65	Pole Foundations	L.S.	1	\$70500	\$70,500			
66	Luminaires, Lamps, and Ballasts	L.S.	1	\$31900	\$31,900			
67	Switching, Conduit, and Wiring	L.S.	1	\$142500	\$142,500			
68	Lighting Poles and Arms	L.S.	1	\$83400	\$83,400			
Traffic Control / Illumination Subtotal					\$377,186		\$0.00	
Right of Way Development and Control								
69	Water Quality Planter	S.F.	11,175	\$30.00	\$335,250	67%	\$223,500.00	3' width of filtration planter is within the 12' WWSP pipeline trench. Total planter width is 4.5'
70	Permanent Seeding	Acre	0.4	\$3,500.00	\$1,540			
71	Topsoil	C.Y.	1,167.0	\$50.00	\$58,350	33%	\$19,450.00	3' width of filtration planter is within the 12' WWSP pipeline trench. Total planter width is 9.0' including landscape strip.
72	Deciduous Trees, 2 Inch Caliper	Each	92.0	\$300.00	\$27,600	67%	\$7,760.00	3' width of filtration planter is within the 12' WWSP pipeline trench. Total planter width is 4.5'
73	Shrubs, #5 Container	Each	291.0	\$40.00	\$11,640			
74	Shrubs, #1 Container	Each	1874.0	\$15.00	\$28,110	260	\$3,900.00	3' width of filtration planter is within the 12' WWSP pipeline trench. Total planter width is 4.5'
75	Groundcovers, #1 Container	Each	2,980.0	\$15.00	\$44,850			
76	Wetland Plants, Plugs	Each	12291.0	\$3.00	\$36,873	1	\$24,582.00	3' width of filtration planter is within the 12' WWSP pipeline trench. Total planter width is 9.0' including landscape strip.
77	Bark Mulch	C.Y.	125.0	\$55.00	\$6,875	33%	\$2,291.67	
78	Root Barrier	L.F.	3720.0	\$15.00	\$55,800			
79	Monument Boxes	Each	7.0	\$3,500.00	\$24,500			
80	Remove and Reinstall Mailbox Supports	Each	16.0	\$800.00	\$12,800			
ROW Development and Control					\$623,188		\$281,483.67	

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	WWSP QUANTITY	WWSP SHARE TOTAL	Methodology for WWSP Share and WWSP Added
Water Supply System								
81	Irrigation System	L.S.	1	\$70,000	\$70,000	33%	\$23,333.33	3' width of filtration planter is within the 12' WWSP pipeline trench. Total planter width is 9.0' including landscape strip.
82	6 Inch Potable Water, Complete	L.F.	650	\$40	\$26,000	108	\$4,320.00	9 - 6" water services crossing over WWSP pipeline trench (12' width).
83	18 Inch Tapping Sleeve and 6 Inch Valve Assembly	Each	15	\$5,000.00	\$75,000			
84	Fire Hydrant Assembly	Each	4	\$8,000	\$8,000	3	\$6,000.00	3 fire hydrants located within WWSP pipeline trench (12' width).
85	Relocate Existing Water Service	Each	1	\$2,500.00	\$2,500			
	Water Supply System				\$181,500		\$33,653.33	
Miscellaneous Utilities								
86	Joint Trench and Backfill	L.F.	2,700	\$15.00	\$40,500	19%	\$7,653.54	Existing utilities over WWSP pipeline trench. Shared cost for relocation.
87	5106 Vault for Power	Each	5	\$5,000.00	\$25,000	19%	\$4,724.41	12 feet of WWSP pipeline trench over 63.5 feet of work area width (includes PUE width).
88	4 Inch Grey Schedule 40 PVC Conduit for Power	L.F.	2,700	\$3.00	\$8,100	19%	\$1,530.71	
89	4 Inch Fiberglass Conduit Bend for Power	Each	5	\$300.00	\$1,500	19%	\$283.46	
	Miscellaneous Utilities				\$75,100		\$14,192.13	
Project Sub-Total								
	Extra Depth Excavation for WWSP Pipeline	CY	0	\$53.00	\$0	3723	\$197,312.60	Depth based on HHPR storm drainage analysis and unit cost based on Kinsman Road Extension (CIP #4004) bid tabulation average bids for general excavation and base aggregate.
Project Total							\$5,473,110.00	\$1,183,873.14
							WWSP Share of Roadway Construction	21.6%

