

RESOLUTION NO. 2419

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH KERR CONTRACTORS OREGON INC. FOR THE CONSTRUCTION OF THE SEGMENT 3B WATER TRANSMISSION PIPELINE PROJECT, CAPITAL IMPROVEMENT PROJECT #1055.

WHEREAS, the City of Wilsonville has planned for, designed, and budgeted for the completion of Capital Improvement Project #1055, known as the “Segment 3b Water Transmission Pipeline”, and solicited competitive bids from qualified Contractors consistent with State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and,

WHEREAS, Kerr Contractors Oregon, Inc. submitted a bid for the project on May 23, 2013 for \$2,456,730, and this bid was subsequently evaluated as the lowest responsible bid; and

WHEREAS, the City of Wilsonville and City of Sherwood previously entered into an Intergovernmental Agreement regarding construction, ownership, and operation of transmission Segment 3B, and regarding payment terms and schedules for advance deposits by the City of Sherwood to the City of Wilsonville to fund the construction effort; and,

WHEREAS, the City of Sherwood has met their obligation under the IGA to deposit funding with Wilsonville for the project equal to the lowest responsible bid cost, plus 5 percent, totaling \$2,579,566.

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

1. The City Council authorizes the City Manager to enter into, on behalf of the City of Wilsonville, a Construction Contract with Kerr Contractors Oregon, Inc. for a stated value of \$2,456,730.
2. The City Council authorizes additional expenditures not to exceed a contingency amount of 5 percent of the Contract Value, totaling \$122,836, to cover unforeseen project expenses, consistent with the 5 percent contingency funding provided by the City of Sherwood.
3. This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a meeting thereof this 3rd day of June, 2013, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Fitzgerald	Yes
Councilor Goddard	Yes
Councilor Stevens	Yes

Attachments:

Exhibit 1 – Construction Contract

**CITY OF WILSONVILLE
CONSTRUCTION CONTRACT**

This Construction Contract for the Segment 3b Water Transmission Pipeline ("Contract") is made and entered into on this ____ day of _____, 2013 ("Effective Date") by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the "City" or "Owner"), and _____, a(n) _____ (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, the City requires construction services which Contractor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Contractor represents that Contractor is qualified to perform the construction services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Contractor is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the following additional "Contract Documents": Invitation to Bid; Information for Bidders; Instructions to Bidders; Bid Form (including Schedule of Prices); Non-Collusion Affidavit; Bidders Checklist; First-Tier Subcontractor Disclosure form and instructions; Bid Bond form; Performance & Payment Bonds; BOLI Public Works Bond form, Certificate of Insurance & Additional Insured Endorsement; applicable Prevailing Wage Rates; Construction Contract, Conditions of Contract (General Conditions, Supplementary General Conditions, and other conditions); Full Size Drawings; Specifications; Appendixes; as well as all Addenda and any other documents contained in the Project Manual or referred to in the Bidding Documents. Any conflict or difference between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected Work. All Contract Documents should be read in concert, and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. This Contract also incorporates by reference the 2006 City of Wilsonville Public Works Standards. Contractor must be familiar with all of the foregoing and comply with them. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing, the stricter provision or requirement more favorable to the City will apply.

Section 2. Substantial Completion and Contract Term

The term of this Contract shall be from the date stated on the Notice to Proceed until all work required to be performed hereunder ("Work") is completed and accepted, unless earlier terminated in accordance herewith. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Work. Except in the event of an extension of time, agreed to in writing by the City, Substantial Completion shall occur no later two hundred three (203) days after the date of the Notice to Proceed. Except in the event of an extension of time, agreed to in writing by the City, the Contract Term shall be two hundred thirty-three (233) days after the date of the Notice to Proceed. If Work is not completed within the Contract Term, or as it may be extended, in writing, by the City, the Liquidated Damages provision of **Section 16** shall apply.

Section 3. Contractor's Work

3.1. Contractor will perform the work, more particularly described in the Contract Documents ("Work") for the Segment 3b Water Transmission Pipeline project ("Project").

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor's authorized Project Representative. Any documents submitted by Contractor which do not bear the signature, stamp, or initials of Contractor's authorized Project Representative, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor's Project Representative may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor's Project Representative will provide such written documentation.

3.3. Contractor will not be responsible for damages, be in default, or be deemed to be in default by reason of delays in performance due to reasons beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that preclude Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.4. The existence of this Contract between the City and Contractor shall not be construed as the City's promise or assurance that Contractor will be retained for future services beyond the Work described herein.

3.5. Contractor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor's employees assigned to work on the Work provided in this Contract shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

3.6. All other provisions of the General Conditions and Supplementary Conditions concerning Contractor's Work shall apply.

Section 4. City's Rights and Responsibilities

4.1. The scope of the City's rights and responsibilities, including those of the City's Project Representative, are as set forth in the General Conditions and Supplemental Conditions. The City will designate an Owner's Project Representative to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff and City consultants to support the Project.

4.2. The City hereby certifies that sufficient funds are available and authorized to finance the Contract Price set forth in **Section 5** of this Contract.

4.3. The City will pay the required Bureau of Labor and Industries fee of one-tenth of one percent (0.1%) of the Contract Price, or as required by statute.

4.4. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

4.5. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

Section 5. Contract Price

5.1. Except as otherwise set forth in this **Section 5**, the City agrees to pay Contractor a not to exceed amount of _____ DOLLARS (\$_____) for performance of the Work ("Contract Price"). Any compensation in excess of the Contract Price will require express written agreement by the City and Contractor.

5.2. During the course of Contractor's performance, if the City or its Project Representative specifically requests Contractor to provide additional services that are beyond the Work, as described in the Contract Documents, Contractor shall provide such additional

services and bill the City a reasonable agreed upon fee, pursuant to a Change Order executed in compliance with the provisions of **Section 23**.

5.3. Application for payment shall be made in accordance with Article 14 of the General Conditions, as amended by the Supplementary Conditions. Unless expressly set forth in the Work as a reimbursable expense item that is not included in the fixed Contract Price of **Subsection 5.1**, or as an additional charge for which a written Change Order has been approved, in accordance with **Subsection 5.2** and the requirements of **Section 23**, Contractor shall only be entitled to the Contract Price specified in **Subsection 5.1**.

5.4. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible, in accordance with the dispute resolution provisions of the General Conditions and Supplemental Conditions.

5.5. The Contract Price includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees required to perform the Work on the Project.

5.6. Contractor's Contract Price is all inclusive and includes, but is not limited to, salaries or wages plus fringe benefits and contributions, including payroll taxes, workers' compensation insurance, liability insurance, profit, pension benefits, and similar contributions and benefits.

5.7. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in the General Conditions and in ORS 279C.570.

Section 6. Prevailing Wages

This is a Contract for a Public Works Project ("Contract"), subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this project are those published by BOLI effective January 1, 2013 and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following web address: http://www.oregon.gov/BOLI/WHD/PWR/Pages/PWR_Oregon_2013.aspx. Because this is a public works contract subject to payment of prevailing wage, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the

City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage in the amount of their unpaid wages, including all fringe benefits under ORS 279C.840(5). Contractor shall include a contract provision in compliance with this paragraph in every subcontract, and shall require each subcontractor to include in subcontract(s).

See Contractor Responsibilities below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 7. Filing of Certified Statement

As required in ORS 279C.845(7), Owner will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). Owner will pay to Contractor the amount retained within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with Owner the certified statements required in ORS 279C.845(1). Before paying any amount retained, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount retained. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with Owner.

Section 8. City's Project Representative

The City's Project Representative is Eric Mende, P.E., also referred to in the General Conditions as the Owner's Project Representative. The City's Engineer is Westech Engineering, Inc. The City shall give Contractor prompt written notice of any redesignation of its Project Representative or Engineer. The City's Project Representative retains full authority to delegate his responsibilities under this Contract to other City Staff or to Engineer as appropriate to facilitate the Work, but must notify Contractor in writing of the scope of such delegation.

Section 9. Contractor's Project Manager

Contractor's Project Manager is _____. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such redesignation. Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may

request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 10. Project Information

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Representative.

Section 11. Duty to Inform

If, at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Representative. Any delay or failure on the part of the City to provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

Section 12. Contractor's Responsibilities

In addition to the Contractor Responsibilities set forth in the General Conditions and Supplementary Conditions, Contractor also agrees to the following, some of which may also be set forth in the General Conditions:

12.1. Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Price provided for under **Section 5** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

12.2. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor.

12.3. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with and be subject to the provisions of **Section 12** and meet the same insurance requirements of Contractor under this Contract.

12.4. Contractor shall make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract, as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the subcontractor furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

12.5. Contractor must comply with all wage and hour laws. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth in the Contract Documents as a reimbursable expense item, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Contractor's Contract Price is based.

12.6. Contractor agrees to comply with all applicable laws in the performance of this Contract.

12.7. Contractor agrees that no person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the grounds of sex, gender, race, color, creed, marital status, age, disability, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and

ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

12.8. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

12.9. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

12.10. Contractor is solely responsible for ensuring that any subcontractor selection and substitution has been in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution. Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

12.11. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

12.12. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the contracting agency or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

12.13. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580

12.14. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay for the services or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

12.15. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

12.15.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

12.15.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

12.15.3. All Work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

12.16. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

12.17. For personal/professional service contracts, as designated under ORS 279A.055, instead of 12.15.1 – 12.15.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

12.18. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

12.19. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

12.20. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

12.21. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

12.22. Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in the Contract Documents, not caused by Contractor, and that was not discoverable by reasonable site inspection, which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

Section 13. Environmental Laws

13.1. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

- | | |
|---|--------------------------------|
| Forest Service | Agriculture, Department of |
| Defense, Department of | Soil Conservation Service |
| Environmental Protection Agency | Army Corps of Engineers |
| Bureau of Sport Fisheries and Wildlife | Interior, Department of |
| Bureau of Land Management | Bureau of Outdoor Recreation |
| Bureau of Reclamation | Bureau of Indian Affairs |
| Occupational Safety and Health Administration | Labor, Department of |
| Coast Guard | Transportation, Department of |
| | Federal Highway Administration |

STATE AGENCIES:
Environmental Quality, Department of
Forestry, Department of
Human Resources, Department of
Soil and Water Conservation Commission
State Land Board

Agriculture, Department of
Fish and Wildlife, Department of
Geology and Mineral Industries, Department of
Land Conservation and Development Commission
State Engineer
Water Resources Board

LOCAL AGENCIES:
County Court
Port Districts
County Service Districts
Water Districts

City Council
County Commissioners, Board of
Metropolitan Service Districts
Sanitary Districts
Fire Protection Districts”

13.2. Contractor shall be liable for any fine imposed against Contractor, the City or the ‘Project’ as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

13.3. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

13.4. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

Section 14. Subcontractor Requirements

14.1. Contractor’s relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

(a) a payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the contracting agency under the public improvement contract; and

(b) an interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in (a) above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

14.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in Section 14.1(a) and (b) above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

14.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

Section 15. Indemnity and Insurance

15.1. See General Conditions, Article 5, as amended by the Supplementary Conditions, for insurance requirements.

15.2. Evidence of insurance coverage must be submitted on current "ACORD" forms (or other insurance certificate containing similar language regarding cancellation of coverage) that EITHER includes a statement that "30 days cancellation notice shall be provided" so as to conform with General Conditions 5.03 OR Contractor's insurance agent shall submit a written letter certifying that new insurance certificates will be issued and sent to the City a minimum of every 30 days, throughout the term of the required insurance. The City and Westech Engineering Inc. must be named as additional insured, with the City being named as certificate holder. In addition, insurance or bond riders must be provided as required under the terms of any permit that Contractor must obtain from any city, county, service district, or stage agency with jurisdiction over the Work. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City.

15.3. See the General Conditions, Article 5, as amended by the Supplementary Conditions, for indemnity requirements.

Section 16. Liquidated Damages

The City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss and public detriment if the Work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof granted, in writing, by the City. They also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amounts listed below for each and every day that expires after the time specified for Substantial Completion.

Liquidated damages shall apply against Contractor and accrue to the City at the rate of Five Hundred Dollars (\$500) for each day that expires after the time specified for Substantial Completion until the Work is substantially complete.

After Substantial Completion, if Contractor shall neglect, fail, or refuse to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City, Contractor shall pay the City One Thousand Dollars (\$1,000) for each day that expires after the time specified above for the Work to be complete and ready for final payment.

The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the Engineer for all costs incurred by the Engineer for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the Engineer for all costs incurred for inspection and project management services required due to punchlist items not completed within the time allotted for Final Acceptance. If Contractor fails to reimburse the Engineer directly, the City will deduct the cost from Contractor's final pay request.

Section 17. Bonding Requirements

17.1. Contractor shall obtain Payment and Performance Bonds, in the form contained in the Contract Documents and from a surety acceptable to the City, in the full amount of the Contract Price.

17.2. In addition to the Payment and Performance Bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the amount of \$30,000. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond.

17.3. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

17.4. Any notice of claim on a payment bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 18. Early Termination or Suspension; Default

18.1. This Contract may be terminated early or suspended in accordance with Article 15 of the General Conditions, as amended by the Supplementary Conditions.

18.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

18.3. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of Work or portions thereof, referred to in **Section 22**, for which Contractor has received payment or the City has made payment.

Section 19. Suspension of Work

The City may suspend, delay, or interrupt all or any part of the Work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Work performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 20. Assignments

20.1. Any attempted assignment of this Contract without the written consent of the City shall be void.

20.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 21. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years, unless within that time the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

Section 22. Property of the City

Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports, and photographs, performed or produced by Contractor under this Contract shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Contractor as creator of such work shall be conveyed to the City upon request without additional compensation. Upon the City's approval, and provided the City is identified in connection therewith, Contractor may include Contractor's work in its promotional materials. Drawings may bear a disclaimer releasing Contractor from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

Section 23. Contract Modification/Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. Modifications to the Work or Contract Price must be made by Change Order as provided in Article 10 of the General Conditions, as amended by the Supplementary Conditions.

Section 24. Warranty

24.1. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the Owner to file for repairs of defective Work due to the Contractor's improper use of materials and/or workmanship.

24.2. In addition to, and not in lieu of, any other warranties required under the Contract, Contractor shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the Owner, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing his/her duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The two (2) year warranty period shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair.

24.3. If the Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this section, the Owner may have the defects corrected, and the Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to the Contractor, and the Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve the Contractor or Contractor's surety from liability and payment of all such costs.

24.4. In addition to the above, City of Wilsonville water line facilities installed by the Contractor under the Contract that require repair or replacement during the two (2) year maintenance period shall be repaired by the Owner, or under direct supervision of the Owner and the Contractor, and Contractor's surety will be liable for all expenses.

Section 25. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
 Attn: Eric Mende
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Contractor: _____
 Attn: _____

Section 26. Miscellaneous Provisions

26.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

26.2. Adherence to Law. Contractor shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to complete the Work shall be obtained and maintained throughout the term of this Contract.

26.3. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

26.4. No Assignment. Contractor may not delegate the performance of any obligation to a third party unless mutually agreed, in writing. This Contract cannot be assigned without the written consent of the other party, but all claims for overcharges of goods or other anti-trust violations in connection with this Contract are assigned to the City of Wilsonville. Contractor warrants that its suppliers will also assign any such claims.

26.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon. All contractual provisions required by ORS Chapter 279A and 279C to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

26.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

26.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

26.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

26.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

26.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

26.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

26.12. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any

period falls on any Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday.

26.13. Counting of Days. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event the period runs until the end of the next day that is not a Saturday or legal holiday.

26.14. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

26.15. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

26.16. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

26.17. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

26.18. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

26.19. Defined Terms. Terms not otherwise defined herein shall have the meaning given to them in the General Conditions or Supplemental Conditions.

26.20. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represents the entire agreement between the parties.

26.21. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

26.22. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract, including all General Conditions, Supplementary Conditions, and all other Contract Documents.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Contract in four (4) copies, each of which shall be deemed an original on the date first above written. Each party represents by signing below that he/she has authority to sign this agreement and to fully bind the principals thereto.

CONTRACTOR:

CITY:

CITY OF WILSONVILLE

By: _____

By: _____

(Print Name) _____

(Print Name) _____

As Its: _____

As Its: _____

Employer I.D. No. _____

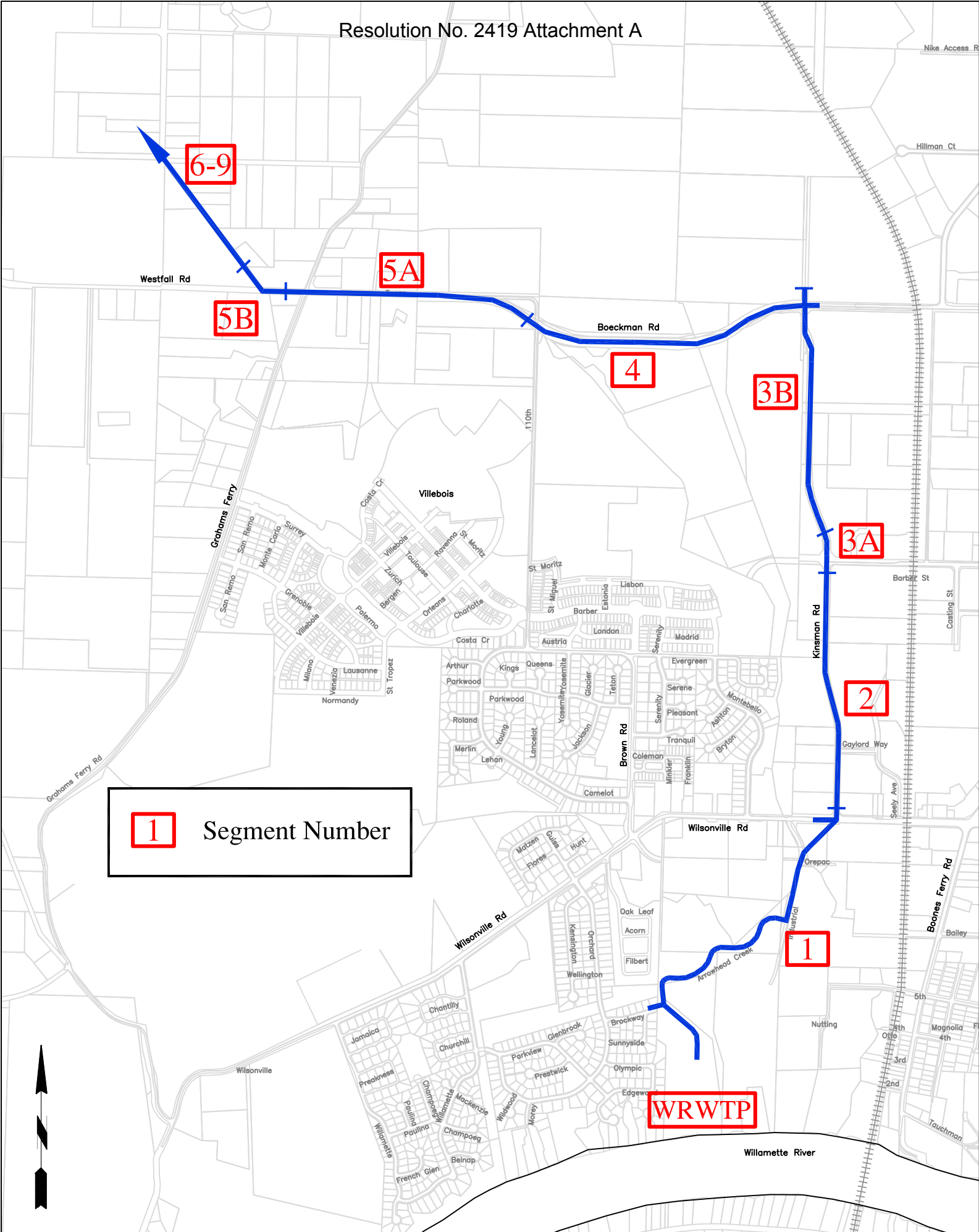
APPROVED AS TO FORM:

ATTESTED TO:

Barbara A. Jacobson, Assistant City Attorney
City of Wilsonville, Oregon

Sandra C. King, MMC, City Recorder
City of Wilsonville, Oregon

Resolution No. 2419 Attachment A



1 Segment Number

WRWTP

