

RESOLUTION NO. 2840

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH WILLAMETTE WATER SUPPLY SYSTEM COMMISSION FOR THE WILLAMETTE RIVER WATER TREATMENT PLANT (WRWTP) FILTRATION PILOT STUDY.

WHEREAS, ORS Chapter 190 authorizes units of local government to enter into intergovernmental agreements for the performance of any or all activities and functions that a party to such an agreement has the authority to perform; and

WHEREAS, Wilsonville desires to develop a one-year Filtration Pilot Study (“Project”) in order to demonstrate to the Oregon Health Authority (“OHA”) Drinking Water Division, and thereby obtain their written approval, that the existing Willamette River Water Treatment Plant (WRWTP) filters are capable of operating at a higher filtration rate while maintaining finished water quality goals that have been established for the plant; and

WHEREAS, the WWSS Commission desires to participate in the Project in order to demonstrate to the OHA Drinking Water Division, and thereby obtain its written approval, that the filters for the WWSS Commission’s soon to be constructed water treatment plant (“WWSS Plant”) will be capable of operating at a higher filtration rate while maintaining finished water quality goals that have been established for the plant; and

WHEREAS, data and other information from the Project is anticipated to result in a significant cost saving to both the WWSS Commission, at its WWSS Plant, and Wilsonville, at its WRWTP; and

WHEREAS, the Parties therefore agree to share in the cost of the Project, as more particularly set forth below; and


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

Section 1. Wilsonville is agreeable to the partnership with the Willamette Water Supply System Commission on the WRWTP Filtration Pilot Study, in a manner described and in exchange for the considerations set forth in this Intergovernmental Agreement.

Section 2. The City Manager is authorized to sign the Intergovernmental Agreement for the WRWTP Filtration Pilot Study in substantially the form as present with latitude to make minor revision to reflect project variances and clarifications.


Section 3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this 17th day of August 2020, and filed with the Wilsonville City Recorder this date.

DocuSigned by:

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TIM KNAPP, MAYOR

ATTEST:

DocuSigned by:

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Akervall

Councilor Lehan

Councilor West

Councilor Linville

EXHIBIT:

- A. Intergovernmental Agreement between the City of Wilsonville and the Willamette Water Supply System Commission, WRWTP Filtration Pilot Study

INTERGOVERNMENTAL AGREEMENT**BETWEEN****THE CITY OF WILSONVILLE AND
THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION****(WRWTP Filtration Pilot Study)**

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 (“Wilsonville”), and the **Willamette Water Supply System Commission**, an Oregon intergovernmental entity organized under ORS Chapter 190 (the “WWSS Commission”). Wilsonville and the WWSS Commission are referred to herein individually as a “Party” and jointly as the “Parties.”

RECITALS

- A. WHEREAS, ORS Chapter 190 authorizes units of local government to enter into intergovernmental agreements for the performance of any or all activities and functions that a party to such an agreement has the authority to perform; and
- B. WHEREAS, TVWD, the City of Hillsboro (“Hillsboro”), and the City of Beaverton (“Beaverton”) entered into an intergovernmental agreement creating the WWSS Commission to set forth the terms for the joint ownership, financing, design, permitting, construction, operation, maintenance, repair, and replacement of the Willamette Water Supply System (“WWSS”) in a prudent, economic, and efficient manner to provide high quality water to their respective municipal water supply systems; and
- C. WHEREAS, the WWSS Commission oversees the Willamette Water Supply Program (“WWSP”) and has designated WWSP to exercise the responsibilities and obligations for the planning and design of WWSS projects; and
- D. WHEREAS, Wilsonville desires to develop a one-year Filtration Pilot Study (“Project”), as more particularly described below, in order to demonstrate to the Oregon Health Authority (“OHA”) Drinking Water Division, and thereby obtain their written approval, that the existing Willamette River Water Treatment Plant (WRWTP) filters are capable of operating at a higher filtration rate while maintaining finished water quality goals that have been established for the plant; and
- E. WHEREAS, the WWSS Commission desires to participate in the Project in order to demonstrate to the OHA Drinking Water Division, and thereby obtain its written approval, that the filters for the WWSS Commission’s soon to be constructed new water treatment plant (“WWSS Plant”) will be capable of operating at a higher filtration rate while maintaining finished water quality goals that have been established for the plant; and

- F. WHEREAS, data and other information from the Project is anticipated to result in a significant cost saving to both the WWSS Commission, at its WWSS Plant, and Wilsonville, at its WRWTP; and
- G. WHEREAS, the Parties therefore agree to share in the cost of the Project, as more particularly set forth below; and
- H. WHEREAS, it is the mutual desire of the Parties to enter into this Agreement to fund, complete, and share the Project data and other information, as follows:

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 DESCRIPTION AND GOALS

- 1.1. Wilsonville has retained a design and engineering firm, Stantec Consulting Services, Inc. (“Contractor”) to develop and complete the WRWTP Filtration Pilot Study, which includes a work plan, filter rate study, filter operations, and a summary report for a scaled down model prototype of the existing WRWTP filters.
- 1.2. The scaled down prototype filtration system will be constructed by a third party contractor, and Wilsonville will rent the prototype, to be operated and monitored in accordance with Contractor’s directed work plan by the WRWTP plant operator, Veolia North America (“Veolia”), for a “Monitoring Period” of up to one year, subject to OHA approval.
- 1.3. At the conclusion of the Monitoring Period, draft and Pilot Study Reports will be generated by Contractor, and Contractor will submit the final Pilot Study Report, on behalf of the Parties, to OHA for review and approval.
- 1.4. Each Party will possess the right to use the final Pilot Study Report and all associated data and information for its own purposes, including but not limited to those explicitly stated in this Agreement.
- 1.5. If approved by OHA, Wilsonville anticipates the existing WRWTP filter rates may be re-programmed to operate at the higher filtration rate proven by the study, while maintaining the finished water quality goals established for the WRWTP, with the goal of resulting in a significant cost savings.
- 1.6. If approved by OHA, the WWSS Commission anticipates it may use the data to assist in programming the filters in the WWSS Plant to operate at the higher filtration rate while maintaining the finished water quality goals established for the WWSS Plant, with the goal of resulting in a significant cost savings.

- 1.7. The duration of this Agreement is expected to be eighteen (18) months, beginning on September 4, 2020 (“Effective Date”). The Monitoring Period is subject to OHA approval but is expected to run for one full year from the date the prototype is placed into service in accordance with the work plan.
- 1.8. The Project will be a work product of both Parties for their individual or joint use.

ARTICLE II - WILSONVILLE OBLIGATIONS

- 2.1. Wilsonville will enter into the contract with Contractor, rent the prototype filtration system from a source recommended by the Contractor, and will direct Veolia to operate the prototype at the WRWTP for the Monitoring Period.
- 2.2. Wilsonville will provide any amendments or change orders that may affect the scope, schedule, or cost of the Project to the WWSS Commission, allowing a maximum of fifteen (15) business days for review and approval; and will not execute any such change orders without written consent from the WWSS Commission.
- 2.3. Wilsonville will invite the WWSS Commission to participate in all Project meetings with the Contractor and/or OHA and provide reasonable notice of such meetings.
- 2.4. Wilsonville will share all Project data and information with the WWSS Commission, including but not limited to interim, draft, and final reports; databases; presentations; and meeting agendas and notes. This Project data and information shall be shared monthly, unless a separate schedule is agreed to by the Parties.
- 2.5. Wilsonville will provide the WWSS Commission with a draft Project Work Plan (“Work Plan”) for comment, allow a maximum of ten (10) business days for review, and transmit all WWSS Commission comments to the Contractor.
- 2.6. Wilsonville will provide the WWSS Commission with a draft Pilot Study Report for comment, allow a maximum of ten (10) business days for review, and transmit all WWSS Commission comments to the Contractor.
- 2.7. Wilsonville will organize a meeting for Wilsonville, the WWSS Commission, and the Contractor to review comments on the draft Project Work Plan and the draft Pilot Study Report and agree on a disposition for each comment.
- 2.8. Wilsonville will cause the Contractor to prepare a final Project Work Plan and final Pilot Study Report that is responsive to the review comments, and provide the final plan and report to the WWSS Commission.
- 2.9. In conjunction with the WWSS Commission, Wilsonville will present the final Project results to OHA.
- 2.10. Wilsonville will provide reasonable opportunity for the WWSS Commission to coordinate with OHA and the Contractor to address any comments or questions that OHA provides on the final Project results.

- 2.11. Wilsonville will provide to the WWSS Commission all approvals, questions, comments, or other communications from or with OHA pertaining to the Project.
- 2.12. Wilsonville does not guarantee that the Project will be successful or that OHA will accept the Project results.

ARTICLE III - WWSS COMMISSION OBLIGATIONS

- 3.1. The WWSS Commission will reimburse Wilsonville for fifty percent (50%) of all expenditures related to the Project. **Exhibit A** sets forth the Parties' initial determination of anticipated Project costs. Expenditures will be billed monthly and paid by the WWSS Commission within thirty (30) days of receipt of the invoice from Wilsonville.
- 3.2. The WWSS Commission will cooperate with Wilsonville, the Contractor, and Veolia to pursue accurate Project results.
- 3.3. The WWSS Commission will review amendments or change orders within fifteen (15) days of receipt from Wilsonville, and provide written comments or approval.
- 3.4. The WWSS Commission may, at its discretion, participate in Project meetings with Wilsonville and the Contractor and/or OHA.
- 3.5. The WWSS Commission will review the draft Work Plan and provide any comments to Wilsonville within ten (10) business days of receiving the draft plan.
- 3.6. The WWSS Commission will review the draft Pilot Study Report and provide any comments to Wilsonville within ten (10) business days of receiving the draft report.
- 3.7. The WWSS Commission will participate in a meeting for Wilsonville, the WWSS Commission, and the Contractor to review comments on the draft Work Plan and the draft Pilot Study Report and agree on a disposition for each comment.
- 3.8. In conjunction with Wilsonville, the WWSS Commission will present the final Project results to OHA.
- 3.9. The WWSS Commission will work with Wilsonville to coordinate with OHA and the Contractor to address any comments or questions that OHA provides on the final Project results.
- 3.10. The WWSS Commission does not guarantee that the Project will be successful or that OHA will accept the Project results.

ARTICLE IV - GENERAL PROVISIONS

- 4.1. *Laws of Oregon.* The 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. Jurisdiction will be in Clackamas

County Circuit Court. The Project contracts shall contain all required public contract provisions of ORS Chapters 279A, 279B, and 279C.

- 4.2. *Default.* Either Party will be deemed to be in default if it fails to comply with any term, condition, or covenant in this Agreement. The 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, the 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. If a default causes a delay to the non-defaulting Party's construction schedule that results in actual additional costs, including but not limited to delay damages, the defaulting Party will be responsible for all cost increases and related damages, plus the non-defaulting Party's construction schedule will take priority for the purposes of avoiding or minimizing additional delay and allowing the non-defaulting Party to retain the original schedule, and the defaulting Party's construction may need to be delayed.
- 4.3. *Indemnification.* This Agreement is for the benefit of the 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.
- 4.4. *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 the Project work shall be subject to the applicable provisions of Oregon public records law.
- 4.5. *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.

4.6. *Dispute Resolution.*

4.6.1. Mediation. Should any dispute arise between the Parties, the Parties agree to meet informally to negotiate the problem, upon notice from one Party to the other specifying the dispute that needs to be resolved. If such informal negotiation fails, the Parties will mediate the dispute using a professional mediator, and the Parties will split the cost of the mediator. A 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 will cooperate in good faith to select the mediator within seven (7) days of either Party requesting mediation, and may adopt any procedural format that seems appropriate for the particular dispute. Mediation should be scheduled within fourteen (14) days of selection of the mediator, or as soon as possible, based on availability.

In the event the Parties cannot agree on a mediator, the Parties will ask any circuit court judge to appoint a mediator. The mediator will then set the ground rules for the mediation. In the event a written settlement agreement cannot be reached by the Parties within thirty (30) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon, in writing, by the Parties, then the Parties may either agree to binding arbitration or, if the Parties do not agree, then either Party may seek legal relief through the circuit court in Clackamas County.

4.6.2. Arbitration. If the Parties agree to arbitration, selection of the arbitrator, time frame for arbitration, and ground rules for arbitration will be agreed upon at that time. Any arbitrator or arbitrators selected must have a minimum of ten (10) years' of municipal law experience, unless the Parties mutually agree, in writing, otherwise.

4.6.3. Injunctive Relief and Specific Performance. Notwithstanding Subsection 4.6.1 or 4.6.2, even if the Parties agree to mediation or arbitration, either Party 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 resolution.

4.7. *Remedies.* Subject to the provisions of the dispute resolution process set forth in Section 4.6, 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. The Parties, by signature of their authorized representatives below, consent to the personal jurisdiction of those courts.

4.8. *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.

- 4.9. *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 the WWSS Commission.
- 4.10. *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 the 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 of the Party to be excused.
- 4.11. *Integration.* This Agreement contains the entire agreement between the Parties with respect to the subject matter herein. Notwithstanding the foregoing, this Agreement is not intended to supersede any provision of the WIF Agreement, the Ground Lease, or the Pipeline Easement.
- 4.12. *Assignment/Additional Parties.* This Agreement may be assigned by either Party subject to the consent of the non-assigning Party, which consent shall not be unreasonably withheld.
- 4.13. *Access to Books, Records, and Accounting.* Wilsonville will maintain books, records, and reports of the Project 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 the WWSS Commission at reasonable times upon reasonable notice.

ARTICLE V - TERM OF AGREEMENT

- 5.1. The term of this Agreement shall be from the date of execution until the Project is completed, tested, and presented to OHA. The Project will automatically be extended if OHA requires additional data and the Parties mutually agree, in writing, to extend this Agreement, subject to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written. This Agreement is effective upon the date of the final signature.

CITY OF WILSONVILLE, OREGON

APPROVED AS TO FORM:

By: _____

Bryan Cosgrove

As Its: City Manager

Barbara A. Jacobson, City Attorney

Dated: _____

**WILLAMETTE WATER SUPPLY SYSTEM
COMMISSION, OREGON**

APPROVED AS TO FORM:

By: _____

Print Name: _____

As Its: _____

Tommy Brooks, Legal Counsel WWSS

Dated: _____

Exhibit A

Item	Cost
Pilot Filter Equipment Lease	\$61,500
Finalize Filtration Study Work Plan with OHA	\$39,122
Complete Pilot Filtration Study	\$116,451
Install Pilot Filter Mechanical and Electrical Connections	\$6,000
Construct Pilot Filter Shelter	\$4,000
Particle Counters (3 @ \$5,500 each)	\$16,500
Pilot Filter Operation and Maintenance	\$50,000
Subtotal	\$293,573
Contingency (10%)	\$29,357
Total	\$322,930