



## CITY COUNCIL AGENDA

January 05, 2023 at 7:00 PM

Wilsonville City Hall & Remote Video Conferencing

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### PARTICIPANTS MAY ATTEND THE MEETING AT:

City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon

YouTube: <https://youtube.com/c/cityofwilsonvilleor>

Zoom: <https://us02web.zoom.us/j/81536056468>

### TO PARTICIPATE REMOTELY OR PROVIDE PUBLIC COMMENT:

Register with the City Recorder:

[CityRecorder@ci.wilsonville.or.us](mailto:CityRecorder@ci.wilsonville.or.us) or 503-570-1506

Individuals may submit comments online at: <https://www.ci.wilsonville.or.us/SpeakerCard>,  
via email to the address above, or may mail written comments to:

City Recorder - Wilsonville City Hall

29799 SW Town Center Loop East, Wilsonville, OR 97070

### CITY COUNCIL MISSION STATEMENT

*To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.*

### REVIEW OF AGENDA AND ITEMS ON CONSENT [5:00 PM]

### COUNCILORS' CONCERNS [5:05 PM]

### PRE-COUNCIL WORK SESSION [5:10 PM]

- A. Addendum to the Community Enhancement Grant Program Agreement between Metro and the City of Wilsonville to accept Community Investment Fees (*Mombert*) [10 min.]
- B. Transportation Planning Training/Q&A (*Pepper*) [20 min.]
- C. [Code Revisions Relating to Code Enforcement \(\*Adams\*\)](#) [25 min.]

### ADJOURN [6:05 PM]

### CITY COUNCIL MEETING

*The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, January 5, 2023 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10:00 a.m. on December 20, 2022. Remonstrances and other*

*documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered there with except where a time limit for filing has been fixed.*

#### **SWEARING IN CEREMONY [6:30 PM]**

1. [Oath of office administered by Judge Fred Weinhouse to newly elected Councilor Caroline Berry and Councilor Katie Dunwell.](#)

#### **CALL TO ORDER [7:00 PM]**

1. Roll Call
2. Pledge of Allegiance
3. Motion to approve the following order of the agenda.

#### **MAYOR'S BUSINESS [7:05 PM]**

4. [Upcoming Meetings](#)

#### **COMMUNICATIONS [7:15 PM]**

#### **CITIZEN INPUT AND COMMUNITY ANNOUNCEMENTS [7:15 PM]**

*This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizen input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.*

#### **COUNCILOR COMMENTS, LIAISON REPORTS AND MEETING ANNOUNCEMENTS [7:25 PM]**

5. Council President Akervall
6. Councilor Linville
7. Councilor Berry
8. Councilor Dunwell

#### **CONSENT AGENDA [7:45 PM]**

9. [Resolution No. 3019](#)

[A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Professional Services Agreement Contract Amendment With Otak, Inc. For Construction Engineering Services For The 5th Street / Kinsman Road Extension Project \(Capital Improvement Project #1139, 2099, &4196\). \(Weigel\)](#)

10. **Resolution No. 3029**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Construction Contract With Emery And Sons Construction Group, LLC For Construction Of The 2022 Street Maintenance Project (Capital Improvement Projects No. 4014, 4118, And 4717). (Barrett)

11. **Resolution No. 3033**

A Resolution Of The Wilsonville City Council Amending To The Community Enhancement Grant Program Intergovernmental Agreement Between Metro And The City Of Wilsonville To Accept Community Investment Fees. (Mombert)

12. **Diversity, Equity and Inclusion Cultural Calendar (Mombert)**

13. **Minutes of the December 19, 2022 City Council Meeting. (Veliz)**

**NEW BUSINESS [7:50 PM]**

14. **Resolution No. 3028**

A Resolution Of The City Of Wilsonville Approving The City Of Wilsonville Flag Policy. (Guile-Hinman)

**CONTINUING BUSINESS [8:00 PM]**

**PUBLIC HEARING [8:00 PM]**

15. **Ordinance No. 874 - 1st Reading (Legislative Hearing)**

An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Section 6.150, "Special Use Of Streets And Sidewalks And Large Special Events Signs And Street Banners." (Guile-Hinman)

16. **Ordinance No. 872 - 1st Reading (Quasi-Judicial Hearing)**

An Ordinance of the City of Wilsonville Annexing Approximately 9.17 Acres of Property Located at 9710 SW Day Road for Development of a Warehouse/Manufacturing Building and Associated Site Improvements. (Luxhoj)

17. **Ordinance No. 873 - 1st Reading (Quasi-Judicial Hearing)**

An Ordinance of the City of Wilsonville Approving a Zone Map Amendment from the Washington County Future Development – 20 Acre (FD-10) Zone to the Planned Development Industrial – Regionally Significant Industrial Area (PDI-RSIA) Zone on Approximately 9.17 Acres Located at 9710 SW Day Road for Development of a Warehouse/Manufacturing Building and Associated Site Improvements. (Luxhoj)

**CITY MANAGER'S BUSINESS [8:20 PM]**

**LEGAL BUSINESS [8:25 PM]**

**ADJOURN [8:30 PM]**

**AN URBAN RENEWAL AGENCY MEETING WILL  
IMMEDIATELY FOLLOW THE CITY COUNCIL MEETING**

*Time frames for agenda items are not time certain (i.e. agenda items may be considered earlier than indicated). The City will endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting by contacting the City Recorder at 503-570-1506 or [CityRecorder@ci.wilsonville.or.us](mailto:CityRecorder@ci.wilsonville.or.us): assistive listening devices (ALD), sign language interpreter, and/or bilingual interpreter. Those who need accessibility assistance can contact the City by phone through the Federal Information Relay Service at 1-800-877-8339 for TTY/Voice communication.*

*Habr  interpretes disponibles para aqu llas personas que no hablan Ingl s, previo acuerdo. Comun quese al 503-570-1506.*





## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> January 5, 2023		<b>Subject:</b> Code Revisions Relating to Code Enforcement  <b>Staff Members:</b> Ryan Adams, Assistant City Attorney  <b>Department:</b> Legal	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> N/A	
<b>Staff Recommendation:</b> N/A			
<b>Recommended Language for Motion:</b> N/A			
<b>Project / Issue Relates To:</b> The City's Code enforcement provisions.			
<input type="checkbox"/> Council Goals/Priorities:	<input type="checkbox"/> Adopted Master Plan(s):	<input checked="" type="checkbox"/> Not Applicable	

### ISSUE BEFORE COUNCIL:

Shall the Office of the City Attorney draft an ordinance revising our City Code's enforcement provisions?

## **EXECUTIVE SUMMARY:**

The Wilsonville Code (WC) is inconsistent as to who has the authority to enforce specific provisions. Additionally, fine amounts are often so low that they do not act as a deterrent for larger businesses. For example, our sign code imposes a maximum fine of \$100 per day for violations. While that amount may dissuade residential citizens from violations, often, it does not dissuade a large business. The Wilsonville City Charter imposes a responsibility on the City Manager to “see that all ordinances are enforced.” However, the Wilsonville City Code delegates enforcement of various sections to 11 different staff positions and one councilor.

Wilsonville has a Code Compliance Coordinator; however, that position is not mentioned within our Code. Thus, the Code Compliance Coordinator’s enforcement ability is limited. For example, the Assistant City Attorney recently signed a citation regarding an off-leash dog because the code did not provide the Coordinator with authority to do so.

## **1. STAFF AUTHORITY**

Staff has reviewed the municipal codes for twelve jurisdictions within our state.<sup>1</sup> Ten out of twelve of those jurisdictions vest ultimate enforcement authority in a City Manager and allow the City Manager to delegate administratively which staff member is authorized to enforce certain provisions of the code.

## **2. CODE ENFORCEMENT PROCESS**

City Code is enforced in different ways based on different chapters of our code. For example, if an individual has a dog off leash in a park, our Code Compliance Coordinator is not authorized to issue a citation. In this case, a citation would need to be issued by a member of our parks staff, a police officer, or the city councilor in charge of parks (which we do not have). Our development code is enforced by the Planning Manager or the City Attorney, depending on the offense. If there is a violation of a zoning ordinance, the Planning Manager is vested with enforcement authority. However if an individual violates our tree code, the City Attorney is responsible for enforcement. There are many other examples in our code where alignment could potentially be helpful. Other jurisdictions have recently updated their City Codes to vest enforcement authority in a code compliance Coordinator. The City of McMinnville recently vested enforcement of their code in a compliance officer. West Linn operates in a similar fashion as do most other nearby jurisdictions.<sup>2</sup>

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<sup>1</sup> Staff reviewed: Lake Oswego, West Linn, Bend, Gresham, Tualatin, Sherwood, Albany, Canby, Beaverton, Troutdale, Tigard, and Clackamas County.

<sup>2</sup> West Linn vests enforcement authority in: “City police officers, community service officers, City Public Works Director, Chief Financial Officer, Community Development Director, Parks Director, Building Official, and any employee with an approved job description that includes code compliance or enforcement. City officials are authorized to enforce any and all of the provisions of the code and have all law enforcement authority granted by charter, ordinance and general law.” (WLMC 1.220).

### 3. REVIEW AUTHORITY

Our appeal process is also unclear and situationally dependent. For example, a violation of our building code allows an appeal to the City Manager and then to a Board of Appeals appointed by City Council. Whereas, a violation of our sign code may be cited into the Wilsonville Municipal Court or the Clackamas County Circuit Court. Other jurisdictions handle this in a more consistent manner. In McMinnville, for example, if an individual violates the zoning, business, health and safety, or building codes, the individual has the opportunity to appeal any fine to the City Manager, and if dissatisfied, to a hearings officer.

### 4. FINE AMOUNTS

Wilsonville's fine schedule is disjointed and does not provide significant deterrence to larger businesses who would violate a code provision for economic gain. Section 1.012 of our code generally allows a fine of \$500 per day and provides that a second conviction for the same offense is chargeable as a misdemeanor. However, in charging a misdemeanor, the City would be required to appoint an attorney for the defendant. We do not have the budget to do so at this time. Other jurisdictions provide more flexibility. Specifically, West Linn classifies violations into specific categories with metrics for the severity of violation. McMinnville, on the other hand, classifies different levels of violations for purposes of assessing a specific civil penalty.

A recent update to Chapter 9 (Buildings) of the Wilsonville City Code created a system whereby any fine amount is determined based on prior violations, the gravity and magnitude of the current violation, whether the violation was intentional, and the cooperativeness of the violator (WC 9.410(5) is attached as exhibit 1). There is no apparent reason why this same system could not be applied to the entirety of the Wilsonville City Code.

### EXPECTED RESULTS:

To the extent City Council believes that revising the enforcement provision of our Code will be beneficial to Wilsonville, Staff will immediately draft provisions for your consideration.

### TIMELINE:

Approximate timeline of expected events:

1. January 5, 2022 – First Council Work Session to request input from Council.
2. February 6, 2023 – Second Council Work Session to go over draft revisions.
3. March 6, 2023 – Third Council Work Session to go over draft revisions.
4. April 3, 2023 – First Reading of Ordinance
5. April 17, 2023 – Second Reading of Ordinance
6. May 17, 2023 – Any new ordinance becomes effective

### CURRENT YEAR BUDGET IMPACTS:

N/A

**COMMUNITY INVOLVEMENT PROCESS:**

Any proposed code amendment must follow the standard notice requirements set forth in Oregon law and Wilsonville's charter.

**POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

The community will benefit because its Code Compliance Coordinator will be empowered to enforce the code in an equitable manner that provides justice for all, regardless of economic status.

**ALTERNATIVES:**

Take no action.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENT:**

1. WC 9.410 – Authority to Impose Civil Penalty

## 9.410. - Authority to Impose Civil Penalty.

Item C.

- (1) In addition to, and not in lieu of, any other enforcement mechanism authorized by the Building Code or the City Code, upon a determination by the Building Official that a person has violated a provision of the Building Code or a rule adopted thereunder, the Building Official may impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections (1) to (12) of this Section. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner as well.
- (2) The preferred enforcement of the Building Code is for the Building Official to first attempt, if possible, voluntary correction of any violations of the Building Code. Therefore, prior to imposing an administrative civil penalty under this Section, the Building Official may, in the Building Official's discretion, pursue reasonable attempts to secure voluntary correction. If the violator fails to correct the violation, the Building Official may issue a notice of civil violation to one or more of the persons responsible to correct the violation, as well as the owner of the site if the owner is not the violator. Except where the Building Official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five calendar days from Receipt of the notice.
- (3) Following the date or time by which the correction must be completed as required by an order to correct a violation, the Building Official shall determine whether such correction has been completed. If the required correction has not been completed by the date or time specified in the order, the Building Official may impose a civil penalty on each person to whom an order to correct was issued.
- (4) Notwithstanding subsection (2) above, the Building Official may impose a civil penalty without having issued an order to correct violation or made attempts to secure voluntary correction where the Building Official determines that the violation was knowing or intentional or a repeat of a similar violation.
- (5) In imposing a penalty authorized by this Section, the Building Official will consider:
  - (a) The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
  - (b) Any prior violations of statutes, rules, orders, and Permits;
  - (c) The gravity and magnitude of the violation;
  - (d) Whether the violation was repeated or continuous;
  - (e) Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
  - (f) The violator's cooperativeness and efforts to correct the violation; and

- (g) Any relevant rule of the Building Code or the City Code.
- (6) The notice of civil penalty shall either be served by personal service or shall be mail by registered or certified mail, return receipt requested. A notice of civil penalty shall include:
- (a) Reference to the particular Building Code provision or rule involved;
  - (b) A short and plain statement of the matters asserted or charged;
  - (c) A statement of the amount of the penalty or penalties imposed;
  - (d) The date on which the order to correct was issued and time by which correction was to be made, or if the penalty is imposed pursuant to subsection (4), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
  - (e) A statement of the party's right to appeal the civil penalty to the City Manager.
- (7) Any person who is issued a notice of civil penalty may appeal the penalty to the City Manager pursuant to Section 9.420.
- (8) A civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the City Manager pursuant to, and within the time limits established by, Section 9.420. If the responsible person appeals the civil penalty to the City Manager, the penalty shall become final, if at all, upon issuance of the City Manager's decision affirming the imposition of the administrative civil penalty.
- (9) Except as provided in subsection (10) below, failure to pay a penalty imposed hereunder within ten) calendar days after the penalty becomes final as provided in subsection (8) shall constitute a separate and additional violation of the Building Code. Each day the penalty is not paid thereafter shall constitute a separate violation. The Building Official also is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection (11) below, other provisions of the City Code, or Oregon statutes. The civil administrative penalty authorized by this Section shall be in addition to:
- (a) Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement; and
  - (b) Any other actions authorized by law.
- (10) The City Manager may, in the City Manager's sole discretion, suspend the imposition of additional civil penalties pending the City Manager's decision of an appeal properly submitted pursuant to Section 9.420 herein.
- (11) If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of the Building Code resulting from prohibited use or activity on real property, and the penalty remains unpaid 30 calendar days after such penalty became final, the Building Official may assess the property the full amount of the unpaid fine and may enter such an assessment as a lien in the municipal lien docket pursuant to Section 9.430. At the time such an assessment is

made, the Building Official shall notify the responsible person and the owner, if different from the responsible person, that the penalty has been assessed against the real property upon which the violation occurred and has been entered in the municipal lien docket. The interest shall commence from the date of entry of the lien in the lien docket.

- (12) In addition to enforcement mechanisms authorized elsewhere in the Building Code and the City Code, failure to pay an administrative civil penalty imposed pursuant to this Section will be grounds for withholding issuance of requested Permits or licenses, for issuing a stop work order, if applicable, or revoking or suspending any issued Permits or certificates of occupancy.

(Ord. No. 839, § 2(Att. 1), 12-16-2019, eff. 1-1-2020)

#### 9.420. - Appeal of Penalty.

- (1) A person aggrieved by an action of the Building Official taken pursuant to a section of the Building Code that authorizes an appeal under this Section may, within ten Business Days after the Receipt of notice of the action, appeal in writing to the Building Official. The appeal shall state:
- (a) The name and address of the appellant;
  - (b) The nature of the determination being appealed
  - (c) The reason the determination is incorrect; and
  - (d) What the correct determination of the appeal should be.
- (2) Dismissal.
- (a) An appellant who fails to file such a statement within the time permitted waives the objections, and the appeal shall be summarily dismissed by the City Manager not later than five Business Days after receipt of the appeal.
  - (b) If an appellant timely files an appeal, but fails to meet requirements (a) through (d) of subsection (1), the Building Official will notify the appellant in writing the defect(s) of the appeal and allow the appellant five Business Days from Receipt of the notification of defect(s) to correct the defect(s) and resubmit the appeal. If appellant fails to correct the defect(s) and resubmit the appeal within the five Business Days, the appeal shall be summarily dismissed by the City Manager not later than five Business Days after the date by which the appeal was resubmitted or had to be resubmitted, whichever is earlier.
- (3) Upon Receipt of a timely appeal that meets the requirements of subsection (1), the Building Official may prepare a written response brief and provide the response brief to the City Manager and the appellant no less than seven calendar days prior to the hearing date.
- (4) If a notice of revocation of a license or Permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal. Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.

- (5) Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Manager within 30 calendar days of the Receipt of the appeal. No later than seven calendar days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.
- (6) The City Manager shall hear and determine the appeal on the basis of the appellant's written statement, the Building Official's response brief, if any, and any additional evidence the City Manager deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The Building Official may also present testimony and oral argument, and may have the City represented by the City Attorney's Office if the appellant is represented by counsel. The rules of evidence as used by courts of law do not apply.
- (7) The City Manager will issue a written decision within ten Business Days of the hearing date. The decision of the City Manager after the hearing is final.
- (8) Any legal action contesting the City Manager's decision on the appeal must be filed within 60 calendar days of the City Manager's decision. Review of the City Manager's decision shall be by writ of review pursuant to ORS 34.010 to 34.100.

(Ord. No. 839, § 2(Att. 1), 12-16-2019, eff. 1-1-2020)





## CITY OF WILSONVILLE OATH OF OFFICE

STATE OF OREGON	)
COUNTIES OF CLACKAMAS	)
AND WASHINGTON	)
CITY OF WILSONVILLE	)

I, Caroline Berry, the undersigned, having been elected to the office of Wilsonville City Councilor, on oath depose and say that I will support the Constitution and Laws of the United States, and the State of Oregon, and that I will faithfully perform the duties of Wilsonville City Councilor to which I have been elected.

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Caroline Berry

Subscribed and sworn to before me this 5<sup>th</sup> day of January, 2023.

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Honorable Judge Fred Weinhouse



# CITY OF WILSONVILLE

## OATH OF OFFICE

STATE OF OREGON )  
COUNTIES OF CLACKAMAS )  
AND WASHINGTON )  
CITY OF WILSONVILLE )

I, Katie Dunwell, the undersigned, having been elected to the office of Wilsonville City Councilor, on oath depose and say that I will support the Constitution and Laws of the United States, and the State of Oregon, and that I will faithfully perform the duties of Wilsonville City Councilor to which I have been elected.

Katie Dunwell

Subscribed and sworn to before me this 5<sup>th</sup> day of January, 2023.

Honorable Judge Fred Weinhouse

**CITY COUNCIL ROLLING SCHEDULE**  
**Board and Commission Meetings**  
**Items known as of 12/22/22**

Item 4.

**January**

Date	Day	Time	Event	Location
1/9	Monday	6:30 pm	DRB Panel A	Council Chambers
1/10	Tuesday	6:00 pm	Diversity, Equity and Inclusion Committee	Council Chambers
1/11	Wednesday	6:00 pm	Planning Commission	Council Chambers
1/11	Wednesday	6:00 pm	Kitakata Sister City Advisory Board	Parks & Rec Admin Bldg.
1/17	Tuesday	5:00 pm	Municipal Traffic Court	Council Chambers
1/18	Wednesday	5:00 pm	Arts, Culture and Heritage Comm.	Library
1/19	Monday	7:00 pm	City Council Meeting	Council Chambers
1/23	Monday	6:30 pm	DRB Panel B	Council Chambers
1/25	Wednesday	6:30 pm	Library Board Meeting	Library
1/25	Wednesday	6:30 pm	Tourism Promotion Committee	Council Chambers

**February**

Date	Day	Time	Event	Location
2/1	Wednesday	6:00 pm	Budget Committee	Council Chambers
2/6	Monday	7:00 pm	City Council Meeting	Council Chambers
2/8	Wednesday	6:00 pm	Planning Commission	Council Chambers
2/8	Wednesday	6:00 pm	Kitakata Sister City Advisory Comm.	Parks & Rec Admin Bldg.
2/13	Monday	6:30 pm	DRB Panel A	Council Chambers
2/14	Tuesday	6:00 pm	Diversity, Equity and Inclusion Committee & Subcommittee	Council Chambers
2/15	Wednesday	5:00 pm	Arts, Culture and Heritage Comm.	Oak Room - Library
2/20	Office	Closed	President's Day	OFFICE CLOSED
2/22	Wednesday	6:30 pm	Library Board	Library
2/23	Thursday	7:00 pm	City Council Meeting	Council Chambers
2/27	Monday	6:30 pm	DRB Panel B	Council Chambers

**Community Events:**

1/5 Virtual Reality Fitness, 10:00 am, Wilsonville Community Center  
 Ladies Afternoon Out, 1:00 pm, Wilsonville Community Center

- 1/6 Sit and Be Fit, 11:00 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 pm, Wilsonville Community Center  
Mexican Train Dominoes, 1:00 pm, Wilsonville Community Center  
First Friday Films, 6:00 pm, Wilsonville Public Library
- 1/9 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Weight Loss Support Group, 12:30 pm, Wilsonville Community Center  
Bridge Group, 1:00 pm, Wilsonville Community Center  
Body Sculpt, 5:45 pm, Wilsonville Community Center
- 1/10 Chair Y.E.S! 8:30 am, Wilsonville Community Center  
Ukulele Jam, 9:00 am, Parks & Rec Admin Building  
Quilters, 9:00 am, Tauchman House  
Zumba Gold, 9:40 am, Wilsonville Community Center  
ODHS Drop-In Assistance, 10:00 am, Wilsonville Library  
Toddler & Baby Time, 10:30 am, Wilsonville Library  
English Class, 10:30 am, Wilsonville Library  
Toddler & Baby Time, 11:15 am, Wilsonville Library  
Gentle Flow Yoga, 7:15 pm, Wilsonville Community Center
- 1/11 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
Digital Photography Club, 10:00 am, Wilsonville Community Center  
Family Storytime, 10:30 am, Wilsonville Library  
Sit and Be Fit, 11:00 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Pinochle/Cribbage, 1:00 pm, Wilsonville Community Center  
Teen Drop-In Activities, 3:00 pm, Wilsonville Library  
Zumba, 7:00 pm, Wilsonville Community Center
- 1/12 Virtual Reality Fitness, 10:00 am, Wilsonville Community Center  
Family Storytime, 10:30 am, Wilsonville Library  
Ladies Afternoon Out, 1:00 pm, Wilsonville Community Center  
Restorative Yoga, 7:15 pm, Wilsonville Library
- 1/13 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
Play Group, 10:00 am, Wilsonville Library  
Sit and Be Fit, 11:00 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Mexican Train Dominoes, 1:00 pm, Wilsonville Community Center
- 1/14 Barre, 9:00 am, Wilsonville Community Center  
Oil Painting, 10:00 am, Parks & Rec Admin Building  
Book Notes Concert, 2:00 pm, Wilsonville Library
- 1/16 Body Sculpt, 5:45 pm, Wilsonville Community Center
- 1/17 Chair Y.E.S! 8:30 am, Wilsonville Community Center  
Ukulele Jam, 9:00 am, Parks & Rec Admin Building  
Quilters, 9:00 am, Tauchman House  
Zumba Gold, 9:40 am, Wilsonville Community Center  
ODHS Drop-In Assistance, 10:00 am, Wilsonville Library  
Toddler & Baby Time, 10:30 am, Wilsonville Library

Alzheimers Education: Understanding Alzheimer's & Dementia, 10:30 am, Comm. Center

English Class, 10:30 am, Wilsonville Library

Toddler & Baby Time, 11:15 am, Wilsonville Library

Beginning Tai Chi, 3:00 pm, Wilsonville Community Center

Lehan Lectures, 5:30 pm, Wilsonville Library, Oak Room

Gentle Flow Yoga, 7:15 pm, Wilsonville Community Center

1/18 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center

Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center

Digital Photography Club, 10:00 am, Wilsonville Community Center

Family Storytime, 10:30 am, Wilsonville Library

Sit and Be Fit, 11:00 am, Wilsonville Community Center

Lunch at the Community Center, 12:00 noon, Wilsonville Community Center

STEAM Stuff, 1:00 pm, Wilsonville Library

Pinochle/Cribbage, 1:00 pm, Wilsonville Community Center

Bingo, 1:00 pm, Wilsonville Community Center

Teen Drop-In Activities, 3:00 pm, Wilsonville Library

Zumba, 7:00 pm, Wilsonville Community Center

1/19 Virtual Reality Fitness, 10:00 am, Wilsonville Community Center

Family Storytime, 10:30 am, Wilsonville Library

Walking Book Club, 1:00 pm, Wilsonville Library

Ladies Afternoon Out, 1:00 pm, Wilsonville Community Center

Beginning Tai Chi, 3:00 pm, Wilsonville Community Center

Restorative Yoga, 7:15 pm, Wilsonville Library

1/20 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center

Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center

Play Group, 10:00 am, Wilsonville Library

Sit and Be Fit, 11:00 am, Wilsonville Community Center

Lunch at the Community Center, 12:00 noon, Wilsonville Community Center

Mexican Train Dominoes, 1:00 pm, Wilsonville Community Center

1/21 Barre, 9:00 am, Wilsonville Community Center

1/23 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center

Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center

Ridewise Travel Training Program, 10:30 am, Wilsonville Community Center

Lunch at the Community Center, 12:00 noon, Wilsonville Community Center

Weight Loss Support Group, 12:30 pm, Wilsonville Community Center

Bridge Group, 1:00 pm, Wilsonville Community Center

Body Sculpt, 5:45 pm, Wilsonville Community Center

1/24 Chair Y.E.S! 8:30 am, Wilsonville Community Center

Ukulele Jam, 9:00 am, Parks & Rec Admin Building

Quilters, 9:00 am, Tauchman House

Zumba Gold, 9:40 am, Wilsonville Community Center

ODHS Drop-In Assistance, 10:00 am, Wilsonville Library

Toddler & Baby Time, 10:30 am, Wilsonville Library

English Class, 10:30 am, Wilsonville Library

Toddler & Baby Time, 11:15 am, Wilsonville Library

Beginning Tai Chi, 3:00 pm, Wilsonville Community Center

Gentle Flow Yoga, 7:15 pm, Wilsonville Community Center

- 1/25 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
 Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
 Digital Photography Club, 10:00 am, Wilsonville Community Center  
 Family Storytime, 10:30 am, Wilsonville Library  
 Sit and Be Fit, 11:00 am, Wilsonville Community Center  
 Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
 Pinochle/Cribbage, 1:00 pm, Wilsonville Community Center  
 Teen Drop-In Activities, 3:00 pm, Wilsonville Library  
 Zumba, 7:00 pm, Wilsonville Community Center
- 1/26 Virtual Reality Fitness, 10:00 am, Wilsonville Community Center  
 Family Storytime, 10:30 am, Wilsonville Library  
 Ladies Afternoon Out, 1:00 pm, Wilsonville Community Center  
 Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
 Restorative Yoga, 7:15 pm, Wilsonville Library
- 1/27 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
 Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
 Blood Drive, 10:00 am, Wilsonville Library  
 Play Group, 10:00 am, Wilsonville Library  
 Sit and Be Fit, 11:00 am, Wilsonville Community Center  
 Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
 Mexican Train Dominoes, 1:00 pm, Wilsonville Community Center
- 1/28 Barre, 9:00 am, Wilsonville Community Center
- 1/30 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
 Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
 Estate Planning 101, 10:30 am, Wilsonville Community Center  
 Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
 Weight Loss Support Group, 12:30 pm, Wilsonville Community Center  
 Bridge Group, 1:00 pm, Wilsonville Community Center  
 Genealogy Club, 1:00 pm, Wilsonville Library  
 Body Sculpt, 5:45 pm, Wilsonville Community Center
- 1/31 Chair Y.E.S! 8:30 am, Wilsonville Community Center  
 Ukulele Jam, 9:00 am, Parks & Rec Admin Building  
 Quilters, 9:00 am, Tauchman House  
 Zumba Gold, 9:40 am, Wilsonville Community Center  
 ODHS Drop-In Assistance, 10:00 am, Wilsonville Library  
 Toddler & Baby Time, 10:30 am, Wilsonville Library  
 English Class, 10:30 am, Wilsonville Library  
 Toddler & Baby Time, 11:15 am, Wilsonville Library  
 Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
 Gentle Flow Yoga, 7:15 pm, Wilsonville Community Center
- 2/1 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
 Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
 Digital Photography Club, 10:00 am, Wilsonville Community Center  
 Family Storytime, 10:30 am, Wilsonville Library  
 PROFILES (online), 11:00 am, Zoom  
 Sit and Be Fit, 11:00 am, Wilsonville Community Center  
 Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
 Pinochle/Cribbage, 1:00 pm, Wilsonville Community Center

- Teen Drop-In Activities, Wilsonville Library  
Zumba, 7:00 pm, Wilsonville Community Center
- 2/2 Virtual Reality Fitness, 10:00 am, Wilsonville Community Center  
Family Storytime, 10:30 am, Wilsonville Library  
Ladies Afternoon Out, 1:00 pm, Wilsonville Community Center  
Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
Restorative Yoga, 7:15 pm, Wilsonville Library
- 2/3 Play Group, 10:00 am, Wilsonville Library  
Sit and Be Fit, 11:00 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Mexican Train Dominoes, 1:00 pm, Wilsonville Community Center  
First Friday Films, 3:00 pm, Wilsonville Library
- 2/4 Barre, 9:00 am, Wilsonville Community Center
- 2/6 Alzheimer's Education: Dementia Conversations, 10:30 am, Comm. Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Weight Loss Support Group, 12:30 pm, Wilsonville Community Center  
Bridge Group, 1:00 pm, Wilsonville Community Center  
Body Sculpt, 5:45 pm, Wilsonville Community Center
- 2/7 Chair Y.E.S! 8:30 am, Wilsonville Community Center  
Ukulele Jam, 9:00 am, Parks & Rec Admin Building  
Quilters, 9:00 am, Tauchman House  
Zumba Gold, 9:40 am, Wilsonville Community Center  
ODHS Drop-In Assistance, 10:00 am, Wilsonville Library  
Toddler & Baby Time, 10:30 am, Wilsonville Library  
English Class, 10:30 am, Wilsonville Library  
Toddler & Baby Time, 11:15 am, Wilsonville Library  
Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
Oil Painting, 5:30 pm, Parks & Rec Admin Building  
Lehan Lectures, 5:30 pm, Wilsonville Library, Oak Room  
Gentle Flow Yoga, 7:15 pm, Wilsonville Community Center
- 2/8 Winter Walk+Roll to School Day (all day)  
Digital Photography Club, 10:00 am, Wilsonville Community Center  
Family Storytime, 10:30 am, Wilsonville Library  
Sit and Be Fit, 11:00 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
STEAM Stuff, 1:00 pm, Wilsonville Library  
Pinochle/Cribbage, 1:00 pm, Wilsonville Community Center  
Teen Drop-In Activities, 3:00 pm, Wilsonville Library  
Zumba, 7:00 pm, Wilsonville Community Center
- 2/9 Virtual Reality Fitness, 10:00 am, Wilsonville Community Center  
Family Storytime, 10:30 am, Wilsonville Library  
Ladies Afternoon Out, 1:00 pm, Wilsonville Community Center  
Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
Restorative Yoga, 7:15 pm, Wilsonville Library
- 2/10 Play Group, 10:00 am, Wilsonville Library  
Sit and Be Fit, 11:00 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Mexican Train Dominoes, 1:00 pm, Wilsonville Community Center



- 2/11 Barre, 9:00 am, Wilsonville Community Center  
Oil Painting, 10:00 am, Parks & Rec Admin Building  
Book Notes Concert, 2:00 pm, Wilsonville Library
- 2/13 Life 101-Healthy Bones and Aging, 10:30 am, Comm. Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Weight Loss Support Group, 12:30 pm, Wilsonville Community Center  
Bridge Group, 1:00 pm, Wilsonville Community Center  
Body Sculpt, 5:45 pm, Wilsonville Community Center
- 2/14 Chair Y.E.S! 8:30 am, Wilsonville Community Center  
Ukulele Jam, 9:00 am, Parks & Rec Admin Building  
Quilters, 9:00 am, Tauchman House  
Zumba Gold, 9:40 am, Wilsonville Community Center  
ODHS Drop-In Assistance, 10:00 am, Wilsonville Library  
Toddler & Baby Time, 10:30 am, Wilsonville Library  
English Class, 10:30 am, Wilsonville Library  
Toddler & Baby Time, 11:15 am, Wilsonville Library  
Beginning Tai Chi, 3:00 pm, Wilsonville Community Center
- 2/14 Gentle Flow Yoga, 7:15 pm, Wilsonville Community Center
- 2/15 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
Digital Photography Club, 10:00 am, Wilsonville Community Center  
Family Storytime, 10:30 am, Wilsonville Library  
Sit and Be Fit, 11:00 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Pinochle/Cribbage, 1:00 pm, Wilsonville Community Center  
Bingo, 1:00 pm, Wilsonville Community Center  
Teen Drop-In Activities, 3:00 pm, Wilsonville Library  
Zumba, 7:00 pm, Wilsonville Community Center
- 2/16 Virtual Reality Fitness, 10:00 am, Wilsonville Community Center  
Family Storytime, 10:30 am, Wilsonville Library  
Walking Book Club, 1:00 pm, Wilsonville Library  
Ladies Afternoon Out, 1:00 pm, Wilsonville Community Center  
Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
Restorative Yoga, 7:15 pm, Wilsonville Library
- 2/17 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
Play Group, 10:00 am, Wilsonville Library  
Sit and Be Fit, 11:00 am, Wilsonville Community Center  
Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
Mexican Train Dominoes, 1:00 pm, Wilsonville Community Center
- 2/18 Barre, 9:00 am, Wilsonville Community Center
- 2/20 Body Sculpt, 5:45, Wilsonville Community Center
- 2/21 Chair Y.E.S! 8:30 am, Wilsonville Community Center  
Ukulele Jam, 9:00 am, Parks & Rec Admin Building  
Quilters, 9:00 am, Tauchman House  
Zumba Gold, 9:40 am, Wilsonville Community Center  
ODHS Drop-In Assistance, 10:00 am, Wilsonville Library



- Toddler & Baby Time, 10:30 am, Wilsonville Library  
 English Class, 10:30 am, Wilsonville Library  
 Toddler & Baby Time, 11:15 am, Wilsonville Library  
 Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
 Lehan Lectures, 5:30 pm, Wilsonville Library, Oak Room  
 Gentle Flow Yoga, 7:15 pm, Wilsonville Community Center
- 2/22 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
 Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
 Digital Photography Club, 10:00 am, Wilsonville Community Center  
 Family Storytime, 10:30 am, Wilsonville Library  
 Sit and Be Fit, 11:00 am, Wilsonville Community Center  
 Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
 STEAM Stuff, 1:00 pm, Wilsonville, Library  
 Pinochle/Cribbage, 1:00 pm, Wilsonville Community Center  
 Teen Drop-In Activities, Wilsonville Library  
 Zumba, 7:00 pm, Wilsonville Community Center
- 2/23 Virtual Reality Fitness, 10:00 am, Wilsonville Community Center  
 Family Storytime, 10:30 am, Wilsonville Library  
 Ladies Afternoon Out, 1:00 pm, Wilsonville Community Center  
 Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
 Restorative Yoga, 7:15 pm, Wilsonville Library
- 2/24 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
 Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
 Play Group, 10:00 am, Wilsonville Library  
 Sit and Be Fit, 11:00 am, Wilsonville Community Center  
 Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
 Mexican Train Dominoes, 1:00 pm, Wilsonville Community Center
- 2/25 Barre, 9:00 am, Wilsonville Community Center
- 2/27 Healthy Bones and Balance, 8:30 am, Wilsonville Community Center  
 Advanced Healthy Bones and Balance, 9:30 am, Wilsonville Community Center  
 Ridewise Travel Training Program, 10:30 am, Wilsonville Community Center  
 Lunch at the Community Center, 12:00 noon, Wilsonville Community Center  
 Weight Loss Support Group, 12:30 pm, Wilsonville Community Center  
 Bridge Group, 1:00 pm, Wilsonville Community Center  
 Body Sculpt, 5:45 pm, Wilsonville Community Center
- 2/28 Chair Y.E.S! 8:30 am, Wilsonville Community Center  
 Ukulele Jam, 9:00 am, Parks & Rec Admin Building  
 Quilters, 9:00 am, Tauchman House  
 Zumba Gold, 9:40 am, Wilsonville Community Center  
 ODHS Drop-In Assistance, 10:00 am, Wilsonville Library  
 Toddler & Baby Time, 10:30 am, Wilsonville Library  
 English Class, 10:30 am, Wilsonville Library  
 Toddler & Baby Time, 11:15 am, Wilsonville Library  
 Beginning Tai Chi, 3:00 pm, Wilsonville Community Center  
 Gentle Flow Yoga, 7:15 pm, Wilsonville Community Center



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> January 5, 2023		<b>Subject: Resolution No. 3019</b> Authorizing the City Manager to Execute a Second Amendment to the Professional Services Agreement with OTAK, Inc. for Construction Engineering Services for the 5 <sup>th</sup> Street / Kinsman Road Extension project (Capital Improvement Project 1139, 2099, & 4196).  <b>Staff Member:</b> Zach Weigel, P.E., City Engineer  <b>Department:</b> Community Development	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> N/A	
<b>Staff Recommendation:</b> Staff recommends Council adopt the Consent Agenda.			
<b>Recommended Language for Motion:</b> I move to adopt the Consent Agenda.			
<b>Project / Issue Relates To:</b>			
<input checked="" type="checkbox"/> Council Goals/Priorities: Goal 1.5 Implement existing transportation plans and advance planning efforts to improve our local transportation network.	<input checked="" type="checkbox"/> Adopted Master Plan(s): Transportation System Plan Project RE-04	<input type="checkbox"/> Not Applicable	

### ISSUE BEFORE COUNCIL:

A City of Wilsonville Resolution approving a Second Amendment to the Professional Services Agreement (Amendment) with OTAK, Inc. in the amount of \$50,872.94 for Construction Engineering Services for the 5<sup>th</sup> Street / Kinsman Road Extension (Capital Improvement Project (CIP) 1139, 2099, & 4196) project.

### **EXECUTIVE SUMMARY:**

The 5<sup>th</sup> Street / Kinsman Road Extension project (Project) is identified as a high priority project in the 2013 Transportation System Plan (TSP, amended in 2020) as Project RE-04 and the Year 2000 Urban Renewal Plan. The project will extend 1000 feet of Kinsman Road south of Wilsonville, Road, 1800 feet of 5<sup>th</sup> Street west of Boones Ferry Road with a new intersection of Kinsman Road and 5<sup>th</sup> Street, and 2000 feet of Ice Age Tonquin Trail and includes installation of two bridge crossings of Coffee Lake Creek, and extension of wastewater and water pipelines.

On October 19, 2020, City Council approved Resolution No. 2855, entering into a Professional Services Agreement (PSA) with OTAK, Inc. for construction engineering services. This work consists of supporting Wilsonville staff in the day to day administration of the construction contract, including survey quality control, environmental permit compliance, construction document and submittal review, and construction inspection of structural facilities. On March 1, 2021, City Council approved Resolution No. 2881, entering into a Construction Contract with Moore Excavation, Inc. Construction of the Project began on April 1, 2021 with a final completion date of January 31, 2023.

In August 2022, the City determined additional construction engineering services were needed than what was originally contemplated under the original OTAK contract. As a result, a First Amendment to the PSA with OTAK, Inc. was authorized on September 19, 2022 in the amount \$48,371.90 for performance of additional utility coordination, construction document review, and geotechnical inspection.

Due to unforeseen utility conflicts on Boones Ferry Road, the construction contract final completion date, with Moore Excavation, Inc., has been extended to May 29, 2023. As a result, the OTAK PSA must be amended to provide additional construction engineering services through the extended construction date. The PSA Second Amendment with OTAK, Inc. (**Exhibit A**) increases the compensation by \$50,872.94 and extends the contract term to October 31, 2023. Because this PSA amendment increases the original contract amount by more than fifteen (15) percent, City Council authorization is required.

### **EXPECTED RESULTS:**

Extend 1000 feet of Kinsman Road south of Wilsonville Road, 1800 feet of 5<sup>th</sup> Street west of Boones Ferry Road with a new intersection of Kinsman Road and 5<sup>th</sup> Street, and 2000 feet of Ice Age Tonquin Trail and includes installation of two bridge crossings of Coffee Lake Creek and a new railroad crossing, and extension of wastewater and water pipelines.

### **TIMELINE:**

Construction of the 5<sup>th</sup> Street / Kinsman Road Extension project is anticipated to be complete by May 29, 2023. Post construction work to be completed by OTAK, including “as-built” drawings, post construction survey monumentation, and closeout of the project record will be completed by October 31, 2023.

**CURRENT YEAR BUDGET IMPACTS:**

The amended Fiscal Year 22/23 budget includes funding for construction, contract administration, and overhead for the 5<sup>th</sup> Street / Kinsman Road Extension project. The source of project funds for this work include System Development Charges (SDC) and Year 2000 Urban Renewal Agency (URA) as summarized below:

CIP No.	Project Component	Funding Source	FY 22/23 Budget	Agreement Total
1139	Water System	Water SDC	\$674,165.00	\$5,494.28
2099	Sewer System	Sewer SDC	\$829,180.00	\$10,988.55
4196	Roadway System	Year 2000 URA	\$5,015,167.00	\$34,390.11
		Total	\$6,518,512.00	\$50,872.95

The construction engineering PSA amendment is within the budgeted amount for the Project. This project is included in the City's five-year capital improvement plan and will carry into the next fiscal year.

**COMMUNITY INVOLVEMENT PROCESS:**

The Boones Ferry Road to Brown Road Connector Corridor Plan included an extensive community involvement process with multiple stakeholder meetings, two public meetings, an on-line survey, and hearings before both City Council and the Planning Commission.

During the 2017 design phase of the 5th Street / Kinsman Road Extension project, engagement of the community has included three public open houses, meetings with several landowners, two City Council meetings, and regular informational updates on the project website and social media.

Coordination and outreach to the surrounding community and adjacent property owners will continue throughout construction, providing regular updates and notifications through the use of flyers, door hangers, social media posts, press releases, and Boones Ferry Messenger articles.

**POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

Construction of the 5<sup>th</sup> Street / Kinsman Road Extension project will provide additional connectivity in south Wilsonville with a new route between Old Town and Kinsman Road that parallels Wilsonville Road and provides an alternate to using the Wilsonville Road / Boones Ferry Road intersection, which experiences frequent congestion when I-5 approaches capacity. This project will also provide infrastructure and access to serve future industrial and residential development in the Arrowhead Creek Planning Area.

Along with constructing the roadway, both water and sanitary sewer will be extended within the road right-of-way. The project will construct a significant segment of Ice Age Tonquin Trail providing bicycle and pedestrian connectivity between the residential neighborhoods in southwest Wilsonville to commercial businesses along Boones Ferry Road, to Boones Ferry Park and Memorial Park, and to the neighborhoods east of I-5 and south of Wilsonville Road.

**ALTERNATIVES:**

Current final project design is based on coordination between City Staff, the design consultant team, neighboring property owners, the Old Town neighborhood, and City Council direction over the course of the Project design since 2016.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Vicinity Map
2. Resolution No. 3019
  - A. 5<sup>th</sup> Street / Kinsman Road Extension Second Amendment to Professional Services Agreement



# 5th Street / Kinsman Road Extension Project

## Project Location Map

### DISCLAIMER

This product is for informational purposes and may not have been prepared for, or be suitable for, legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



**RESOLUTION NO. 3019**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT CONTRACT AMENDMENT WITH OTAK, INC. FOR CONSTRUCTION ENGINEERING SERVICES FOR THE 5<sup>TH</sup> STREET / KINSMAN ROAD EXTENSION PROJECT (CAPITAL IMPROVEMENT PROJECT #1139, 2099, &4196).**

WHEREAS, the City has planned, designed, and budgeted for the completion of Capital Improvements Project #1139, 2099, and 4196, known as 5<sup>th</sup> Street / Kinsman Road Extension project (the Project); and

WHEREAS, the City solicited Requests for Proposals from qualified consultants for the Project that duly followed the State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and

WHEREAS, OTAK, Inc. was selected as the most qualified consultant, was awarded a Professional Services Agreement (PSA) for construction engineering services (Resolution No. 2855), and performed the work to the satisfaction of the City; and

WHEREAS, the Construction Contract final completion date with the Project Contractor was extended to May 29, 2022 to allow more time for completion of the work; and

WHEREAS, the City desires to amend the PSA contract with OTAK, Inc. to extend construction engineering services for the Project through the amended construction final completion date.

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

Section 1. The procurement process for the Project duly followed Oregon Public Contracting Rules, and OTAK, Inc. has provided a responsive and responsible proposal for engineering consulting services.

Section 2. The City Council, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a Professional Services Agreement contract amendment with OTAK, Inc. for a not-to-exceed amount of \$50,872.94, which is substantially similar to Exhibit A attached hereto.

Section 3. In order to allow future minor contract amendments, if needed, to occur without having to come back to City Council, the authorized Professional Services Agreement contract total is hereby adjusted up to \$477,964.51, allowing for continued Contracting Agency approval of contract amendments that exceed this adjusted amount by fifteen percent (15%) in accordance with City Code requirements.

Section 4. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 5<sup>th</sup> day of January 2023, and filed with the Wilsonville City Recorder this date.

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JULIE FITZGERALD, MAYOR

ATTEST:

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Linville

Councilor Berry

Councilor Dunwell

EXHIBITS:

- A. Second Amendment to 5<sup>th</sup> Street / Kinsman Road Extension Professional Services Agreement.



**CITY OF WILSONVILLE  
SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT**

**5th Street/Kinsman Road Extension**

This Second Amendment to Professional Services Agreement (“Second Amendment”) is effective the \_\_\_\_\_ day of \_\_\_\_\_ 2023 (“Effective Date”), by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (“City”), and **Otak, Inc.**, an Oregon corporation (“Consultant”), upon the terms and conditions set forth below.

**RECITALS**

WHEREAS, the City entered into a Professional Services Agreement (“Agreement”) with Consultant on October 21, 2020, relating to the 5<sup>th</sup> Street/Kinsman Road Extension Project (“Project”); and

WHEREAS, the City entered into a First Amendment to Professional Services Agreement (“First Amendment”) with Consultant on September 19, 2022; and

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

WHEREAS, the City and Consultant anticipate that additional time is needed to complete the Services stated in the Agreement and the Additional Services described in this Second Amendment; and

WHEREAS, Consultant represents that Consultant is qualified to perform the Additional Services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such Additional 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**

The Agreement is amended as follows:

**Section 1. Term**

The term of the Agreement is hereby extended to October 31, 2023.

**Section 2. Additional Services To Be Provided**

Consultant will perform the Additional Services more particularly described in **Exhibit A**, attached hereto and incorporated by reference herein, for the Project pursuant to all original terms of the Agreement, except as modified herein.

### Section 3. Time for Completion of Additional Services

The Additional Services provided by Consultant pursuant to this Second Amendment shall be completed by no later than October 31, 2023.

### Section 4. Compensation

The City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed FIFTY THOUSAND EIGHT HUNDRED SEVENTY-TWO DOLLARS AND NINETY-FOUR CENTS (\$50,872.94), for performance of the Additional Services ("Second Amendment Compensation Amount") which, when totaled with the Total Compensation Amount from the First Amendment, equals a total not-to-exceed amount of FOUR HUNDRED SEVENTY-SEVEN THOUSAND NINE HUNDRED SIXTY-FOUR DOLLARS AND FIFTY-ONE CENTS (\$477,964.51) for the performance of the Services and Additional Services ("Total Compensation Amount"). The term "Total Compensation Amount," as defined in the First Amendment, is hereby deleted and replaced with the term "Total Compensation Amount" as defined above. Consultant's estimate of time and materials is attached hereto as **Exhibit B**, and incorporated herein by reference.

### Section 5. All Other Terms

All of the other terms and conditions of the Agreement shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Agreement shall apply to this Second Amendment.

The Consultant and the City hereby agree to all provisions of this Second Amendment.

#### CONSULTANT:

OTAK, INC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

EIN/Tax I.D. No. 03-0788869

#### CITY:

CITY OF WILSONVILLE

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Ryan Adams, Assistant City Attorney  
City of Wilsonville, Oregon

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**City of Wilsonville – 5th Street/Kinsman Road Extension  
Amendment No. 2  
Scope of Work  
November 2022**

Amendment No. 2 reflects the additional efforts to complete the extended construction management efforts due to the contractor's revised schedule and additional (future) out of scope items. The items include project management, administration, permit and utility coordination, weekly meetings and minutes, construction verification, RFIs and submittals, additional engineering design modifications, inspections, and traffic design support from December 31, 2022, to the new anticipated project completion date of construction activities of June 30, 2023, with survey work to be completed October 2023.

**Additional Project Schedule – 4 additional months (based on City's revisions to the contractor's proposed schedule).**

<b>Schedule Task</b>	<b>Previous Dates</b>	<b>Current (Proposed) Dates</b>
Construction completion date	December 31, 2022	April 30, 2023
Curbs, gutters, landscaping, irrigation, pavers, stormwater		January 2023 – February 2023
Paving on Boones Ferry Road		Spring 2023
Punchlist/Final Completion		April 2023
Post Construction Activities*	January 2023 – February 2023	May – June 2023*
Set Property Monuments*	February 2023 – June 2023	June 2023 – October 2023*

*\*Shifted dates only, no added scope.*

**TASK 1.0 – PROJECT MANAGEMENT AND ADMINISTRATION**

**1.1 Project Management and Coordination**

The revised duration of this contract adds four months of construction work as directed by the City in response to the contractor's revised schedule extension request. Therefore, with the existing completion of construction extending until April 30, 2023, the assumed overall contract extension is from February 2023 until October 31, 2023, to account for the actual setting of property monuments. The revised duration of the on-site construction work is assumed to extend from December 31, 2022, to April 30, 2023, for substantial completion of the constructed project. Post construction activities and setting property monuments timelines have shifted from January – February 2023 and February – June 2023, respectively to May – June 2023 and June – October 2023, respectively. The additional approximately 4 months for construction management activities is based on the contractors revised construction schedule and the City's revisions. Additional work included within this task is as follows:

- Continue to provide management, coordination and direction to the consultant project team.
- Continue to coordinate activities on the project and track project issues.

**1.2 Project Administration**

Additional Project Administration shall be performed for the Otak project team, as follows:

- Track Otak project costs and budgets on a monthly basis. Prepare monthly invoices and progress reports for the project from January 2023 through October 2023. Up to ten (10) additional invoices and monthly progress reports during this period.
- Continue to maintain consultant document files for the project.
- Continue to maintain subconsultant contracts, including contract sub-amendments.

## **TASK 2.0 – PRE-CONSTRUCTION ACTIVITY**

### **2.2 Permit and Utility Coordination**

Additional scope of work under this task includes continued coordination with the subconsultants and utility companies – specifically the Pacific & Western Railway and Northwest Natural Gas (NWNG) with potential for conflicts and work on Boones Ferry Road. Pacific & Western Railway has delayed the bidding of their adjacent work from the summer 2022 to late winter 2022, resulting in construction activities taking place in January through April 2023. The continued potential for coordination with NWNG has been requested by the city as a result of MEI encountering a NWNG trench above their high pressure gas line that was backfilled with concrete. Continued coordination will be required as the contractor moves to the Boones Ferry Road section. Due to the delays with the railroad bidding work, additional coordination with the railroad will be required as well.

## **TASK 3.0 – CONSTRUCTION MANAGEMENT**

This task is to provide additional Construction Management to assist the City with contract administration and to monitor that construction of the project is completed in substantial accordance with the plans, specifications and DSL/Corps, Railroad, and BPA permit conditions.

### **Task 3.2 Weekly Meetings and Minutes**

Additional scope of work under this task includes continuing holding weekly construction meetings through the revised construction final completion period of April 2023. This includes attending an additional sixteen (16) weekly meetings and preparing agenda and meeting minutes for submittal to the project team and Construction Contractor. Minutes will include old business, new business, safety, schedule, and action items for project delivery team and Construction Contractor. Construction Manager to provide weekly correspondence to Contractor regarding work progress and design and permit compliance based on site visits.

## **TASK 5.0 – CONSTRUCTION ENGINEERING**

This task is to provide additional construction engineering, including the review and response to RFI's, review of construction shop drawings and submittals, engineering consultation during construction, and design modifications as authorized by the City. Consultant shall maintain Logs for RFI's, Submittal, Shop and Working Drawings submittals and responses. Amendment No. 2 addresses RFIs beyond the 10 additional from Amendment No. 1.

### **5.1 Requests for Information (RFI's) Review**

Extend the scope of work for Requests for Information (RFI's) Review as per the amended agreement to address additional RFI's.

Consultant shall:

- Review and respond to up to an additional five (5) RFI's by Otak and up to an additional two (2) each by Alta, DKS, and S&W (Assume a team average of approximately 4 hours per RFI)
- Continue preparing and maintaining an RFI response log to accommodate additional RFI's.

## 5.2 Submittals Review

Extend the scope of work for Submittals Review as per the amended agreement to address additional Submittals.

Consultant shall continue to track in the Submittal Log and shall:

- Review and respond up to an additional five (5) submittals material submittals by Otak and up to an additional two (2) each by Alta and DKS. (Assume a team average of approximately 3 hours per submittal).
- Continue preparing and maintaining a submittal response log.

## 5.4 Engineering Design Modifications

Extend the scope of work for Engineering Design Modifications to reflect additional time required to respond to one (1) additional design modifications (assume a team average of 40 hours each).

### Deliverables:

- Draft and Final Design revisions (11x17 PDF's).

## TASK 6.0 – CONSTRUCTION INSPECTION (SPECIALTY)

### 6.3 Inspection

This reflects the additional efforts for additional engineering site visits for inspection up to the amendment fee.

### Deliverables:

- Specialty Inspection Reports

# EXHIBIT B

Item 9.

## 5th Street / Kinsman Road Extension

Fee Estimate - Amendment No. 2

Otak Project #19864.000



Task	Description	Otak	Alfa	DKS	PHS	Shannon & Wilson	Total Hours	Total Budget by Task
<b>1</b>	<b>Project Management</b>							<b>\$8,134.68</b>
1.1	Project Management & Administration	20	-	-	-	-	20	\$3,257.36
1.2	Project Administration	30	-	-	-	-	30	\$4,877.32
1.3	Construction Management Plan (CMP)	-	-	-	-	-	0	\$0.00
<b>2</b>	<b>Pre-Construction Activity</b>							<b>\$2,758.24</b>
2.1	Pre-Bid Meeting	-	-	-	-	-	0	\$0.00
2.2	Permit & Utility Coordination	16	-	-	-	-	16	\$2,758.24
2.3	Public Outreach	-	-	-	-	-	0	\$0.00
<b>3</b>	<b>Construction Management</b>							<b>\$11,032.96</b>
3.1	Pre-Construction Meeting	-	-	-	-	-	0	\$0.00
3.2	Weekly Meetings & Minutes	64	-	-	-	-	64	\$11,032.96
3.3	Review Contractor Schedule	-	-	-	-	-	0	\$0.00
3.4	Pay Note/Progress Payments Review	-	-	-	-	-	0	\$0.00
3.5	Inspector Documentation Review	-	-	-	-	-	0	\$0.00
3.6	Change Order Review/Update	-	-	-	-	-	0	\$0.00
<b>4</b>	<b>Construction Survey</b>							<b>\$0.00</b>
4.1	Construction Verification	-	-	-	-	-	0	\$0.00
4.2	As-Constructed Survey	-	-	-	-	-	0	\$0.00
4.3	Post Construction Record Survey	-	-	-	-	-	0	\$0.00
<b>5</b>	<b>Construction Engineering</b>							<b>\$22,158.50</b>
5.1	RFI Responses (5)	25	10	8	-	4	47	\$7,918.64
5.2	Submittal Reviews (5)	16	7	5	-	-	28	\$4,694.02
5.3	Shop Drawing Review	-	-	-	-	-	0	\$0.00
5.4	Eng. Design Modifications (1)	28	20	8	-	-	56	\$9,545.84
<b>6</b>	<b>Construction Inspection (Specialty)</b>							<b>\$6,788.56</b>
6.1	Structural Inspection	-	-	-	-	-	0	\$0.00
6.2	Geotechnical Inspection (Sub)	-	-	-	-	-	0	\$0.00
6.3	Inspection	26	8	8	-	-	42	\$6,788.56
<b>7</b>	<b>Project Close Out</b>							<b>\$0.00</b>
7.1	Final Inspection & Meeting	-	-	-	-	-	0	\$0.00
7.2	Final Completion & Punch List	-	-	-	-	-	0	\$0.00
7.3	Record Drawings	-	-	-	-	-	0	\$0.00
7.4	Submit Final Project Records	-	-	-	-	-	0	\$0.00
	<b>Total Hours</b>	225	45	29	-	4	303	
	<b>Total Labor Cost</b>	\$39,290.94	\$6,497.00	\$4,545.00	-	\$540.00		<b>\$50,872.94</b>
	<b>Direct Expenses</b>	-	-	-	-	-		<b>\$0.00</b>
	<b>Project Total</b>							<b>\$50,872.94</b>



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> January 5, 2023		<b>Subject: Resolution No. 3029</b> Authorizing the City Manager to Execute a Construction Contract with Emery and Sons Construction Group, LLC, for construction of the 2022 Street Maintenance Project (Capital Improvement Projects 4014, 4118, and 4717)  <b>Staff Member:</b> Andrew Barrett, PE, Capital Projects Engineering Manager  <b>Department:</b> Community Development	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> N/A	
<b>Staff Recommendation:</b> Staff recommends Council adopt the Consent Agenda.			
<b>Recommended Language for Motion:</b> I move to adopt the Consent Agenda.			
<b>Project / Issue Relates To:</b>			
<input checked="" type="checkbox"/> Council Goals/Priorities: Goal 1.5 Implement existing transportation plans and advance planning efforts to improve our local transportation network.	<input type="checkbox"/> Adopted Master Plan(s):		<input type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

A City of Wilsonville Resolution approving the public bid process, accepting the lowest responsible bidder, and awarding a construction contract to Emery and Sons Construction Group, LLC in the amount of \$426,567.00 for the construction of the 2022 Street Maintenance project (Capital Improvement Projects 4014, 4118, and 4717).

**EXECUTIVE SUMMARY:**

The 2022 Street Maintenance project will replace or reconstruct pedestrian curb ramps and pedestrian signals on Wilsonville Road at Boones Ferry Road and on Wilsonville Road at Rose Lane. Included with this work are crosswalk, striping and signage upgrades along French Prairie Road for consistency and where needed to meet regulatory requirements. A map of the planned improvements is provided as **Attachment 1**.

The Department of Justice has determined that pedestrian facilities crossing public roadways must be improved to Americans with Disabilities Act (ADA) standards as part of any roadway resurfacing work. As a result, the curb ramps and pedestrian signals must be improved in preparation for planned street resurfacing scheduled for summer 2023. This work includes improvement of 15 curb ramps on Wilsonville Road at the intersections with Boones Ferry Road and Rose Lane and four (4) pedestrian signals on Wilsonville Road at the intersection with Boones Ferry Road. In addition, pedestrian safety improvements will be made along French Prairie Road, providing better consistency and meeting regulatory requirements. This work consists of eight (8) intersection crosswalk improvements, including signage and striping enhancements.

The City received six (6) bids by the December 14, 2022 deadline (**Attachment 2**), of which Emery and Sons Construction Group, LLC submitted the lowest responsive and responsible bid of \$426,567.00.

**EXPECTED RESULTS:**

The Project will replace or reconstruct pedestrian curb ramps, pedestrian signals, crosswalks, and signage along the project locations. The work along Wilsonville Road work will address the ADA requirements necessary to construct the upcoming Street Maintenance work. These improvements will make the City's curb ramps and pedestrian signals accessible for users of all abilities ahead of subsequent paving. The French Prairie Road work will provide necessary crosswalk improvements to increase the safety and visibility of bike and pedestrian users.

**TIMELINE:**

Construction is expected to begin March 2023, with a final completion date scheduled for June 2023.

**CURRENT YEAR BUDGET IMPACTS:**

The amended budget for Fiscal Year 2022/23 includes funding for construction and overhead for the Project as summarized below.



CIP No.	Project Name	Funding Source	Adopted 22/23 Budget	FY	Contract Amount
4014	2022 Maintenance	Street Road Maintenance Fees	\$ 817,200		\$ 223,991.70
4118	Signal Improvements	Road Operating Fund	\$130,473		\$85,186.62
4717	Pedestrian Improvements	Road Operating Fund	\$242,955		\$117,388.68
Total			\$ 1,190,628		\$ 426,567.00

The contract amount for the Project is within the FY22/23 budgeted amount. The Project is included in the City's five-year capital improvement plan and will carry into subsequent fiscal years.

#### **COMMUNITY INVOLVEMENT PROCESS:**

Members of the Charbonneau community were engaged to help inform the location of pedestrian crosswalk enhancements along French Prairie Road. Prior to the start of construction, there will be a public outreach process to inform the community of the Project and potential impacts. The outreach will be conducted through the Boones Ferry Messenger, City project webpage, social media, project signage, door hangers and mailers.

#### **POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

Completion of the Project will positively impact vehicular and pedestrian uses of the roadway and sidewalk facilities in the project areas. These improvements will enhance the safety and accessibility to all users.

#### **ALTERNATIVES:**

City staff and the engineering consultants considered design alternatives to each curb ramp and/or crosswalk location and configuration. The designs were selected to meet current ADA requirements and best engineering practices. The designs will promote greater safety and accessibility for users of these facilities.

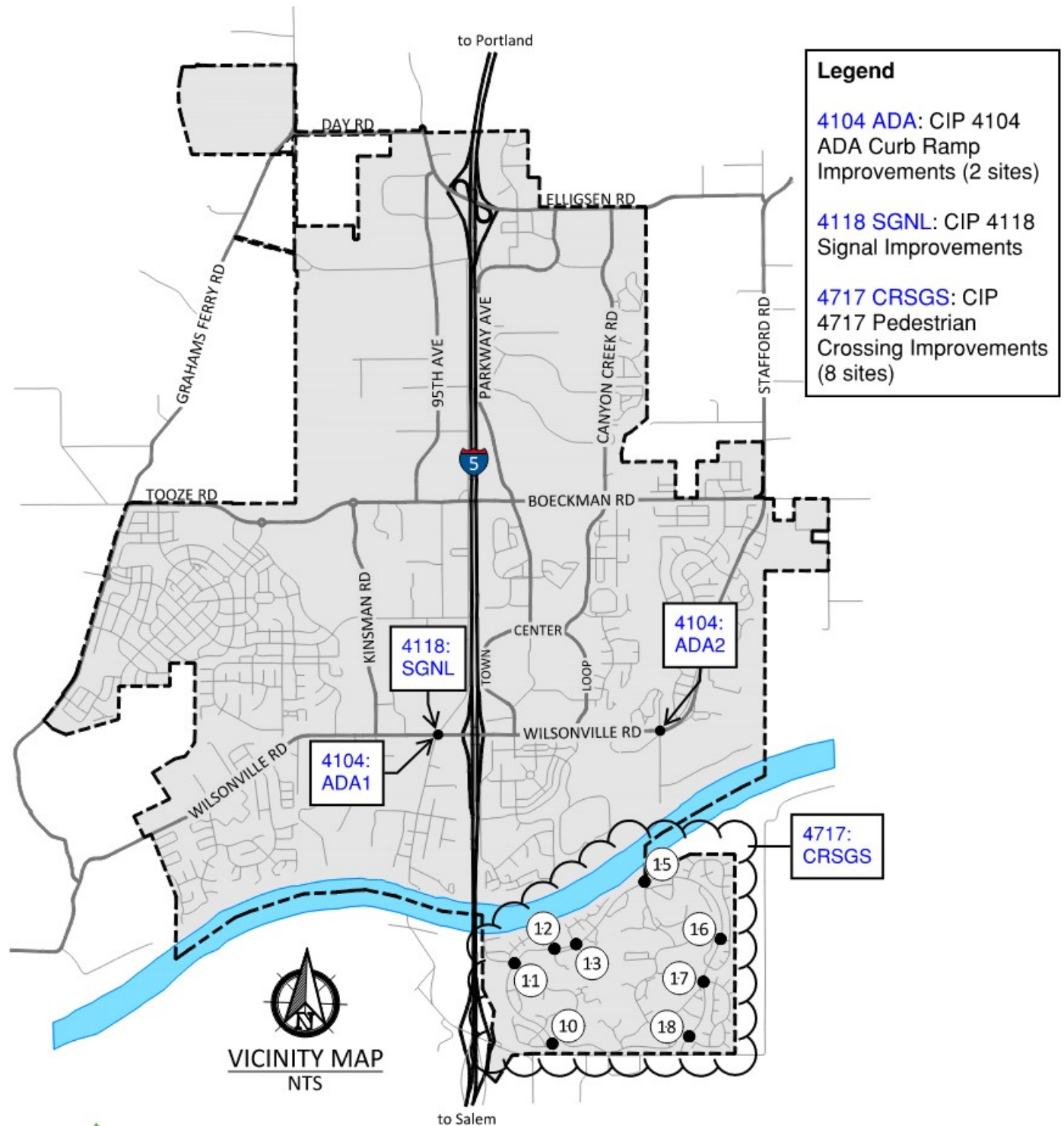
#### **CITY MANAGER COMMENT:**

N/A

#### **ATTACHMENTS:**

1. Project Locations Map
2. Bid Tabulation Summary
3. Resolution No. 3029
  - A. 2022 Street Maintenance Construction Contract

## Attachment 1 - Project Locations Map



## Attachment 2 - Bid Tabulations Summary

Item 10.



**Project:** 2022 Street Maintenance: Curb Ramps & Ped Improvements  
**File No:** 22 06 001

### BID SUMMARY

**CIP No:** 4014 / 4118 / 4717  
**Bid Date:** December 14 @ 2 pm

Order Opened	Bidder	Envelope Marked	Proposal Complete	Addenda	Proposal Signed	Bid Security		Pre- Qual	Non-Collusion Affidavit	Certification of Status	First Tier Sub-Con.	Bid Amount	Rank
						Amount	Type						
-	Engineer's Estimate	-	-	-	-	-	-	-	-	-	-	\$350k-\$500k	
1	Brix Paving Northwest	1:31 PM	YES	YES	YES	10%	BOND	YES	YES	YES	YES	\$ 446,446.00	2
2	Brown Contracting, Inc.	1:55 PM	YES	YES	YES	10%	BOND	YES	YES	YES	YES	\$ 483,023.00	3
3	D&D Concrete Utilities, Inc.	1:47 PM	YES	YES	YES	10%	BOND	YES	YES	YES	NO	\$ 622,160.00	6
4	Emery & Sons Const. Group	1:47 PM	YES	YES	YES	10%	BOND	YES	YES	YES	YES	\$ 426,567.00	1
5	Moore Excavation, Inc.	1:55 PM	YES	YES	YES	10%	BOND	YES	YES	YES	YES	\$ 531,650.00	5
6	Wildish Standard Paving Co.	1:47 PM	YES	YES	YES	10%	BOND	YES	YES	YES	YES	\$ 498,720.05	4

**RESOLUTION NO. 3029**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH EMERY AND SONS CONSTRUCTION GROUP, LLC FOR CONSTRUCTION OF THE 2022 STREET MAINTENANCE PROJECT (CAPITAL IMPROVEMENT PROJECTS NO. 4014, 4118, AND 4717).**

WHEREAS, the City has planned, designed, and budgeted the construction for Capital Improvement Projects No. 4014, 4118, and 4717 known as the 2022 Street Maintenance project (the Project); and,

WHEREAS, the City solicited sealed bids from qualified contractors for the Project that duly followed State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and,

WHEREAS, six bids were received and opened on December 14, 2022 and Emery and Sons Construction Group, LLC submitted a bid of \$426,567.00 for the Project, which was subsequently evaluated as the lowest responsive and responsible bid; and,

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

Section 1. The procurement process for the Project duly followed Oregon Public Contracting Rules, and Emery and Sons Construction Group, LLC has submitted the lowest responsive and responsible bid.

Section 2. The City Council, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a Construction Contract with Emery and Sons Construction Group, LLC for a stated value of \$426,567.00, which is substantially similar to **Exhibit A** attached hereto.

Section 3. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 5<sup>th</sup> day of January, 2023, and filed with the Wilsonville City Recorder this date.

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JULIE FITZGERALD, MAYOR

ATTEST:

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Linville

Councilor Berry

Councilor Dunwell

EXHIBITS:

A. 2022 Street Maintenance Construction Contract

## **CITY OF WILSONVILLE CONSTRUCTION CONTRACT**

This Construction Contract (“Contract”) for the 2022 Curb Ramps and Pedestrian Improvements Project (“Project”) is made and entered into on this \_\_\_\_ day of January 2023 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Emery & Sons Construction Group, LLC**, an Oregon corporation (hereinafter referred to as “Contractor”).

### **RECITALS**

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

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

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, 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 foregoing Recitals and all of the following additional “Contract Documents”: Specifications and Contract Documents for 2022 Curb Ramps and Pedestrian Improvements Project, dated November 16, 2022, including Drawings; Contractor’s Bid submitted in response thereto; 2017 City of Wilsonville Public Works Standards; Oregon Department of Transportation 2018 Oregon Standard Specifications for Construction; Special Provisions to ODOT Standards; and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency 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. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

## **Section 2. Term**

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than June 29, 2023, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Substantial Completion by no later than May 30, 2023, and at Final Completion by June 29, 2023. See **Section 23** for the definitions of Substantial Completion and Final Completion.

## **Section 3. Contractor’s Work**

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the 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 Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager 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 Manager will provide such written documentation.

3.3. 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.

3.4. 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 perform any of 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.

## **Section 4. Contract Sum, Retainage, and Payment**

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor the unit price not-to-exceed amount of FOUR HUNDRED TWENTY-SIX THOUSAND FIVE HUNDRED SIXTY-SEVEN DOLLARS (\$426,567) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor. Unit Prices are as more particularly described in the Contract Documents.

4.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work

described in the Contract Documents, Contractor shall provide such additional services and bill the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 24**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, 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, less the retainage. 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. Final payment will be held until completion of the final walkthrough, as described in **Section 23**.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

4.5. Contractor's unit prices and Contract Sum are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

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

## **Section 5. Prevailing Wages**

This is a Contract for a Public Works Project, 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 the Bureau of Labor and Industries (BOLI), effective July 1, 2022, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: <http://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, 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, if applicable. 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, including all fringe benefits under ORS 279C.840(5). Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

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

## **Section 6. Filing of Certified Statement**

As required in ORS 279C.845(7), the City 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). The City will pay to Contractor the amount withheld 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 the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, 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 withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

## **Section 7. Reports to Department of Revenue**

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

## **Section 8. City's Rights and Responsibilities**

8.1. The City will designate a Project Manager 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 to support the Project.

8.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one/tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3. 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.

8.4. 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, but shall not be obligated to, 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.

8.5. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 21**.

### **Section 9. City's Project Manager**

The City's Project Manager is Andrew Barrett. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

### **Section 10. Contractor's Project Manager**

Contractor's Project Manager is Aaron Slowik. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, 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 11. 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 Manager.

### **Section 12. 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, Contract Documents, 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 Manager. 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 13. Subcontractors and Assignments**

13.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 14.3**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. 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 14. Contractor's Responsibilities**

This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Those required provisions include but are not limited to all of the following:

14.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

14.2. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 4** 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.

14.3. 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. References to "subcontractor" in this Contract mean a subcontractor at any tier.

14.4. 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 this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

14.5. Contractor must 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 person 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.

14.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. 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.

14.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, 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.

14.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.9. 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.

14.10. 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.

14.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is 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.

14.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.13. 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).

14.14. 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 City 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.

14.15. 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.

14.16. 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 or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

14.17. 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:

14.17.1. 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

14.17.2. 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

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

14.18. 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.

14.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.17.1, 14.17.2, and 14.17.3 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.

14.20. 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.

14.21. 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.

14.22. 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.

14.23. 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.

14.24. In the performance of this Contract, 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 this Contract, 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.

14.25. 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.

14.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

14.27. COVID-19 Safety Measures. During the term of the Contract, when any work is performed at the work site, the safety measures and protocols set forth in this Subsection must be followed for the protection of Contractor's employees and/or subcontractors, City employees, and the public. In the event that Contractor is required to evacuate the building or stop or delay work due to a COVID-19 related event, Contractor shall not be entitled to any additional payment, remobilization costs, or delay damages.

14.27.1. Contractor must submit a construction schedule for approval by the City's Project Manager.

14.27.2. The City's Project Manager may change the approved schedule immediately in the event needed for assurance of health and safety.

14.27.3. Contractor must meet the City's Project Manager outside of the building or project area (if outdoors) where work is to take place and be prepared to be escorted to the work site.

14.27.4. Contractor's Project Manager must sign a daily form, acknowledging that, to the best of his/her knowledge, all employees or subcontractors working on the site have not felt, and are not feeling, sick nor been exposed to anyone showing signs of sickness in the last 14 days.

14.27.5. Contractor must follow all social distancing guidelines to the absolute best of Contractor's ability, and Contractor shall have a designated safety manager on-site at all times to ensure social distancing.

14.27.6. Contractor will be informed of the maximum acceptable number of workers allowed in the facility or project area. The City's Project Manager will set a maximum occupancy limit for the number of Contractor's employees/subcontractors who can be working on-site at any given time, and shall direct point of exit and entry to use, assigned restroom facilities, and approved travel routes to and from the work site.

14.27.7. Contractor will need to be prepared to immediately evacuate the building or project area, with the possibility of a delayed return, in the event of a level 1, 2, or 3 disinfection response by the City.

14.27.8. Contractor must do ample site clean-up at the end of each day in preparation for the City to perform a final disinfection once Contractor has left for the day.



14.27.9. Contractor must notify the City's Project Manager thirty (30) minutes before each expected day's end for clean site inspection.

## **Section 15. Subcontractor Requirements**

15.1. If subcontractors are permitted, 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:

15.1.1. 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 City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, 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 **Subsection 15.1.1** 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 City 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).

15.2. 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 **Subsections 15.1.1 and 15.1.2** 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.

15.3. 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.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

15.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

## Section 16. Environmental Laws

16.1. Although the City is not aware of any of the following, before beginning construction, Contractor shall determine if there is any asbestos, lead paint, or other hazardous materials that will be removed or disturbed as a part of the Project. If disturbance or removal is required, Contractor will advise the City, in writing, and will provide the City with a detailed written supplemental Scope of Work concerning how such disturbance or removal will be accomplished and how materials, if any, will be disposed of, all in accordance with State and Federal environmental laws. Work required due to the finding of any such hazardous materials will require a written Change Order.

16.2. 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  
 Defense, Department of  
 Environmental Protection Agency  
 Bureau of Sport Fisheries and Wildlife  
 Bureau of Land Management  
 Bureau of Reclamation  
 Occupational Safety and Health Administration  
 Coast Guard

Agriculture, Department of  
 Soil Conservation Service  
 Army Corps of Engineers  
 Interior, Department of  
 Bureau of Outdoor Recreation  
 Bureau of Indian Affairs  
 Labor, Department of  
 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  
 National Marine Fisheries Service (NMFS)  
 State Engineer  
 Water Resources Board

### LOCAL AGENCIES:

County Courts  
 Port Districts  
 County Service Districts  
 Water Districts

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

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

16.3. 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.

16.4. 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.

16.5. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

16.6. Contractor must maintain a City of Wilsonville or Metro business license at all times while performing Work under this Contract.

## **Section 17. Indemnity**

17.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 17.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

17.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

## **Section 18. Insurance**

18.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or Work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the

subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

18.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

18.1.2. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

18.1.3. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

18.1.4. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

18.1.5. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

18.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

18.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

18.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

## **Section 19. Bonding Requirements**

19.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

19.2. Maintenance/Warranty Bond. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

19.3. Landscaping Bond. Contractor shall also maintain a two (2) year Landscape Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, for maintenance and replacement of all landscaping material in accordance with ***Public Works Standards Section 201.10.03***. The landscape maintenance bond shall be for 10% of the amount required to maintain and replace the landscaping installed with the Project. At the one-year time frame in the maintenance period, the City shall perform an inspection of the landscaping and provide Contractor with a landscape replacement list. Contractor shall have 30 days to replace landscaping, as directed, and warranty all new landscaping for an additional two (2) year maintenance period.

19.4. Public Works Bond. Pursuant to ORS 279C.830(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 minimum 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. 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).

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

## **Section 20. Warranty**

20.1. Contractor shall provide a full warranty for all Work for a period of two (2) years from the date of Final Acceptance of all Work.

20.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of two (2) years from the date of Final Acceptance of the Work and 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 City, 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 Contractor in performing Contractor's 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.

20.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this Section, the City may have the defects corrected, and 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 Contractor, and 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 Contractor or Contractor's surety from liability and payment of all such costs.

20.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

## **Section 21. Early Termination; Default**

21.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

21.1.1. By mutual written consent of the parties;

21.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

21.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

21.2. 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.

21.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

21.4. 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 27**, for which Contractor has received payment or the City has made payment.

## **Section 22. 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 23. Substantial Completion, Final Completion, and Liquidated Damages**

23.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is substantially complete, and create a project corrections list ("punch list") of items to be completed before final payment will be made. Substantial Completion means that the Work is completed and the curb ramps, sidewalks, and crosswalks are fully functional and ready to use, with only minor punch list items remaining that do not significantly impact public use. Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed within thirty (30) days thereof, and then a final walk-through will occur to confirm all punch list items have been completed. Final payment will occur upon completion of all punch list items ("Final Completion") as determined by final acceptance by the City ("Final Acceptance"). Substantial Completion must occur on or before May 30, 2023 or liquidated damages will apply. The parties agree that delay damages can be significant but are often difficult to quantify and costly to litigate; therefore the Contractor and the City agree that the sums set forth below in **Subsections 23.3 and 23.4** shall apply as liquidated damages for every day the Project is not completed beyond the Substantial Completion and Final Completion dates.

23.2. The City and Contractor recognize that time is of the essence of this Contract 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. Both parties 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 and Final Completion.

23.3. Liquidated damages shall apply against Contractor and accrue to the City at the rate of Two Hundred Dollars (\$200) for each day that expires after the time specified for Substantial Completion of all Work until the Work reaches Substantial Completion.

23.4. If Contractor shall neglect, fail, or refuse to complete the remaining Work on the punch list by the Final Completion date of June 29, 2023, or any written extension thereof granted by the City, Contractor shall pay the City Four Hundred Dollars (\$400) for each day that expires



after the time specified above for the Work to reach Final Completion and be ready for final payment. Retainage will not be released before Final Completion is established.

23.5. 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 City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Completion. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

23.6. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to circumstances 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 would preclude any reasonable 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 and proportionately 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.

## **Section 24. 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. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

## **Section 25. Dispute Resolution**

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

## **Section 26. 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 during the term of this Contract and for a period of four (4) years after termination of the Contract, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

## **Section 27. As-Built**

Contractor must provide redlined as-builts prior to Final Acceptance. As-builts should be provided in electronic format.

## **Section 28. 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: Andrew Barrett, Capital Projects Engineering Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

To Contractor: Emery & Sons Construction Group, LLC  
Attn: Aaron Slowik  
3841 Fairview Industrial Drive SE, Suite 150  
Salem, OR 97302

## **Section 29. Miscellaneous Provisions**

29.1. Integration. This Contract 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 or any other documents, the provisions of this Contract shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

29.2. 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.

29.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

29.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), 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 perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

29.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

29.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

29.7. 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.

29.8. 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.

29.9. 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.

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

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

29.12. Calculation of Time. Except where the reference is to business days, 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 observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. 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.

29.13. 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.

29.14. 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.

29.15. 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.”

29.16. 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.

29.17. 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 attorney fees and costs, whether incurred in a court of law or otherwise.

29.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

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

29.20. 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.

29.21. 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.

**CONTRACTOR:**

**CITY:**

**Emery & Sons Construction Group, LLC**

**City of Wilsonville**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

EIN/Tax I.D. No.: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Ryan Adams, Assistant City Attorney  
City of Wilsonville, Oregon

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## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> January 5, 2023	<b>Subject: Resolution No. 3033</b> Authorizing the City Manager to sign an the Community Enhancement Grant Program Intergovernmental Agreement between Metro and the City of Wilsonville to accept Community Investment Fees  <b>Staff Member:</b> Zoe Mombert, Assistant to the City Manager  <b>Department:</b> Administration	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> The resolution and intergovernmental agreement (IGA) will provide additional funding to the Wilsonville-Metro Community Enhancement Program.	
<b>Staff Recommendation:</b> Staff recommends approval of the Consent Agenda.		
<b>Recommended Language for Motion:</b> I move approval of the Consent Agenda.		
<b>Project / Issue Relates To:</b> Wilsonville – Metro Community Enhancement Program funding.		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

Authorizing the City Manager to sign an amendment to the Community Enhancement Grant Program Intergovernmental Agreement (IGA) between Metro and the City of Wilsonville to accept Community Investment Fees (CIF).

## **EXECUTIVE SUMMARY:**

The City has been participating in the community enhancement program since 2015 through an Intergovernmental Agreement (IGA) with Metro.

The City of Wilsonville receives funds through Metro to offset the impacts of the waste processing plant, Willamette Resources, Inc. (WRI) (the waste transfer station for related entity, Republic Services), operating in the City. Metro requires WRI to pay the \$1 per ton, and then the City receives the \$1 per ton of waste processed at Wilsonville Republic Services location for grant funding. The Wilsonville-Metro Community Enhancement Committee (CEC) meets annually to discuss the project nominations and make a recommendation to City Council.

City Resolution No. 2543 (July 2015) that created the Community Enhancement Program (CEP) provided for City Council approval of the project recommendations made by the Wilsonville-Metro Community Enhancement Committee. Since the program was formed nearly 40 projects have been funded, of which, nearly 30 are complete. Over \$500,000 has been received from Metro, has been allocated to CEP projects. The funded community enhancement programs and projects vary in scope but they all make a positive impact in Wilsonville. The City extended the program through June 30, 2026 with the adoption of Resolution 2897 in May 2021.

The Community Enhancement Program funding is used for “enhancing the host community of the facility from which the fees have been collected” to fund projects that “rehabilitate and enhance the area within the city.” Eligible projects can improve the appearance or environmental quality of the community, increase reuse and recycling opportunities or improve recreational areas and programs.

### **Goals for community enhancement projects include:**

- a) Improve the appearance or environmental quality of the community.
- b) Reduce the amount or toxicity of waste.
- c) Increase reuse and recycling opportunities.
- d) Result in rehabilitation or upgrade of real or personal property owned or operated by a nonprofit organization having 501(c)(3) status under the Internal Revenue Code.
- e) Result in the preservation or enhancement of wildlife, riparian zones, wetlands, forestlands and marine areas, and/or improve the public awareness and the opportunities to enjoy them.
- f) Result in improvement to, or an increase in, recreational areas and programs.
- g) Result in improvement in safety.
- h) Benefit youth, seniors, low income persons or underserved populations.

In addition to the \$1 per ton required grant program administered by Metro, Metro also has an optional fee that may be collected for additional grant funding opportunities. This fee is referred to as the Solid Waste Community Investment Fee and applies to waste not otherwise subject to the Solid Waste Community Enhancement, which currently funds the Community Enhancement Grant Program. The funds will be allocated as a part of the Wilsonville – Metro Community Grant Program.

**EXPECTED RESULTS:**

Approving the amendment will increase funding for the Wilsonville – Metro Community Enhancement Program.

**TIMELINE:**

The program funds will be available with our Quarter 3 Community Enhancement payment from Metro, assuming that the IGA is finalized. The funds will be available as a part of our 2023 Community Enhancement Grants program. Future CIF payments will be sent with our quarterly Community Enhancement payments.

**CURRENT YEAR BUDGET IMPACTS:**

The Wilsonville- Metro Community Enhancement Program is funded through an existing agreement and the City expects to receive about \$70,000 in FY 2022-23. The CIF payments are expected to be about \$20,000 each quarter based on preliminary conversations with Metro staff. The initial payment will include additional CIF funds that were collected in 2022. The CIF money will be included in the available Community Enhancement Grant funding for 2023.

**COMMUNITY INVOLVEMENT PROCESS:**

The Community Enhancement Committee is made up of four community members, two city councilors, and a Metro Councilor. The agendas posted for each of the committee meetings. There appears to be positive feedback regarding the program. There was not a community involvement process to accept the CIF money as the funds must be spent as outlined by Metro.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

The community benefits from all of the projects funded by the Community Enhancement Program in different ways such as; education, increased street trees, and community beautification.

**ALTERNATIVES:**

The City Council could direct staff not to sign the amendment and not accept the additional funding.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Resolution No. 3033
  - A. Amendment to Community Enhancement Grant Program Agreement
2. Community Enhancement Grant Program Intergovernmental Agreement between Metro and the City of Wilsonville (Metro Contract No. 937323)



**RESOLUTION NO. 3033****A RESOLUTION OF THE WILSONVILLE CITY COUNCIL AMENDING TO THE COMMUNITY ENHANCEMENT GRANT PROGRAM INTERGOVERNMENTAL AGREEMENT BETWEEN METRO AND THE CITY OF WILSONVILLE TO ACCEPT COMMUNITY INVESTMENT FEES.**

WHEREAS, the Metro Solid Waste Community-Enhancement Program collects funds from solid-waste transfer facilities located throughout the greater metro region to be used to enhance and improve communities that host these facilities in accord with ORS 459.284; and

WHEREAS, Community enhancement fees are collected on municipal garbage and food waste but generally are not collected on source-separated yard debris or construction/demolition waste; and

WHEREAS, funds collected under the community enhancement program are dedicated and used for enhancement host community of the facility from which the fees have been collected as determined by the committee or local government. These funds may be used for extensive community purposes that “rehabilitate and enhance the area within the City limits related to the transfer station”; and

WHEREAS, Metro’s program is applicable to eligible facilities located in Clackamas, Washington and Multnomah Counties within Metro’s jurisdictional boundary; however, in practice, only some facilities and host communities participated in the program and others did not participate; and

WHEREAS, participation by the City in the Metro Solid-Waste Community Enhancement Program is accomplished through an intergovernmental agreement (IGA) with Metro that required the formation of a committee to vet and select projects, a public-input process and participation by the community’s district Metro Councilor, among other requirements; and

WHEREAS, participation in the program requires a public-engagement process to advertise and solicit suggestions for community-enhancement projects, which are approved through an open public process; and

WHEREAS, on July 6, 2015, the City Council approved Resolution No. 2543 adopting the IGA the Metro Solid-Waste Community Enhancement Program in Wilsonville and creating a new Council-level committee known as the Wilsonville-Metro Community Enhancement Committee to oversee the program locally; and

WHEREAS, on May 17, 2021, the City Council approved Resolution 2897 adopting the Agreement to continue the program in from July 1, 2021 – June 30, 2026.

WHEREAS, the City of Wilsonville wants to accept Community Investment Fees to be managed and distributed through existing Community Enhancement Grant mechanisms.

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

1. The Wilsonville City Council hereby authorizes the City Manager to enter into an amendment of the Intergovernmental Agreement Between Metro and the City of Wilsonville to accept Community Investment Fees, which is substantially similar to **Exhibit 1** attached hereto and incorporated by reference herein.

ADOPTED by the Wilsonville City Council at a special meeting on January 5, 2023, and filed with the Wilsonville City Recorder this date.

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Julie Fitzgerald, Mayor

ATTEST:

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald  
Council President Akervall  
Councilor Linville  
Councilor Berry  
Councilor Dunwell

EXHIBIT:

- A. Amendment to Community Enhancement Grant Program Agreement

# Amendment to Community Enhancement Grant Program Agreement



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

**AMENDMENT NO. 01  
CONTRACT NO. 937323**

This Amendment hereby amends the above titled agreement between Metro, a metropolitan service district organized under the law of the State of Oregon and the Metro Charter, and City of Wilsonville, hereinafter referred to as "City."

## Recitals

The parties executed an intergovernmental agreement for the purpose of establishing a Solid Waste Community Enhancement Program for Willamette Resources, Inc. (the "Facility").

As part of Metro's tonnage allocation program, the Facility may choose to collect an additional Solid Waste Community Investment Fee ("CIF") on waste not otherwise subject to Solid Waste Community Enhancement Fees.

The parties now wish to provide direction on how Wilsonville must manage CIFs and distribute the funding through existing Community Enhancement Grant mechanisms.

## Amendment Terms

This amendment is a change to the original Agreement as follows:

The following section is hereby ADDED to the Agreement:

### "Section 13: Collection and Distribution of Community Investment Fee ("CIF") Funds

- A. As part of Metro's goals-based tonnage allocation criteria, the Facility can voluntarily choose to collect and remit to Metro: (1) a CIF of \$0.50 per ton on all putrescible solid waste, including yard debris mixed with food waste received by the Facility; or (2) a CIF of \$1.00 per ton on all types of waste received that are not subject to any Solid Waste Community Enhancement Fees.
- B. Metro will send to Wilsonville any CIF funds ("CIF Funds") collected in subsection A above on the first business day in February, May, August, and November of each year this Agreement is in effect.
- C. At the request of Wilsonville, Metro will provide quarterly reports of activity at the Facility, including data on (1) the gross weight of solid waste received in vehicles that are weighed as they enter the Facility; (2) the number of other vehicles assessed fees on an estimated volume basis; and (3) the tonnage of solid waste transferred from the Facility.

# Amendment to Community Enhancement Grant Program Agreement



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

**AMENDMENT NO. 01  
CONTRACT NO. 937323**

- E. Wilsonville must not commingle Community Engagement Fee funds and CIF Funds in its budget.
- F. Wilsonville must ensure that only projects chosen by the host grant advisory committee receive CIF Funds. Wilsonville must carry forward any CIF Funds not expended during a budget year to the following year. Wilsonville must not use CIF Funds for general government purposes.”

Except for the above, all other conditions and covenants remain in full force and effect.

IN WITNESS TO THE ABOVE, the following duly authorized representatives of the parties referenced have executed this Amendment.

CITY OF WILSONVILLE

METRO

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# Community Enhancement Grant Program Agreement

Metro Contract No. 937323

## Community Enhancement Grant Program Agreement

THIS AGREEMENT, entered into under the provisions of ORS Chapter 190, is between Metro, a Metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and the City of Wilsonville (the "City") an Oregon municipal corporation, whose address is 29799 SW Town Center Loop E, Wilsonville, Oregon, 97070.

### Section 1: Purpose

The purpose of this Agreement is to implement the provisions of Metro Code Chapter 5.06 related to the establishment of a Solid Waste Community Enhancement Program ("program") for Willamette Resources, Inc.

### Section 2: Term

This Agreement begins on July 1, 2021 and terminates on June 30, 2026. The parties may agree to terminate this Agreement earlier. Metro may terminate this Agreement under Section 8. The parties may extend the term of the Agreement by written amendment.

### Section 3: Collection and Distribution of Community Enhancement Fee Funds

- A. In accordance with Metro Code, Willamette Resources, Inc. ("facility") must collect and remit to Metro a solid waste community enhancement fee of \$1.00 on each ton of putrescible solid waste, including yard debris mixed with food waste, received at the facility. If the facility seeks to collect additional fees for community enhancement, the parties will amend this Agreement so the additional funds are distributed in compliance with the Agreement.
- B. Metro will send to the City the solid waste community enhancement fee funds ("funds") collected in A above on the first business day in February, May, August, and November of each year this Agreement is in effect.
- C. At the request of the City, Metro will provide quarterly reports of activity at the facility, including data on (1) the gross weight of solid waste received in vehicles that are weighed as they enter the facility; (2) the number of other vehicles assessed fees on an estimated volume basis; and (3) the tonnage of solid waste transferred from the facility.
- D. At the request of the City, Metro will assist with the establishment and implementation of the program.

### Section 4: The City Obligations

- A. The City must establish and implement a program that complies with Metro Code Chapter 5.06 (Exhibit A), and Metro Administrative Procedures (Exhibit B). Exhibits A and B are incorporated into this Agreement and are binding on the City.



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

# Community Enhancement Grant Program Agreement

Metro Contract No. 937323

- B. The City must establish a solid waste community enhancement program advisory committee ("committee") that complies with Exhibit A and Exhibit B. The City will monitor the committee for compliance with its duties, including without limitation establishment of a solid waste community enhancement area boundary and compliance with Exhibits A and B. The committee must include one or more members of the City Council, four citizens of the City appointed by the Mayor, and the Metro Councilor whose district includes the City. The City may include additional members at its discretion. **OR** The City and the Metro Councilor whose district includes the City must perform the functions of the committee. At the request of the City, Metro will support the City's citizen member recruitment process and will provide best practices guidelines to the City. The best practices include recruitment of citizens who have experience with populations that are underserved by the community in terms of access to and participation in solid waste activities and benefits. All committee members must disclose any conflict of interest before participating in a grant decision, and must sign a conflict of interest form provided by The City and approved by the attorney representing The City.
- C. The City must create a separate program account for deposit of the funds collected under Section 3. The City must ensure that only projects chosen by the committee receive these funds. The City must carry forward any funds not expended during a budget year to the following year. The City must not use the funds for general government purposes.
- D. The City must promote the program within the solid waste community enhancement program boundary area. The City must publish information about the program, including without limitation funding criteria, goals, application process, and timeline, on its website.
- E. The City must require the committee to provide an open public process for project review and selection.
- F. The City must require the committee to prepare an annual budget. The budget must identify the expected distribution of funds for projects during a fiscal year. The committee may propose that there be no distribution of funds during a fiscal year, for a maximum of three consecutive years.
- G. The City must ensure funding decisions are made by a majority vote of the committee.
- H. The City must provide all necessary support to administer the program. The City may charge the fund no more than 20% of the annual budget, not to exceed \$50,000, for the direct costs of administering the program. Direct costs include staff time and materials.
- I. No later than October 1 of each year, the City must provide a written report to Metro on the program that includes revenues and expenditures of the program funds and the fund balance carried forward, if any. The report also must include an accounting of any funds expended for program administration.


**Metro**

 600 NE Grand Ave.  
 Portland, OR 97232-2736

# Community Enhancement Grant Program Agreement

Metro Contract No. 937323

- J. The City must maintain complete and accurate records related to the administration of the program and all funds expended and carried forward, and must make these records available to Metro for inspection, auditing and copying.
- K. The City staff who administer the Community Enhancement Grant Program will attend an annual grant-making best practices training hosted by Metro.

## Section 5: Notices

Legal notice provided under this Agreement must be delivered personally or by certified mail to the following individuals:

### For The City :

Office of The City: Counsel  
 City of Wilsonville  
 29799 SW Town Center Loop E  
 Wilsonville, OR 97070

Management of this Agreement will be conducted by the following designated Project Managers:

### For The City :

Zoe Monahan  
 City of Wilsonville  
 29799 SW Town Center Loop E  
 Wilsonville, OR 97070

### For Metro:

Rob Nathan  
 Metro  
 600 NE Grand Avenue  
 Portland, OR 97232

The City may change the above-designated Project Manager by written notice to Metro. Metro may change the above-designated Project Manager by written notice to the City.

## Section 6: Indemnification

Subject to the limits of the Oregon Constitution and Oregon Tort Claims Act, the City shall hold harmless Metro, its officers and employees from any claims or damages or property or injury to persons or for any penalties or fines, for the City's actions under this Agreement.

## Section 7: Dispute Resolution

The parties will attempt to negotiate resolutions to all disputes arising out of this Agreement.


**Metro**

 600 NE Grand Ave.  
 Portland, OR 97232-2736

# Community Enhancement Grant Program Agreement

Metro Contract No. 937323

## Section 8: Termination

During the term of this Agreement, each party retains the right to terminate the Agreement by written notice delivered to the other party no later than 60 days prior to the anniversary date. Metro may terminate this Agreement at any time for nonperformance of any material term of the Agreement.

## Section 9: Insurance

The City agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.270. The City also agrees to maintain for the duration of this Agreement, Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan.

## Section 10: Integration and Amendment

This writing contains the entire Agreement between the parties, and may only be amended by written instrument, signed by both parties.

## Section 11: Severability


If any portion of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless remains in full force and effect and the offending provision will be stricken.

## Section 12: Notice of Default

If Metro determines that a default exists, Metro must give thirty days' written notice to the City describing the nature of the default and will give the City an opportunity to cure the default before taking any further action.

The City

Metro

 By: 

 By: Brian Kennedy
Bryan Cosgrove, City Manager
Brian Kennedy, CFO

Print name and title

Print name and title

May 19, 2021
5/28/2021

Date



**CHAPTER 5.06****SOLID WASTE COMMUNITY ENHANCEMENT PROGRAM<sup>1</sup>**

- 5.06.010 Policy and Purpose
- 5.06.020 Authority and Jurisdiction
- 5.06.030 Amount of Enhancement Fee
- 5.06.040 Enhancement Fee Requirements and Exemptions for Solid Waste Facilities
- 5.06.050 Establishment and Administration of a Solid Waste Community Enhancement Program
- 5.06.060 Solid Waste Community Enhancement Program Advisory Committee
- 5.06.070 Eligibility Criteria for Solid Waste Community Enhancement Projects
- 5.06.080 Goals for Solid Waste Community Enhancement Projects
- 5.06.090 Compliance and Dispute Resolution

**Repealed**

- 5.06.100 Administrative Procedures  
[Repealed Ord. 19-1441]

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<sup>1</sup> Formerly "Community Enhancement Programs"; Ord. 14-1344, Sec. 1.

### **5.06.010 Policy and Purpose**

It is the policy of Metro to establish and implement a solid waste community enhancement program at all eligible solid waste facilities in the Metro region. The purpose of the program is to rehabilitate and enhance the area around the facility from which the fees are collected. [Ord. 14-1344.]

### **5.06.020 Authority and Jurisdiction**

Metro's solid waste authority, including the authority to collect an enhancement fee and establish and implement a solid waste community enhancement program, is established under the Oregon Constitution, ORS Chapters 268 and 459, and the Metro Charter. [Ord. 14-1344.]

### **5.06.030 Amount of Enhancement Fee**

Solid waste facilities subject to this chapter shall collect an amount not exceeding \$1.00 on each ton of putrescible solid waste delivered to the facility and remit the funds to Metro for use as a solid waste community enhancement fee. Eligible solid waste facilities may also collect an amount not exceeding \$1.00 on each ton of non-putrescible waste delivered to the facility when the Metro Chief Operating Officer and facility owner determines it is in the public interest. The Metro Council will set the enhancement fee amount for any solid waste facility subject to the fee. [Ord. 14-1344; Ord. 19-1439.]

### **5.06.040 Enhancement Fee Requirements and Exemptions for Solid Waste Facilities**

- (a) Solid waste facilities that operate all or in part as disposal sites, transfer stations, reload facilities, compost facilities, and energy recovery facilities, as defined by Chapter 5.00, shall collect and remit an enhancement fee under this Chapter.
- (b) Where only a portion of a solid waste facility's operations qualify for collection of a fee under subsection (a), the facility shall collect and remit an enhancement fee only on the solid waste it accepts as an eligible facility.
- (c) Notwithstanding section (a) above, yard debris reload and yard debris composting facilities are not subject to the requirements of this Chapter. [Ord. 14-1344.]

### **5.06.050 Establishment of a Solid Waste Community Enhancement Program**

- (a) Upon approval of a license or franchise application, the Metro Chief Operating Officer will inform a solid waste facility of the requirement to collect a solid waste community enhancement fee. The Metro Chief Operating Officer will require collection of the fee in the facility license or franchise.
- (b) The Metro Chief Operating Officer will inform the local government where the facility is located that a solid waste community enhancement fee will be collected by the facility and remitted to Metro.

- (c) The solid waste community enhancement program will be administered by (1) Metro directly or through a contract; or (2) the local government where the facility is located, so long as Metro and the local government agree on the terms of an intergovernmental agreement.
- (d) The Metro Councilor for the district where the facility is located shall be eligible to participate in the solid waste community enhancement program, including without limitation participation as a co-chair and voting member of the community enhancement committee, regardless of whether Metro or the local government, through an intergovernmental agreement, administers the program.
- (e) The Metro Chief Operating Officer will establish a timeline for implementation of a solid waste community enhancement program.
- (f) The funds collected and remitted to Metro shall be used for solid waste community enhancement projects chosen by a community enhancement committee and may include administrative costs in an amount set by the Metro Chief Operating Officer. [Ord. 14-1344.]

#### **5.06.060 Solid Waste Community Enhancement Program Advisory Committee**

A solid waste community enhancement program established under this section shall have a solid waste community enhancement committee. The committee is responsible for implementation of the program, including without limitation:

- (a) Establishment of the enhancement area boundary.
- (b) Creation of committee bylaws.
- (c) Development of a process for soliciting and selecting solid waste community enhancement projects.
- (d) Compliance with the eligibility criteria set forth in Section 5.06.070 and the goals set forth in Section 5.06.080 and creation of additional criteria and goals where needed.
- (e) Annually review enhancement program revenue estimates provided by Metro staff and propose how these funds will be allocated for the upcoming fiscal year or funding cycle.
- (f) Presentation of an annual report to the Metro Council on all projects approved for funding.
- (g) Maintenance of complete and accurate records related to the administration of the program, submitted to Metro annually. [Ord. 14-1344.]

### **5.06.070 Eligibility Criteria for Solid Waste Community Enhancement Projects**

A solid waste community enhancement project must meet the following criteria to be eligible for funding. A solid waste community enhancement committee may apply more restrictive eligibility criteria:

- (a) The project must be located in the solid waste community enhancement area boundary as specified by the solid waste community enhancement committee or the project must benefit individuals or programs located inside the solid waste community enhancement area boundary.
- (b) The project applicant must be:
  - (1) A non-profit organization, including without limitation a neighborhood association or charitable organization with 501(c)(3) status under the Internal Revenue Service; or
  - (2) A school or institution of higher learning; or
  - (3) A local government, local government advisory committee, department or special district provided that they include documented support from the local government executive officer.
- (c) The project must not be used to replace any other readily available source of federal, state, local or regional funds.
- (d) The project must not promote or inhibit religion.
- (e) The project must not discriminate based on race, ethnicity, age, gender, or sexual orientation.
- (f) If the project is located on private land, the project application must establish a clear public benefit and must document landowner permission. [Ord. 14-1344.]

### **5.06.080 Goals for Solid Waste Community Enhancement Projects**

Projects shall meet one or more of the following goals and solid waste community enhancement committees shall give priority to projects that best meet with goals. A solid waste community enhancement committee may adopt additional funding goals. The project will:

- (a) Improve the appearance or environmental quality of the community.
- (b) Reduce the amount or toxicity of waste.
- (c) Increase reuse and recycling opportunities.
- (d) Result in rehabilitation or upgrade of real or personal property owned or operated by a nonprofit organization having 501(c)(3) status under the Internal Revenue Code.

- (e) Result in the preservation or enhancement of wildlife, riparian zones, wetlands, forest lands and marine areas, and/or improve the public awareness and the opportunities to enjoy them.
- (f) Result in improvement to, or an increase in, recreational areas and programs.
- (g) Result in improvement in safety.
- (h) Benefit youth, seniors, low income persons or underserved populations. [Ord. 14-1344.]

#### **5.06.090 Compliance and Dispute Resolution**

The Metro Chief Operating Office is responsible for ensuring compliance with this Chapter.  
[Ord. 14-1344.]

**5.06.100** [Repealed Ord. 19-1441; Effective February 19, 2020]



# **SOLID WASTE ADMINISTRATIVE PROCEDURES**

**Published:**

## **Administration of Metro Code Chapter 5.06 Solid Waste Community Enhancement Program**

### **Contents**

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<b>Establishing a Solid Waste Community Enhancement Program.....</b>	<b>Section 4</b>
<b>Establishing a Solid Waste Community Enhancement Committee.....</b>	<b>Section 5</b>
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## SOLID WASTE ADMINISTRATIVE PROCEDURES

AP NO. 5.06  
Section 1

METRO

### Policy and Legal Authority

#### 1.1 Policy and Legal Authority.

- 1.1.1 Metro's solid waste planning and implementing authority is established under the Metro Charter, the Constitution of the State of Oregon, and ORS Chapters 268 and 459.
- 1.1.2 Metro's solid waste community enhancement program is established based on state law (ORS 459.280 and 459.284).
- 1.1.3 All solid waste administrative procedure shall be subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this administrative procedure and performance standard.
- 1.1.4 Administrative procedures are adopted, as necessary, to implement the provisions of Metro Code Chapter 5.06 Solid Waste Community Enhancement Program.
- 1.1.5 The purpose of these administrative procedures is to protect and preserve the health, safety and welfare of the Metro residents; to protect and preserve the local environment, to implement cooperatively a solid waste community enhancement fee program; and to reduce the volume and toxicity of waste disposed through source reduction, reuse, recycling, and composting.
- 1.1.6 These administrative procedures and performance standards are issued by the Metro Chief Operating Officer ("Metro COO") pursuant to Metro Code Section 5.06.100.



## **SOLID WASTE ADMINISTRATIVE PROCEDURES**

## **AP NO. 5.06 Section 2**

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### **Application and Purpose of Chapter 5.06**

#### **2.1 Application of Chapter 5.06**

- 2.1.1 Chapter 5.06 shall apply to all eligible solid waste facilities within Metro's jurisdictional boundary that are licensed or franchised by Metro pursuant to Metro Code Chapter 5.01.
- 2.1.2 Metro Code Chapter 5.06 shall apply to all eligible solid waste facilities within Metro's jurisdictional boundaries that are owned by Metro.

#### **2.2 Purpose**

- 2.2.1 Metro has long recognized that certain solid waste facilities may present economic, environmental, health or other impacts on local host communities.
- 2.2.2 Metro's solid waste community enhancement program provides funds that are used for community enhancement grant projects located in the vicinity of each eligible solid waste facility. Funds are to be used for the rehabilitation and enhancement of the area in and around the facility from which the fees are collected, as determined by each solid waste community enhancement committee established in accordance with Metro Code Chapter 5.06.





## SOLID WASTE ADMINISTRATIVE PROCEDURES

## AP NO. 5.06 Section 3

### Program Exempt and Program Eligible Facilities

#### 3.1 Exempt Facility Types and Ineligible Solid Waste Activities

3.1.1 The following types of facilities are not subject to Metro Code Chapter 5.06.

3.1.1.1 Reuse or recycling facilities that (A) exclusively receive non-putrescible source-separated recyclable materials and (B) reuse or recycle such materials, or transfer, transport or deliver such materials to a person or facility that will reuse or recycle them.

3.1.1.2 Material recovery facilities that (A) exclusively receive non-putrescible solid waste and conduct material recovery on such waste, and may also (B) receive non-putrescible source-separated recyclable materials and reuse or recycle such materials or transfer, transport or deliver such materials to a person or facility that will reuse or recycle them.

3.1.2 The following types of solid waste activities are not subject to Metro Code Chapter 5.06.

3.1.2.1 Yard debris reloading.

3.1.2.2 Yard debris composting.

3.1.2.1 Material recovery on non-putrescible waste, except as provided in Section 3.3.

3.1.2.2 Recycling or reuse of non-putrescible materials.

#### 3.2 Program Eligibility by Facility Type and Solid Waste Activity

3.2.1 Eligible facility types include, but are not limited to, the following:

3.2.1.1 Disposal sites.

3.2.1.2 Transfer stations.

3.2.1.3 Reload facilities.

3.2.1.4 Energy recovery facilities.

3.2.1.5 Compost facilities.

3.2.2 Eligible solid waste activities include, but are not limited to, the following:

3.2.2.1 Processing, reloading or transfer of putrescible waste (includes food waste and yard debris mixed with food waste).

3.2.2.2 Composting or any other processing of putrescible waste (includes food waste and yard debris mixed with food waste).

3.2.2.1 Energy recovery (including anaerobic digestion of putrescible waste to include food waste and yard debris mixed with food waste).

3.2.2.2 Disposal (includes landfilling and incineration).

3.3 Special conditions related to non-putrescible waste activities at an eligible facility

3.3.1 Non-putrescible waste that is subject to material recovery and delivered to a transfer station or other eligible solid waste facility shall be subject to Metro Code Chapter 5.06 when a facility owner/operator and the Metro COO determines it to be in the public interest.

3.3.2 For the purpose of this section the public interest shall include, but is not limited to: A) the historical program relationship established between a facility and host local government or community (e.g. Metro Central Transfer Station and Metro South Transfer Station), or B) such conditions necessary to operate a new facility, or at an existing facility conducting a new solid waste activity that is subject to Metro Code Chapter 5.06 and Metro Code Chapter 5.01.



## **SOLID WASTE ADMINISTRATIVE PROCEDURES**

**AP NO. 5.06  
Section 4**

### **Establishing a Solid Waste Community Enhancement Program**

The purpose of this section is to establish a general process for Metro and a host local government to implement and administer a solid waste community enhancement program at an eligible solid waste facility.

#### **4.1 New Facilities Without a Solid Waste Community Enhancement Program**

##### **4.1.1. Notification to a host local government.**

Upon receipt of a complete Metro license or franchise application for a new eligible solid waste facility that is subject to this chapter, or a new eligible solid waste activity at an existing facility, the Metro COO shall notify the host local government that it qualifies for the solid waste community enhancement program.

##### **4.1.2 Coordination with Metro and the host local government.**

- 4.1.2.1 As part of Metro's license and franchise review or renewal process, the Metro COO will notify the local government hosting an eligible solid waste facility that a solid waste community enhancement program shall be established.
- 4.1.2.2 The Metro COO shall provide the host local government with an opportunity to enter into an intergovernmental agreement to administer the program. As provided in Section 5.1, Metro and the local government may consider other approaches to administer the program if an intergovernmental agreement cannot be established.
- 4.1.2.3 A host local government shall not be excluded or limited from participating in Metro's solid waste community enhancement program for an eligible solid waste facility, nor shall Metro be limited in implementing a solid waste community enhancement program when a host local government adopts: (1) a tax or charge that imposes a fee on haulers of commercial solid waste or other users of the facility; (2) any tax duly adopted by the local government which is generally applicable for all persons doing business in boundaries of the local government; or (3) any franchise fee collected by the local government from haulers collecting solid waste within the boundaries of the local government,
- 4.1.2.4 Metro shall not establish a solid waste community enhancement program at a solid waste facility if the respective host local government has implemented and is actively administering a solid waste community enhancement program

for that solid waste facility under separate authority of ORS 459.284 and 459.290.

- 4.1.2.5 Prior to establishing a solid waste community enhancement program at an eligible solid waste facility, the Metro COO shall inform the Metro Council President and the Metro Councilor whose district hosts the solid waste facility of the decision to establish a solid waste community enhancement program and provide the Metro Councilor with the opportunity to chair, co-chair, or otherwise participate in the solid waste community enhancement committee at the option of the Metro Councilor.

#### 4.2 Programs Established Prior to January 1, 2014

Solid waste community enhancement programs that were established prior to January 1, 2014 and are administered through an intergovernmental agreement with a host local government shall be updated and reissued with an effective date of July 1, 2015 to provide consistency with all applicable provisions in Metro Code Chapter 5.06 and these administrative procedures.

#### 4.3 Existing Eligible Facility Without a Solid Waste Community Enhancement Program

The Metro COO shall notify a host local government of an existing eligible solid waste facility within its jurisdictional boundaries regarding a timeframe and process for the implementation and administration of a solid waste community enhancement program in accordance with this chapter.

#### 4.4 Funding

- 4.4.1 Except as provided in Section 3.3, solid waste facilities subject to Metro Code Chapter 5.06 shall collect an amount not exceeding \$1.00 on each ton of putrescible solid waste delivered to the facility and remit the funds to Metro for use as a solid waste community enhancement fee.
- 4.4.2 Metro may periodically adjust the solid waste community enhancement fee based on the Consumer Price Index (CPI) up to the maximum amount set forth in ORS 459.284.
- 4.4.3 On a quarterly basis, Metro will remit the solid waste community enhancement funds to each host local government with a solid waste community enhancement program established by intergovernmental agreement with Metro in accordance with Metro Code Chapter 5.06.
- 4.4.4 Projects funded from a solid waste community enhancement fund will be made with the positive vote of a majority of the solid waste community enhancement committee created to administer such a program. Frequency of funding projects is also to be determined by the committee.



## SOLID WASTE ADMINISTRATIVE PROCEDURES

AP NO. 5.06  
Section 5

### Establishing a Solid Waste Community Enhancement Committee

#### 5.1 Establishing a Solid Waste Community Enhancement Committee

- 5.1.1 For the purpose of establishing a solid waste community enhancement committee, the Metro COO shall coordinate with the host local government and the Metro Councilor whose district hosts the eligible solid waste facility.
- 5.1.2 Metro may designate a solid waste community enhancement committee in accordance with Metro Code Chapter 2.19.
- 5.1.3 The Metro COO may enter into an intergovernmental agreement to designate the host local government as the solid waste community enhancement committee. Such a committee shall consist of at least five members and may include the Metro Councilor whose district hosts the solid waste facility (with the option to serve as co-chair to the committee), and three citizen representatives appointed by the mayor, city manager, or county administrator. In lieu of appointment of such a committee, the local government may designate itself and the Metro Council member representing the district that hosts the solid waste facility (with the option to serve as co-chair to the committee) to perform the function of such committee. The term for such intergovernmental agreements should be established to coincide with the term set forth in the subject facility's Metro license or franchise.
- 5.1.4 The Metro COO may enter into an agreement with a recognized non-profit community organization including, but not limited to, a neighborhood district coalition, neighborhood association, committee for citizen involvement or other similar community-based group having a legally constituted active board of directors. The designated solid waste community enhancement committee shall consist of at least five members, and may include the board of directors, the Metro Councilor whose district hosts the solid waste facility, and any number of citizen representatives appointed by the Metro Councilor whose district hosts the solid waste facility.
- 5.1.5 The Metro COO shall establish the terms and conditions of the agreements for the establishment and administration of a solid waste community enhancement committee as provided in Metro Code Chapter 5.06.

#### 5.2 Administration

- 5.2.1 The administration and distribution of funds from a solid waste community enhancement program shall be subject to the approval of a solid waste community enhancement committee.

- 5.2.2 Each solid waste community enhancement committee or host local government shall promote, advertise, solicit and accept requests for proposals or projects to be funded from the solid waste community enhancement fund within its solid waste community enhancement program area boundary.
- 5.2.3 Either Metro or the host local government shall prepare and publish an annual budget for the solid waste community enhancement account. Each budget shall be subject to review and comment by the solid waste community enhancement committee and shall, at a minimum, identify the proposed allocation of grant funding and administrative costs for the upcoming fiscal year, except that a solid waste community enhancement committee may propose that there be no expenditure of funds during a fiscal year for up to a maximum of three consecutive fiscal years, or longer if approved by the Metro COO or the community enhancement committee.
- 5.2.4 Either Metro or the host local government shall segregate solid waste community enhancement funds by establishing a separate set of accounts for the revenues and expenditures of the solid waste community enhancement program to ensure that only committee-authorized plans, projects, and programs receive funding. Funds not expended during a budget year shall be carried forward to each subsequent year.
- 5.2.5 Each solid waste community enhancement committee or host local government shall publish and follow the project funding criteria in Section 6.1 and goals in Section 6.2 for selecting projects or programs to fund during the fiscal year. A solid waste community enhancement committee may request that Metro modify or change the criteria. A community enhancement committee may publish and follow more restrictive program funding criteria, and may adopt and publish additional goals and/or guidelines.
- 5.2.6 Each solid waste community enhancement committee or host local government shall, provide an annual written report to the Metro COO regarding all expenditures from the enhancement fund and shall itemize all enhancement fund expenditures including the amount of funds expended on each project under its jurisdiction including the funding balance by October 1 of each year.
- 5.2.7 Each solid waste community enhancement committee, upon request by the Metro COO, shall provide an oral presentation to the Metro Council at a time such presentation can be scheduled at a Metro Council meeting.
- 5.2.8 If administrative costs incurred by Metro or the host local government to administer the solid waste community enhancement program are reimbursed from the solid waste community enhancement funds as provided in Section 5.3. The annual report required in Section 5.2.6 shall include an accounting of the funds expended for program administration.
- 5.2.9 Each solid waste community enhancement committee will provide an open public process for project/program review and approval.

### 5.3 Administrative Cost Reimbursement

- 5.3.1 A solid waste community enhancement fund may be used to help defray the direct costs incurred to administer a solid waste community enhancement program by Metro or a host local government (e.g., staff time and materials necessary to set up and administer a solid waste community enhancement program).
- 5.3.2 No more than twenty percent (20%), and not more than \$50,000 of a solid waste community enhancement fund that is collected during a program funding cycle may be used to pay for costs directly associated with administering a solid waste community enhancement program. Administrative costs in excess of these amounts shall not be borne by the solid waste community enhancement fund.

### 5.4 Recordkeeping and Audits

- 5.4.1 Each solid waste community enhancement committee or host local government shall maintain complete and accurate records related to the administration of the program and funds expended under its jurisdiction. The committee shall make these records available to Metro for inspection, auditing, and copying.
- 5.4.2 Metro may require, at Metro's expense, that a solid waste community enhancement committee submit to an independent audit conducted by an auditor chosen by Metro. The audit shall address only those matters reasonably related to the solid waste community enhancement program fund and its administration.



## **SOLID WASTE ADMINISTRATIVE PROCEDURE**

**AP NO. 5.06  
Section 6**

### **Eligibility Criteria and Goals**

#### **6.1 Eligibility Criteria for Funding Solid Waste Community Enhancement Projects**

- 6.1.2 To qualify for funding, a proposed solid waste community enhancement project shall meet the following funding criteria. A designated solid waste community enhancement committee may adopt and publish more restrictive eligibility criteria.
- 6.1.2.1 Be within the solid waste community enhancement area boundaries specified by the designated solid waste community enhancement committee or benefit individuals or programs located inside the community enhancement area boundary.
  - 6.1.2.2 Be from non-profit organizations including, but not limited to, neighborhood associations or charitable organizations with 501(c)(3) status under the Internal Revenue Service, or
  - 6.1.2.3 Be from a school, or institution of higher learning, or
  - 6.1.2.4 Be from a local government, local government advisory committee, department or special district provided that they include documented support from the local government executive officer, and, as a guideline, the requested funding not exceed 15% of an annual solid waste community enhancement program budget or funding cycle, or more as otherwise provided in an intergovernmental agreement between Metro and a host local government.
  - 6.1.2.5 Not replace another readily available source of federal, state, regional or local funds.
  - 6.1.2.6 All applicants must go through the official application, review and approval process established by the solid waste community enhancement committee.
  - 6.1.2.7 Not promote or inhibit religion.
  - 6.1.2.8 Not fund organizations, projects or programs that discriminate based upon race, ethnicity, age, gender or sexual orientation.
  - 6.1.2.9 Be able show a clear public benefit if projects are on private land.



6.1.2.10 Have written landowner permission at the time of application.

## 6.2 Goals for Funding Solid Waste Community Enhancement Projects

- 6.2.1 Projects shall meet one or more of the following goals. Priority will be given to projects that best meet the goals and which offer benefits to the areas and populations most directly impacted by the solid waste facility. A designated solid waste community enhancement committee may adopt and publish additional funding goals. The order of the following listing does not imply ranking or weighting. Projects should:
- 6.2.1.1 Result in an improvement to the appearance or environmental quality of the area/neighborhood within the enhancement area boundaries.
  - 6.2.1.2 Result in the reduction in the amount or toxicity of waste, or increase reuse and recycling opportunities within the enhancement area boundaries.
  - 6.2.1.3 Result in rehabilitation, upgrading or direct increase in the real or personal property owned or operated by a nonprofit organization having 501(c)(3) status under the Internal Revenue Code within the enhancement area boundaries.
  - 6.2.1.4 Result in the preservation or enhancement of wildlife, riparian zones, wetlands, forest lands and marine areas within the enhancement area boundaries, and/or improve the public awareness and the opportunities to enjoy them.
  - 6.2.1.5 Result in improvement to, or an increase in, recreational areas and programs within the enhancement area boundaries.
  - 6.2.1.6 Result in improvement in the safety of the area within the enhancement area boundaries.
  - 6.2.1.7 Result in projects that benefit youth, seniors, low income persons or underserved populations within the enhancement area boundaries.



METRO

## SOLID WASTE ADMINISTRATIVE PROCEDURE

**AP NO. 5.06**  
**Section 7**

### Dispute Resolution

- 7.1 The Metro COO shall, in good faith, attempt to negotiate resolutions to all disputes arising out of the implementation and administration of Metro Code Chapter 5.06 and these administrative procedures. Disputes arising out of or relating to the implementation or administration of Metro Code Chapter 5.06 or these administrative procedures shall be resolved as follows:
  - 7.1.1 The Metro COO will review the matter or dispute to determine if there is sufficient reason or cause to take action.
  - 7.1.2 When warranted, the Metro COO will notify the host local government and the solid waste community enhancement committee, the Council President and the corresponding councilor whose district hosts the solid waste facility in writing of the dispute or alleged breach. The notice shall describe the nature of the dispute or alleged breach. The notice shall prescribe a resolution process and include a date by which the host local government or solid waste community enhancement committee must respond to the Metro COO's notice.
  - 7.1.3 Within the period specified by the Metro COO, the host local government or solid waste community enhancement committee shall respond to the notice provided by the Metro COO regarding the dispute. Such response may include information that proves that the dispute or alleged breach has been resolved, or that diligent efforts to correct the dispute or alleged violation is being made and is likely to succeed in a reasonable period of time.
  - 7.1.4 If the Metro COO determines that the dispute or alleged violation has not or cannot be resolved within the manner prescribed and in a reasonable period of time, the Metro COO may take further action, including the modification or termination of an intergovernmental agreement to ensure that the dispute or breach is resolved within a reasonable period of time.

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## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> January 5, 2023		<b>Subject:</b> Diversity, Equity and Inclusion Cultural Calendar	
		<b>Staff Member:</b> Zoe Mombert, Assistant to the City Manager	
		<b>Department:</b> Administration	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b> The Diversity, Equity and Inclusion Committee unanimously recommended City Council Approve the Cultural Calendar on November 8, 2022.	
<b>Staff Recommendation:</b> Adopt the Consent Agenda.			
<b>Recommended Language for Motion:</b> I move to adopt the Consent Agenda.			
<b>Project / Issue Relates To:</b> Diversity, Equity and Inclusion			
<input checked="" type="checkbox"/> Council Goals/Priorities: Diversity, Equity + Inclusion (DEI): We are committed to promoting DEI in the delivery of City services to the community and in our organizational operations.	<input type="checkbox"/> Adopted Master Plan(s):	<input type="checkbox"/> Not Applicable	

### ISSUE BEFORE COUNCIL:

Review the cultural calendar recommended by the Diversity, Equity, and Inclusion (DEI) Committee.

**EXECUTIVE SUMMARY:**

The City Council adopted the Diversity, Equity and Inclusion Committee Strategic Plan (Plan) on July 18, 2022 (Resolution 2979). The Diversity, Equity and Inclusion (DEI) Committee prioritized the actions within the Plan on August 9, 2022. One of three Priority Level 1, immediate actions, is “develop a cultural calendar (highlight events, holidays, etc.)”. The DEI committee started this work in September by developing an initial list, refining it, asking for community input, before refining it a final time.

The proposed cultural calendar is intended to ensure that Wilsonville recognizes cultural holidays and events that hold meaning to community members in historically-marginalized groups. The committee considered recognition of common holidays celebrated in the United States, recognition of disease related or support months and well as veterans recognition and support months. After much deliberation, the committee recommended the attached list of holidays and culturally significant dates to be acknowledged by the City of Wilsonville. An acknowledgement could include being added to the City’s online calendar, Boones Ferry Massager Calendar, and educational social media post, programming, etc. The Cultural Calendar does not preclude the City from celebrating national holidays or other common holidays. It is intended to raise awareness and work towards becoming a more inclusive community where community members feel a sense of belonging.

The DEI Committee Chair and staff liaison presented the draft cultural calendar at the December 5, 2022 city council work session. Overall, the city council was supportive of the calendar but did request that the DEI Committee evaluate adding Oktoberfest in recognition of Wilsonville’s German heritage. At the DEI Committee’s December 13, 2022 meeting, the committee evaluated the suggestion. The committee discussed the suggestion and determined that it did not meet the intent of the cultural calendar since it is not a date of significance to historically marginalized groups. The committee noted that there is not a lack of recognition of Oktoberfest in the area but they would recommend that the Arts, Culture and Heritage Committee consider recognizing Oktoberfest in some way. The committee did not change their recommendation and continue to recommend approval of the cultural calendar they unanimously recommended on November 8, 2022.

**EXPECTED RESULTS:**

Establish a Diversity, Equity and Inclusion Cultural Calendar to help the City acknowledge dates of significance to historically-marginalized groups.

**CURRENT YEAR BUDGET IMPACTS:**

There are no anticipated budget impacts.

**COMMUNITY INVOLVEMENT PROCESS:**

The DEI Committee discussed the cultural calendar at their public meetings on September 13 and October 11. Once they had a draft developed, they sought public input on Let's Talk Wilsonville! From mid-October – November 7.

There were three comments submitted on Let's Talk Wilsonville!

- Covers several significant holidays
- Suggested additions:
  - o December 12 – Feast Day of Our Lady of Guadalupe – Patroness of the Americas
  - o October 15 - Pregnancy and Infant Loss Remembrance Day
  - o November 2 – All Souls Day
- Suggested additions:
  - o Memorial Day – May
  - o Mental Health Awareness Month – May
  - o PTSD Awareness Month – June
  - o Suicide Prevention Awareness Month – September
  - o Veterans Day – November 11

The DEI committee evaluated each suggestion at their November 8 meeting. There was significant discussion about the suggested dates and the committee felt the suggestions had merit and should be recognized, however, they did not believe that they did not believe that the suggestions fell within the DEI committee's scope. The calendar does include World Mental Health Day; therefore, the committee did not add Mental Health Awareness Month.

**POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

The cultural calendar is one way the city can increase efforts to recognize diverse viewpoint and be an increasingly more welcoming community. By adopting the calendar, it will provide education to the broader community and increase the sense of belonging in Wilsonville.

The City has already started to integrate some of the dates of significance. Specifically, the Parks and Recreation Department modified the gingerbread holiday hunt to a holiday symbols hunt in 2022. The department features images that represented dates of significance such as Hanukkah, Kwanzaa and Lunar New Year. The Parks and Recreation Department is also collaborating with the DEI Committee to host the screening of "Hidden Figures" during Black History Month.

**ALTERNATIVES:**

The City Council can also chose not to move forward with a DEI Cultural Calendar or make modifications to the calendar.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Cultural Calendar

## Cultural Calendar –November 2022

### **January**

- Emancipation Proclamation (1<sup>st</sup>)
- World Braille Day (4<sup>th</sup>)
- Martin Luther King Jr. Day (16<sup>th</sup>)
- Lunar New Year (Jan/Feb) (Jan 22<sup>nd</sup> in 2023)

### **February**

- Black History Month

### **March**

- Ramadan Begins
- Women's History Month (8<sup>th</sup>)
- Holi (8<sup>th</sup>)
- Nowruz - (Iranian New Year/ Persian New Year (21-22)
- Cesar Chavez Day (31<sup>st</sup>)
- International transgender day of visibility (31<sup>st</sup>)

### **April**

- Deaf Heritage Month
- Arab American Heritage Month
- Passover
- Ramadan ends Eld-al-Fitr

### **May**

- Asian American and Pacific Islander Heritage Month
- Jewish American Heritage Month

### **June**

- Pride Month
- Immigrant Heritage Month
- Juneteenth (19<sup>th</sup>)

### **July**

- Disability Pride Month
- Americans with Disability Act (26<sup>th</sup>)

### **August**

- International Day of the World's Indigenous Peoples (UN) (9<sup>th</sup>)
- National Senior Citizens Day (21<sup>st</sup>)
- Raksha Bandhan (30<sup>th</sup>)

**September**

- Hispanic Heritage Month (9/15 – 10/15)
- Rosh Hashanah (15 – 17 in 2023)
- Yom Kippur (24-25 in 2023)

**October**

- Disability Heritage Month
- Indigenous Peoples Day (10<sup>th</sup>)
- World Mental Health Day (10<sup>th</sup>)
- National Coming Out Day (11<sup>th</sup>)

**November**

- Native American Heritage Month
- Dia de Los Muertos (1<sup>st</sup>)
- Transgender Day of Remembrance (20<sup>th</sup>)
- Diwali (between Oct/November based on Hindu lunar calendar) November 12 in 2023 (October 24, 2022)

**December**

- Rosa Parks Day (1<sup>st</sup>)
- International Day of Persons with Disabilities (3<sup>rd</sup>)
- Hanukkah (18<sup>th</sup> ~26<sup>th</sup> – changes)
- Kwanzaa (26<sup>th</sup> – Jan 1<sup>st</sup>)



## CITY COUNCIL MINUTES

December 19, 2022 at 7:00 PM

Wilsonville City Hall & Remote Video Conferencing

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### CALL TO ORDER

1. Roll Call
2. Pledge of Allegiance

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, December 19, 2022. The Mayor called the meeting to order at 7:09 p.m., followed by roll call and the Pledge of Allegiance.

#### PRESENT:

Mayor Fitzgerald  
Council President Akervall  
Councilor Lehan  
Councilor West  
Councilor Linville

#### STAFF PRESENT:

Bryan Cosgrove, City Manager  
Amanda Guile-Hinman, City Attorney  
Kimberly Veliz, City Recorder  
Zoe Mombert, Assistant to the City Manager  
Dwight Brashear, Transit Director  
Zach Weigel, City Engineer  
Jeanna Troha, Assistant City Manager  
Chris Neamtzu, Community Development Director  
Matt Lorenzen, Economic Development Manager  
Dan Carlson, Building Official  
Miranda Bateschell, Planning Director  
Dan Pauly, Planning Manager  
Keith Katko, Finance Director  
Katherine Smith, Assistant Finance Director  
Bill Evans, Communications & Marketing Manager



3. Motion to approve the following order of the agenda.

The Mayor proposed an amendment to the Communications section of the agenda. The Mayor explained the Building Department had a presentation about demolition permit maps and historic documentation to be added to the agenda. The Mayor then requested a motion to approve the agenda as described.

**Motion:** Moved to approve the order of agenda with the amendment.

Motion made by Councilor Lehan, Seconded by Councilor West.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

**COUNCILOR COMMENTS, LIAISON REPORTS AND MEETING ANNOUNCEMENTS**

4. Council President Akervall

No report.

5. Councilor Lehan

No report.

6. Councilor Linville

Councilor Linville reported that on December 7, 2022 she attended a Legislative Coffee in Salem. She was joined by City of Aurora Mayor Asher. Also in attendance was Congresswoman Salinas.

On December 14, 2022, Councilor Linville attended the Clackamas County Coordinating Committee (C4) Metro subcommittee meeting.

Lastly, the audience was reminded that on the City of Wilsonville website, there is a link to an Oregon Department of Transportation (ODOT) survey, related to tolling.

7. Councilor West

No report.

## MAYOR'S BUSINESS

### 8. Recognition of Outgoing Councilors Ben West and Charlotte Lehan

The Mayor first recognized Councilor West. She stated similar to all elected officials, Councilor West came into office with lots of new ideas of how he could make an impact and get things done.

The Mayor stated Councilor West had a high interest in the field, and ran for elected office previously before being elected to Council. The Mayor recalled she was not on Council for Councilor West's first two years. The Mayor shared that she filed to run for mayor and then Councilor West filed to run against her the next day. The Mayor explained that after the election, she and Councilor West were on the Council together for two years. During, this time they had a good opportunity to learn how to hear ideas from each other and work together. The Mayor felt this was a good and rewarding experience in that regard.

The Mayor reflected on the Council retreat that occurred early in her first year. The Mayor recalled during the retreat, Councilors mutually set goals, which they had been working on for two years. She mentioned that one of the biggest developments during Councilor West's term was the passage of the Equitable Housing Strategic Plan and the passage of the Wilsonville Investment Now (WIN) Tax-Increment Financing Plan. The WIN strategy is credited for attracting Twist BioScience to Wilsonville. The Mayor appreciated Councilor West's help on these plans. The Mayor then thanked Councilor West for the decisions made for the Frog Pond East and West Master Plans.

As Clackamas County Commissioner, the Mayor hopes to work with soon to be Commissioner West on some important issues facing Wilsonville. The Mayor announced her and Councilor West plan to meet in January 2023, to discuss supporting, a clean green and safe community here in Wilsonville. Moreover, to delve into the City's diversity, equity, and inclusion plans, as Council would like to see the County and City making even greater strides in that regard. In addition, topics of discussion include helping with homelessness and some solutions that City can assist the County with in that regard. The Mayor believed there are many good things that the City and Clackamas County can do if they work together.

The Mayor shared with Councilor West she had two big items she would like to work with him on. One item of importance is transportation. The Mayor recalled that Oregon Department of Transportation (ODOT) had estimated it would cost at least half a billion dollars to solve the biggest single most onerous cause of traffic congestion in Wilsonville which is the Boone Bridge. Therefore, Council would be looking to Councilor West to help get a new and better bridge.

The other item the Mayor asked Councilor West's help on in his new capacity was protecting rural reserves, and the City's valuable traded sector agriculture, which continues to be important to Wilsonville.

The Mayor recalled Council had recently been looking at the letter that Clackamas County sent Wilsonville a couple weeks ago, regarding the traffic signal at Stafford Road and 65th Avenue. She informed Councilor West the City wants to work with him on those items in the next year as well.

Council West shared his family loves the City of Wilsonville. He then shared how his family ended up moving to Wilsonville from North Portland in 2014 after visiting friends in Villebois.

Councilor West explained in his new role as a Clackamas County Commissioner he would continue to advocate for Wilsonville to be a livable, clean, beautiful, and overall an excellent city.

Councilor West shared he had learned so much in his four years on City Council. He recalled there were some high points, some mistakes, and stumbles along the way. However, the experience had been a thrill the whole time and he would not trade any of those experiences.

Councilor West reminisced on seeing the community come together during some of the most tragic, horrific times over the last four years which included the pandemic, heatwave, ice storm, and Villebois fire. Councilor West shared that he was proud to be a part of the Wilsonville community and would continue to be a member of the community but in his new capacity as Clackamas County Commissioner.

He noted his work as a Commissioner had already begun, even though his official start date was January 1, 2023. He described that the priorities of Clackamas County are also the priorities of Wilsonville. Councilor West looked forward to continue to serve and represent Wilsonville over the next four years as County Commissioner.

Council President Akervall thanked and wished Councilor West the very best in his new endeavor. She then thanked his family for supporting him at home in a much less visible way.

Councilor Lehan recalled her and Councilor West had disagreed on a number of things. However, they had voted on the same side of way more things than not. Moreover, she felt Councilor West had always come through for the important things.

Councilor Linville shared it had been great to sit next to Councilor West for the last couple of years. She told Councilor West she was delighted in the work and the contribution that he made on Council. Moreover, she valued his friendship and tenacity to get his Masters. Councilor Linville also sympathized with Paul and Jay as it is difficult on family members to run a campaign.

Councilor Linville wished Councilor West the very best and thanked him for everything that he has done for the residents of Wilsonville. She recalled that Councilor West has always been open and available to community members in need of assistance.

Councilor West added that politics get contentious quickly however he values everybody on Council. He shared it had been an absolute pleasure and joy to work with and collaborate with the Mayor. He shared she had been a strong leader for the City and fantastic Mayor.

Councilor West then stated that Council President Akervall was the epitome of empathy and kindness. Furthermore, she is a great listener who hears from her heart. Moreover, she leads that same way.

Councilor West described that probably ideologically, Councilor Lehan and he had not always seen eye to eye. However, she loves the City of Wilsonville and has the best interest for this City. Moreover, she brings much wisdom to the community. Councilor West stated he had often been in awe of how Councilor Lehan navigated tough situations. He added it had been a pleasure to learn from her and serve with her.

Councilor West broadcasted that Councilor Linville was like his aunt on Council. He shared that both were nurses and had many conversations from this perspective. Other times their conversations might talk policy, about their dogs, or their families. Councilor West stated he trusts and values his relationship and friendship with Councilor Linville.

Lastly, Councilor West thanked the City Manager for his leadership, the City Attorney for her strong honest opinions and all City staff for their work.

Next, the Mayor shared some comments about Councilor Lehan, whom had 30 years of public service experience to the greater Wilsonville community.

The Mayor informed that Councilor Lehan started her time of public service in the 1990s. She helped to form the nonprofit organization Friends of Goal 5. This organization promoted the Oregon Statewide Planning Goal for local governments to adopt programs that protect natural resources and conserve scenic, historic, and open space resources for present and future generations.

In 1991, Councilor Lehan was appointed to the City Council. After being asked a few times and declining. She then won election as City Councilor in 1992. Councilor Lehan then went on to run for the position of Mayor and won three consecutive terms over 12 years from 1997 to 2008.

After serving on the City Council for 17 years, she then ran for and won the position of Clackamas County Commissioner. For the last two years of her four-year term, Councilor Lehan served as Chair of the Clackamas County Board of County Commissioners.

During this time, Councilor Lehan served on the crucial "Core 4" Committee during the 2008 to 2010 Metro Urban and Rural Reserves land-use designation process.

As the Clackamas County Board Chair, Councilor Lehan was able to work with Multnomah and Washington Counties and Metro to designate key Urban Reserves for future city growth.

Councilor Lehan worked to protect significant agricultural lands as Rural Reserves that provide a 50-year timeframe for protection from urbanization, thereby facilitating farmers' ability to make long-term investments to improve their agricultural operations. Knowing that they can continue to farm their land that has continued to be protected as an agricultural enterprise.

Always seeking to serve her community, Councilor Lehan ran again for City Council and was elected to office in 2014, and re-elected to a second term in 2018.

As if this was not enough public service, Councilor Lehan also serves on the Oregon Commission on Historic Cemeteries and on the Oregon Heritage Tree Committee. Locally, she is president of the Pleasant View Cemetery Association, volunteers with the Wilsonville Boones Ferry Historical Society.

The Mayor publicized that Councilor Lehan would be hosting the Lehan Lectures starting on January 3, 2023. The audience was encouraged to attend the lecture series.

Councilor Lehan has served as the Council liaison to the City Tourism Promotion Committee since it was created in 2015.

For several years, Councilor Lehan led Wilsonville history and geography presentations for second and third grade students in Wilsonville schools.

The Mayor had a feeling that she may have omitted another dozen or so of Councilor Lehan's accomplishments.

The Mayor then listed some major things that happened during Councilor Lehan's 30 years of public service to the greater Wilsonville community.

The first major thing mentioned was that Councilor Lehan led our efforts to seek a long-term supply of domestic water from the Willamette River. An executive at Coca Cola Bottling once said that Wilsonville Water was among the best water in the US.

Councilor Lehan led efforts to site the visionary Villebois urban village at the old Dammasch State Hospital, and to place the proposed Coffee Creek Correctional Facility in North Wilsonville.

As the Mayor noted earlier, Councilor Lehan helped to designate lands both for future urban development and to protect key farmlands as Rural Reserves.

To recognize and appreciate Councilor Lehan's long-term commitment to Wilsonville, the City had arranged to dedicate in her honor a Willamette River viewing bench at Arrowhead Park located at the Water Treatment Plant. The bench is located at a new overlook built during the 2022 seismic resilience project at the Water Treatment Plant. This site was specifically selected since the view overlooks the Willamette River and is located in a grove of trees.

The plaque on the bench reads, "In honor of over 30 years of devoted service to the Wilsonville community, this bench is dedicated to Charlotte Lehan, former Councilor, Mayor, and County Commissioner."

Councilor Lehan thanked the City and the citizens of Wilsonville for the opportunities she had to participate in building the truly remarkable City of Wilsonville.

She then thanked her family for putting up with all of the activities, which got in the way of many other things, and for putting up with the various elections.

Councilor Lehan recalled that she had played a major role in a few things that the Mayor mentioned, and a minor role in many things. Moreover, most of it, but certainly not all of it, but most of it had been fun and inspiring.

She reminded a city is never finished. Therefore, the opportunities continue for improvement. Councilor Lehan invited citizen participation, and more staff participation in this process going forward.

Councilor Lehan stated she personally, looked forward to continuing her deep dive into local history, including how Wilsonville history is similar and how it is quite different from neighboring cities. She disclosed there would be a lecture series on this topic.

She then recalled Wilsonville had been her home for many generations, and she would always find ways to be engaged in some manner or another.

Councilor Lehan added this Council, had been very good to work with, as all Councilors are intelligent, and committed to the work. Her only regret right now in stepping away from Council is not having the opportunity to work with the new incoming Council. Councilor Lehan thinks the new Council has the greatest potential of any Council. Councilor Lehan explained when she first came on City Council in 1991, she knew nothing. However, the new Council would not have a neophyte amongst them. The remaining Councilors and the new Councilors have far more knowledge and experience in urban issues and urban management than she ever did. Councilor Lehan disclosed they are all professionals, and they all have the City's best interests at heart. Therefore, Councilor Lehan looked forward to this being a great time for Wilsonville.

Council President Akervall expressed her thanks, and deep gratitude for Councilor Lehan whom she had sat next to for six years, twice a month for a couple hours each meeting. She then read a quote made by Councilor Lehan in a 1991 Council Comments article, which can be found in the December 2022 Boones Ferry Messenger. The quote is as follows, *"The decisions we make may benefit us now but it is the legacy we leave for those who follow that is most important. I look forward to making a positive contribution toward that future."* Councilor Akervall explained the reason this was so impactful to her is that Councilor Lehan had done exactly that. Councilor Lehan actually lived that quote over a couple decades.

Councilor Akervall appreciated Councilor Lehan for all of the work she had done. Councilor Akervall further explained she thinks it is one thing to, to gain attention over time and it is another thing to gain respect. Councilor Akervall stated from comments made it can be seen how much respect Councilor Lehan has from others.

Councilor Linville described that in 1991, when Councilor Lehan came on Council, there was a population of about 7,600 people Wilsonville. Now in 2022 there are 20,000, people more than in 1991. She told Councilor Lehan that her footprint and touch is all over Wilsonville.

Councilor Linville stated beyond being amazed of Councilor Lehan's perspective every time she speaks is her knowledge of the community. Councilor Linville stated that knowledge was irreplaceable and would be missed. Councilor Linville told Councilor Lehan it had been an honor to get to know her and work with her. Moreover, Councilor Linville was delighted that Councilor Lehan had been willing to take on the Willamette Falls Locks Authority. In closing, Councilor Linville wished Councilor Lehan the very best.

Councilor West reminisced that in 1991 he was a seventh grader. Now he and two others on Council live in a neighborhood that would not exist without Councilor Lehan's advocacy. Councilor West shared that Councilor Lehan sowed seeds that have now benefited multiple generations of people that live in the Clackamas County, Wilsonville, and the region. In addition, Councilor Lehan continues to make Wilsonville a wonderful place to live. She has carried out the legacy of her family that had been in Wilsonville for so many generations.

Councilor West appreciated Councilor Lehan and shared he had been honored to learn and serve with her. Moreover, Wilsonville is lucky to have her as their advocate. Councilor West believed Councilor Lehan would continue to do great things going forward.

Next, a video was played showing the park bench dedicated to Councilor Lehan at the Water Treatment Plant. Photos of Councilors followed.

#### 9. Recess for Refreshments

The Mayor recessed the City Council meeting at 7:52 p.m. for a reception in honor of Councilors Lehan and West.

The Mayor reconvened the City Council meeting at 8:10 p.m.

#### 10. Transit Oriented Development Project

The City Attorney explained the City engaged in a two-phase competitive selection process for the Transit Oriented Development (TOD) Project. The City Attorney recalled the City first published a request for qualifications. Then the qualified respondents had the opportunity to respond to a more specific request for proposal pursuant to ORS 221.729.

Next, staff sought Council approval of one of the proposals as the successful proposer for this Transit Oriented Development Project.

**Motion:** Moved to approve Palindrome as the successful proposal for the Transit Oriented Development Project.

Motion made by Councilor West, Seconded by Council President Akervall.

The Mayor recapped that City Council discussed the Transit Oriented Development Project for over a year. Council looked at ways to take the best advantage of funding that would enable construction of the best type of housing to be built near the West Station.

The Mayor explained this project provides low-income housing for people who are making no more than 60% of the average area median income. The Equitable Strategic Housing Plan, which Council adopted in 2020, to address the gaps in City of Wilsonville housing and find ways for people to live and work in Wilsonville and be able to commute to jobs. This particular development would have about, 121 rental units. These units would be subsidized through various financing mechanisms that have been studied and identified with developers as the best way to proceed.

The Mayor described that Council had identified thru the motion the developer that they think would make the best use of 1.9 million in funding that Representative Courtney Neron secured in the last legislative session.

The Mayor mentioned on the plan, the ground floor includes some options that are attractive and fun for the whole community. In particular, the developer had a focus on bicycle commuting and included an area for the storage of bicycles. Moreover, the concept is possibly to have a bike repair shop. In addition, the development has parking, which aligns with the TriMet parking lot. There is also a plan for a gathering place on the lower floor.

Councilors appreciated the developers that submitted proposal and shared their excitement for the next phase of the project. Council also mentioned their interest in the culturally specific partner that would be identified for this project.

It was noted that since Wilsonville is a member of Tree City USA the developer should be aware that the planting and incorporation of the trees is of importance.

Council desired moving forward that it be discussed with developer the needs of SMART and Wilsonville Community Sharing. In particular Councilors desired, that it be reinforced that Wilsonville Community Sharing had a rent free space, long term, if not indefinite to be located in the that building. Additionally, included in the building should be a transit center for SMART where citizens can learn about transit options in the area. Lastly, Council's desired for a social gathering place, one of which has shown to be successful at other locations.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

**11. Boards/Commission Appointments/Reappointments**



**Development Review Board – Appointment**

Appointment of Megan Chuinard and Justin Brown to the Development Review Board for a term beginning 1/1/2023 to 12/31/2023.

**Motion:** Moved to ratify the appointment of Megan Chuinard and Justin Brown to the Development Review Board for a term beginning 1/1/2023 to 12/31/2023.

Motion made by Council President Akervall, Seconded by Councilor Lehan.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

**Diversity, Equity and Inclusion Committee – Reappointments**

Reappointment of Erika Pham and Luis Gonzalez to the Diversity, Equity and Inclusion Committee for a term beginning 1/1/2023 to 12/31/2025.

**Motion:** Moved to ratify the reappointment of Erika Pham and Luis Gonzalez to the Diversity, Equity and Inclusion Committee for a term beginning 1/1/2023 to 12/31/2025.

Motion made by Council President Akervall, Seconded by Councilor Lehan.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

**Diversity, Equity and Inclusion Committee – Appointment**

Appointment of Karla Brashear to the Diversity, Equity and Inclusion Committee for a term beginning 1/1/2023 to 12/31/2025.

**Motion:** Moved to ratify the appointment of Karla Brashear to the Diversity, Equity and Inclusion Committee for a term beginning 1/1/2023 to 12/31/2025.

Motion made by Council President Akervall, Seconded by Councilor West.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

**Diversity, Equity and Inclusion Committee – Student Appointments**

Appointment of George Luo and Aasha Patel to the Diversity, Equity and Inclusion Committee for a term beginning 1/1/2023 to 12/31/2023.

**Motion:** Moved to ratify the appointment of George Luo and Aasha Patel to the Diversity, Equity and Inclusion Committee for a term beginning 1/1/2023 to 12/31/2023.

Motion made by Council President Akervall, Seconded by Councilor West.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

**Parks & Recreation Advisory Board – Reappointment**

Reappointment of Amanda Aird to the Parks & Recreation Advisory Board for a term beginning 1/1/2023 to 12/31/2026.

**Motion:** Moved to ratify the reappointment of Amanda Aird to the Parks & Recreation Advisory Board for a term beginning 1/1/2023 to 12/31/2026.

Motion made by Council President Akervall, Seconded by Councilor Lehan.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

**Planning Commission – Appointment**

Appointment of Kathryn Neil to the Planning Commission for a term beginning 1/1/2023 to 12/31/2023.

**Motion:** Moved to ratify the appointment of Kathryn Neil to the Planning Commission for a term beginning 1/1/2023 to 12/31/2023.

Motion made by Council President Akervall, Seconded by Councilor Lehan.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

12. Upcoming Meetings

The next City Council meeting is Thursday, January 5, 2023.

## COMMUNICATIONS

### 13. Demo Permit Map/Historic Documentation

Dan Carlson, Building Official shared details of a new City archival project to preserve images of Wilsonville buildings before they are demolished. The project, which preserves local history, requires applicants to submit high-resolution photos that are representative of the property when filing demolition permits.

## CITIZEN INPUT AND COMMUNITY ANNOUNCEMENTS

*This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizen input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.*

Kevin Ferrasci O'Malley, CEO of the Wilsonville Chamber of Commerce spoke on behalf of the Chamber's board of directors. The CEO appreciated and recognized Councilors Lehan and West for their dedication to public service.

## CONSENT AGENDA

The City Attorney read the titles of the Consent Agenda into the record.

### 14. **Resolution No. 3009**

A Resolution Of The City Of Wilsonville Adopting The South Metro Area Regional Transit (SMART) Public Transportation Agency Safety Plan.

### 15. **Resolution No. 3014**

A Resolution Adopting The Canvass Of Votes Of The November 8, 2022 General Election.

### 16. **Resolution No. 3026**

A Resolution Of The City Of Wilsonville Authorizing South Metro Area Regional Transit (SMART) To A Renewal Of Goods And Services Contract With Optibus, Inc.

### 17. Minutes of the December 5, 2022 City Council Meeting.

**Motion:** Moved to approve the Consent Agenda as read.

Motion made by Councilor West, Seconded by Council President Akervall.

### **Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

## NEW BUSINESS

There was none.

## CONTINUING BUSINESS

### 18. Ordinance No. 870 - 2<sup>nd</sup> Reading

An Ordinance Of The City Of Wilsonville Adopting The Frog Pond East And South Master Plan And Related Comprehensive Plan Text And Map Amendments.

The City Attorney read the title of Ordinance No. 870 into the record on second reading.

The Mayor read the second reading script.

**Motion:** Moved to adopt Ordinance No. 870 on second reading.

Motion made by Councilor Lehan, Seconded by Councilor Linville.

#### **Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

### 19. Ordinance No. 871 - 2<sup>nd</sup> Reading

An Ordinance Of The City Of Wilsonville Amending The Comprehensive Plan Text And Areas Of Special Concern Map To Adopt Airport Good-Neighbor Policies And Designate The Aurora State Airport And Surrounding Properties As An Area Of Special Concern.

The City Attorney read the title of Ordinance No. 871 into the record on second reading.

The Mayor read the second reading script.

**Motion:** Moved to adopt Ordinance No. 871 on second reading.

Motion made by Councilor Linville, Seconded by Councilor Lehan.

#### **Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

## PUBLIC HEARING

### 20. **Resolution No. 3016** - *Legislative Hearing*

A Resolution Of The City Of Wilsonville Authorizing A Supplemental Budget Adjustment For Fiscal Year 2022-23.

The City Attorney read the title of Resolution No. 3016 into the record.

The Mayor read the public hearing script and called to order the public hearing at 8:43 p.m.

Katherine Smith, Assistant Finance Director summarized the staff report.

Council asked clarifying questions.

The Mayor invited public testimony, seeing none the Mayor closed the public hearing on Resolution No. 3016 at 8:46 p.m.

**Motion:** Moved to approve Resolution No. 3016.

Motion made by Councilor Lehan, Seconded by Councilor West.

### **Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

## CITY MANAGER'S BUSINESS

The City Manager echoed the sentiments of others regarding Councilors Lehan and West. The City Manager shared he truly appreciated working with both Councilors.

## LEGAL BUSINESS

The City Attorney recalled the City of Aurora, Joseph Schaefer, 1000 Friends, and Friends of French Prairie previously filed lawsuits against the Oregon Department of Aviation and the Oregon State Aviation Board for violations of the Oregon Administrative Procedures Act. The Marion County Circuit Court dismissed those cases. Therefore, each of the parties had filed an appeal of the trial court's decision.

Council was reminded that the City of Wilsonville was not a party to these lawsuits however, had an opportunity to file an amicus brief on these appeals. The City Attorney explained while there is a pending motion to consolidate the appeals, staff requested that Council authorize filing an amicus brief in each separate appeal in the event that the cases are not consolidated. As such, staff further seeks a motion to authorize the City Attorney to file an amicus brief in Oregon Court of Appeals case numbers 179661, 179649, and 179634.

The Mayor then called for the motion.

**Motion:** Moved to file an amicus brief on Oregon Court of Appeals cases 179661, 179649 and 179634.

Motion made by Councilor Lehan, Seconded by Councilor Linville.

**Voting Yea:**

Mayor Fitzgerald, Council President Akervall, Councilor Lehan, Councilor West, Councilor Linville

**Vote:** Motion carried 5-0.

**ADJOURN**

The Mayor adjourned the meeting at 8:50 p.m.

Respectfully submitted,

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Kimberly Veliz, City Recorder

ATTEST:

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Julie Fitzgerald, Mayor



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> January 5, 2023	<b>Subject: Resolution No. 3028</b> Approving the City of Wilsonville Flag Policy; <b>Ordinance No. 874 – 1<sup>st</sup> Reading</b> Amending Wilsonville Code Section 6.150  <b>Staff Member:</b> Amanda Guile-Hinman, City Attorney  <b>Department:</b> Legal	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: January 5, 2023 <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: January 5, 2023 <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: January 19, 2023 <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial  <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b> Diversity, Equity and Inclusion (DEI) Committee recommends approval proposed Flag Policy and adoption of amendments to Wilsonville Code Section 6.150.	
<b>Staff Recommendation:</b> Approve Resolution No. 3028 and adopt Ordinance No. 874 on first reading.		
<b>Recommended Language for Motion:</b> Two separate motions: I move to approve Resolution No. 3028. I move to adopt Ordinance No. 874 on first reading.		
<b>Project / Issue Relates To:</b>		
<input type="checkbox"/> Council Goals/Priorities:	<input checked="" type="checkbox"/> Adopted Master Plan(s): DEI Committee Strategic Plan	<input type="checkbox"/> Not Applicable

### ISSUE BEFORE COMMITTEE:

Consider approving the proposed City Flag Policy and adopting revisions to Wilsonville Code (WC) Section 6.150.

## EXECUTIVE SUMMARY:

The City of Wilsonville Flag Policy will codify a framework for the City to display commemorative flags on City flag poles and in City facilities, among other regulations. In response to Council concerns from the September 8, 2022 work session, proposed revisions to Wilsonville Code (WC) 6.150 will prohibit the display of banners on City streetlights and other poles except for City-sponsored events. This Staff Report explains the background leading to the current draft Flag Policy (Attachment 1) and the proposed revisions to WC 6.150 (Attachment 2).

### A. Background

On August 9, 2022, staff brought a draft flag policy to the Diversity, Equity and Inclusion (DEI) Committee in response to the adopted Diversity, Equity and Inclusion Committee Strategic Plan (the “Plan”), and four other key considerations. These five (5) considerations are summarized below:

1. The Plan that the Council adopted via Resolution No. 2979 on July 18, 2022 includes a Strategic Action item of “Visual representation (flags, symbols, holiday decor on City property).”
2. In January 2022, the United States Supreme Court issued its decision in the matter, *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022). That case involved a lawsuit brought against the City of Boston by a private organization when the city refused to display the organization’s self-described “Christian flag” on one of the city’s flag poles in its City Hall Plaza when the city allowed other groups and individuals to hoist a flag of their choosing on the particular flag pole. The Court found that the city did not shape or control the messages of previously allowed flags and did not have any written policies or internal guidance about what flags groups could fly on the City flag pole.
3. Currently, Wilsonville Code (WC) 6.150(2) allows persons who obtain a special event permit to display banners consistent with the regulations stated in WC 6.150(2). That section includes reference to a plan set out by the Public Works Department, which is currently a written internal banner policy that has not been updated since 2011.
4. The City has an internal banner policy for banners that may be placed on certain streetlights. This internal policy should be updated and incorporated into any overarching commemorative flag policy to provide one document for the City and the public to reference.
5. In December 2021, the League of Oregon Cities published its *Guide to the Public Display of Flags on Government Buildings*, which staff relied on to develop the draft City Flag Policy.

The DEI Committee proposed revisions to some of the language regarding the commemorative flag portion of the draft flag policy, among other proposed revisions.



On September 7, 2022, City Council held a work session on the draft flag policy. At that work session, Council directed staff to bring forward a revision to Wilsonville Code (WC) Section 6.150 in conjunction with the Flag Policy whereby the Code provision would limit banners that the City allows on its streetlights and other (non-flag) poles to either City events or events that the City supports in some fashion.

Staff took the draft Flag Policy (Attachment 1) and proposed revisions to WC 6.150 (Attachment 2) to the DEI Committee at its September 13, 2022 meeting. The DEI Committee had no further suggested revisions to either document. Staff then presented the draft Flag Policy and proposed revisions to WC 6.150 to City Council at its November 7, 2022 work session. Council did not propose any further revisions.

On December 13, 2022, the DEI Committee voted to recommend the Council approve the flag policy and adopt the revisions to WC Section 6.150.

### **B. Proposed Approval/Adoption**

Since the Plan includes a Strategic Action item to increase visual representation in the City, staff and the DEI Committee recommend the City Council approve the draft Flag Policy as provided in Resolution No. 3028 and adopt the proposed revisions to WC. 6.150 as provided in Ordinance No. 874.

#### **EXPECTED RESULTS:**

An adopted Flag Policy and revise WC 6.150 to codify a framework for the City to display commemorative flags on City flag poles and in City facilities.

#### **TIMELINE:**

Since Ordinance No. 874 requires two readings and a minimum of 30 days before it becomes operative, staff recommends that both Resolution NO. 3028 and Ordinance No. 874 become operative on the same date – March 1, 2023.

#### **CURRENT YEAR BUDGET IMPACTS:**

N/A

#### **COMMUNITY INVOLVEMENT PROCESS:**

Staff sought feedback from the DEI Committee at its August, September and December 2022 meetings on the draft Flag Policy. At its December 2022 meeting, the DEI Committee recommended Council to approve the Flag Policy and adopt revisions to WC 6.150.

The Ordinance has also been properly noticed, consistent with WC Chapter 2.

**POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

As identified in the DEI Strategic Plan, flags can serve as visual representation of the City's mission and values. As identified in the 2021-23 City Council Goals, the Council identified the opportunity to continue supporting a focus on diversity, equity, and inclusion and to create an environment where people feel safe to engage.

**ALTERNATIVES:**

The City may decide to forgo a Flag Policy and choose not to display commemorative flags on City flag poles or in City facilities.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Resolution No. 3028
  - a. Exhibit A – Flag Policy
2. Ordinance No. 874

**RESOLUTION NO. 3028****A RESOLUTION OF THE CITY OF WILSONVILLE APPROVING THE CITY OF WILSONVILLE FLAG POLICY.**

WHEREAS, on July 18, 2022, the Wilsonville City Council (“Council”) approved Resolution No. 2979 that adopted the Diversity, Equity and Inclusion Committee Strategic Plan (the “Plan”); and

WHEREAS, the Plan includes a Strategic Action item of “Visual representation (flags, symbols, holiday decor on City property);” and

WHEREAS, a flag policy is necessary to provide clear expectations and guidelines for the use of flags on City property; and

WHEREAS, in December 2021, the League of Oregon Cities published its *Guide to the Public Display of Flags on Government Buildings*, which aided the creation of the proposed Flag Policy that is attached hereto and incorporated by reference herein as **Exhibit A**; and;

WHEREAS, the proposed Flag Policy also incorporates the City’s current internal policy on banners; and

WHEREAS, on December 13, 2022, the Diversity, Equity, and Inclusion Committee of the City of Wilsonville recommended the Council approve the proposed Flag Policy attached hereto as Exhibit A.

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

Section 1. Findings. The Council adopts the above-stated recitals and the staff report accompanying this Ordinance as if fully set forth herein

Section 2. The Council hereby approves the proposed Flag Policy attached hereto and incorporated by reference herein as **Exhibit A**.

Section 3. Effective Date. This Resolution is effective beginning March 1, 2023.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 5th day of January, 2023, and filed with the Wilsonville City Recorder this date.

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JULIE FITZGERALD MAYOR

ATTEST:

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Linville

Councilor Berry

Councilor Dunwell

EXHIBITS:

A. City Flag Policy



## City of Wilsonville Flag Policy

### 1. Purpose

The City of Wilsonville seeks to codify a flag policy for City-owned property that incorporates federal and State of Oregon flag display requirements, along with City-specific requirements. Additionally, the City adopted the Diversity, Equity and Inclusion (DEI) Strategic Plan on July 18, 2022 via Resolution No. 2979. The DEI Strategic Plan includes a strategic action item of “visual representation,” and references flags in that strategic action item. This Flag Policy establishes the framework for the City to engage in visual representation through flags.

### 2. United States Flag

#### 2.1. General Requirements

The City must procure for each City-owned building a United States flag (“US Flag”) of suitable size, as determined by the City Manager or designee. The City will comply with the federal flag regulations as provided in 4 USC § 1-10, as may be amended and as summarized herein. The City may also consult the US Department of Veterans Affairs’ *Guidelines for Display of the Flag* attached as **Exhibit 1** for any further guidance regarding displaying the US Flag.

#### 2.2. Time and Occasions for Display

##### 2.2.1. Outdoor Flags

The US Flag must be placed upon or near each City-owned building and displayed from sunrise to sunset and on stationary flagstaffs in the open, except as otherwise provided herein. The US Flag may be displayed for 24 hours a day if properly illuminated during the hours of darkness. The US Flag should not be displayed on days of inclement weather unless an all-weather US Flag is displayed.

##### 2.2.2. Indoor Flags

The US Flag must be displayed, at a minimum, in the City Council Chambers. The City Manager or designee may authorize the display of the US Flag in other City buildings.

##### 2.2.3. Displaying at Half-Staff

The US Flag should be displayed at half-staff on each Memorial Day until noon and should be displayed at half-staff when otherwise ordered by the President of the United State or the Oregon Governor.

### **2.3. Position and Manner of Display**

When displayed on the same staff, the US Flag must be at the peak, followed by the Oregon Flag, then the POW/MIA Flag, then the Wilsonville Flag (if one is created), and finally any other authorized flag. If one other flag is displayed on a staff next to the US Flag, the US Flag should be displayed on the left-most staff and positioned higher than the other flag. In a group of flags displayed from staffs, the US Flag should be at the center and the highest point. When the flags are flown from adjacent staffs, the US Flag should be hoisted first and lowered last.

The US Flag should be hoisted briskly and lowered ceremoniously.

## **3. State of Oregon Flag and POW/MIA Flag**

### **3.1. General Requirements**

The City must procure for each City-owned building a State of Oregon flag (“Oregon Flag”) and, except as provided herein, a National League of Families' POW/MIA flag (“POW/MIA Flag”), each of suitable size, as determined by the City Manager or designee. The City will comply with the Oregon flag regulations as provided in ORS 186.110 and 186.120, as may be amended and as summarized herein.

The City is required to purchase and display a POW/MIA Flag only with respect to public buildings that have existing flagpoles or other infrastructure installed to properly display all three flags (US Flag, Oregon Flag, and POW/MIA Flag), except that any newly constructed City building must include sufficient infrastructure to properly display all three flags.

### **3.2. Time and Occasion for Display**

#### **3.2.1. Outdoor Flags**

The City will display the Oregon Flag and the POW/MIA Flag with the US Flag upon or near the City buildings during the hours when the US Flag is customarily displayed, except in inclement weather, and at such other times as seems proper, as determined by the City Manager or designee.

#### **3.2.2. Indoor Flags**

The Oregon Flag must be displayed, at a minimum, in the City Council Chambers. The City Manager or designee may authorize the display of the Oregon Flag in other City buildings.

#### **3.2.3. Displaying at Half-Staff**

The Oregon Flag and POW/MIA Flag should be displayed at half-staff when the US Flag is also displayed at half-staff or if otherwise ordered to be displayed at half-staff by the Oregon Governor.

### **3.3. Position and Manner of Display**

When displayed on the same staff, the US Flag must be at the peak, followed by the Oregon Flag, then the POW/MIA Flag, then the Wilsonville Flag, and finally any other authorized flag. In a group of flags displayed from staffs, the US Flag should be at the center and the highest point.

## **4. City of Wilsonville Flag**

If the City approves an official City of Wilsonville flag, the following regulations will apply to such flag.

### **4.1. General Requirements**

The City must procure for City Hall and, as authorized by the City Manager or designee, at any other City-owned building a City of Wilsonville flag (“Wilsonville Flag”) of suitable size, as determined by the City Manager or designee.

### **4.2. Time and Occasion for Display**

#### **4.2.1. Outdoor Flags**

Where the City displays the Wilsonville Flag, it must be displayed with the US Flag upon or near the City building during the hours when the US Flag is customarily displayed, except in inclement weather, and at such other times as seems proper, as determined by the City Manager or designee.

#### **4.2.2. Indoor Flags**

The City Manager or designee may authorize the display of the Wilsonville Flag in any City buildings.

#### **4.2.3. Displaying at Half-Staff**

The Wilsonville Flag should be displayed at half-staff when the US Flag is also displayed at half-staff or if otherwise ordered to be displayed at half-staff by the Mayor or the City Manager.

### **4.3. Position and Manner of Display**

When displayed on the same staff, the US Flag must be at the peak, followed by the Oregon Flag, then the POW/MIA Flag, then the Wilsonville Flag, and finally any other authorized flag. In a group of flags displayed from staffs, the US Flag should be at the center and the highest point.

## **5. Commemorative Flags**

A commemorative flag is a flag that identifies with a specific historical event, cause, nation, or group of people that the City Council chooses to honor or commemorate consistent with the City's mission and priorities. A commemorative flag may include, but is not limited to, a Sister City flag; the World flag; flags received for awards for which the City has applied (e.g., Tree City USA flag); or flags displayed in conjunction with official actions, ceremonies, or proclamations of the City.

### **5.1. General Requirements**

As an expression of the City's official government speech, the City Council may authorize the display of a commemorative flag to be displayed at City buildings. The City's flagpoles are not to serve as a forum for free expression by the public. The City Council will only consider a request to display a commemorative flag if the request is made by any one of the following: (1) the City Manager; (2) a member of Council; or (2) a recommendation from one of the City's committees, boards, or commissions. Requests directly by members of the public to display a commemorative flag will not be considered.

### **5.2. Time and Occasion for Display**

#### **5.2.1. Generally**

Commemorative flags will be displayed for a period of time that is reasonable or customary for the subject that is be commemorated, which period of time may be permanent or temporary. Commemorative flags must be either purchased by the City or temporarily donated for the City's use and must be clean, without holes and tears. Commemorative flags must be the same size or smaller than the US Flag and Oregon Flag that are displayed.

#### **5.2.2. Outdoor Flags**

If a commemorative flag is displayed with the US Flag, it must be displayed for no longer than the hours when the US Flag is customarily displayed, except in inclement weather, and at such other times as seems proper, as determined by the City Manager or designee.

#### **5.2.3. Indoor Flags**

The City Manager or designee may authorize the display of any approved commemorative flag in any City buildings.

#### **5.2.4. Displaying at Half-Staff**

If any other flag is displayed at half-staff, the commemorative flag will also be displayed at half-staff.



### **5.3. Position and Manner of Display**

When displayed on the same staff, the US Flag must be at the peak, followed by the Oregon Flag, then the POW/MIA Flag, then the Wilsonville Flag, and finally any other authorized flag. In a group of flags displayed from staffs, the US Flag should be at the center and the highest point.

## **6. Banners**

### **6.1. Generally**

As an expression of the City's official government speech, the City Manager may authorize the display of banners to be displayed adjacent to City streets attached to public street lights or utility poles. The street lights and utility poles are not to serve as a forum for free expression by the public, except as otherwise provided in WC 6.150(2) for certain permitted Large Special Events. The length of display of banners is at the discretion of the City Manager.

#### **6.1.1. Location of Public Streetlights and Utility Poles**

The City has three districts/corridors where banners are displayed by the City or allowed on public streetlight or utility poles:

##### **6.1.1.1. Wilsonville Road Gateway Corridor**

This corridor between the railroad tracks on the west side of I-5 and Boeckman Creek Bridge on the east side of I-5 serves as a Gateway to the City. The City installs and rotates City-owned seasonal banners along this corridor to enhance the gateway. However, the City may select to substitute the seasonal banners with another theme. Select streetlight poles along the corridor may be available to organizations hosting Large Special Events pursuant to WC 6.150 (2).

##### **6.1.1.2. Town Center Loop**

Town Center Park is one of the City's premier gathering places and the space is used for many of the City's Large Special Events. Pursuant to WC 6.150 (2) organizations requesting Large Special Events are eligible to place banners on certain streetlight poles along SW Town Center Loop East and West, as well as Memorial Drive and Courtside Drive. Spacing is determined by the Public Works Department based on the number of banners being installed.

##### **6.1.1.3. Villebois Village**

Villebois has a specific banner program approved as part of the Master Sign and Wayfinding Plans approved as a component of each Sub Area Plan (SAP). Outside of ensuring compliance with the Master Sign and Wayfinding Plans, the City does not operate, manage, or maintain banners within Villebois.

### **6.1.2. Banner Design**

6.1.2.1. Special Event banners will be designed and produced in a color scheme complementary to the existing city seasonal banners.

6.1.2.2. City seasonal banners will have the following color schemes, which may be modified as authorized by the City Manager or designee:

6.1.2.2.1. Spring: Lavender, Yellow, White

6.1.2.2.2. Summer: Dark Blue, Sky Blue, Yellow

6.1.2.2.3. Fall: Yellow, Purple, Rust, Orange

6.1.2.2.4. Winter: Blue, Yellow, White

### **6.1.3. Banner Production**

#### **6.1.3.1. Sizes**

6.1.3.1.1. Wilsonville Road (West of I-5), Boones Ferry Road: Banners must meet the following dimensional requirements: 28.5 inches wide and 48 inches long.

6.1.3.1.2. Wilsonville Road (East of I-5), Town Center Loop, Elligsen Road, Courtside Drive, Memorial Drive: Banners must meet the following dimensional requirements: 28.5 inches wide and 96 inches long.

#### **6.1.4. Post Sleeves**

Banners shall be installed on upper and lower posts securely attached to the pole. All banners will include an upper and lower sleeve of 4 to 6 inches wide, double stitched, for banners being installed by Public Works, and widths as required by the installer for signs being installed by contractors. Banners shall include grommets on side of banner that will be next to pole for attachment to pole with zip ties. There must be one grommet on top and one on the bottom, 4 inches from the top or bottom of the banner.

#### **6.1.5. Clearance Requirements**

For banners extending over a vehicle travel lane, bike lane, or curb area, the minimum clearance is fourteen feet (14'). For all other banners the minimum clearance is eight feet (8').

## **6.2. Time and Occasion for Display**

6.2.1. Special Event banners must be installed no earlier than fourteen days before the start of the Special Event and removed no later than fourteen days after the end of the Special Event, unless as otherwise provided in the Special Event Permit.

6.2.2. City seasonal banners will be installed consistent with the following schedule:

6.2.2.1. Spring: March 1

6.2.2.2. Summer: June 1

6.2.2.3. Fall: September 1

6.2.2.4. Winter: December 1

6.2.3. Except in Villebois, placement and removal of all banners will be done only by Public Works employees or contractors agreed upon by the Public Works Department.

## **6.3. Installation Fee and Responsibility.**

The City Manager may charge a fee for the installation of Special Event banners, which is currently set at \$1,300 per Special Event (\$650 to install and \$650 to remove), payable in advance. This fee covers installation and removal only, and does not cover banner construction, maintenance, or storage, which the City does not provide. Banners must be installed by City Public Works employees only, as provided in WC 6.150(2)(b). The City of Wilsonville is not responsible for any damage to non-City banners from vehicles, vandalism, or any other cause.

## **7. Amendments to Flag Policy and Other Regulations**

The City Manager is authorized to amend this Flag Policy to reflect any changes in federal or state law regarding the U.S. Flag, the State of Oregon Flag, or the POW/MIA Flag. Any other revisions to this Flag Policy must be approved by the City Council.



U.S. Department of Veterans Affairs  
Washington, D.C. 20420

## Guidelines for Display of the Flag

Public Law 94-344, known as the Federal Flag Code, contains rules for handling and displaying the U.S. flag. While the federal code contains no penalties for misusing the flag, states have their own flag codes and may impose penalties. The language of the federal code makes clear that the flag is a living symbol.







In response to a Supreme Court decision which held that a state law prohibiting flag burning was unconstitutional, Congress enacted the Flag Protection Act in 1989. It provides that anyone who knowingly desecrates the flag may be fined and/or imprisoned for up to one year. However, this law was challenged by the Supreme Court in a 1990 decision that the Flag Protection Act violates the First Amendment free speech protections.

### Important Things to Remember

Traditional guidelines call for displaying the flag in public only from sunrise to sunset. However, the flag may be displayed at all times if it's illuminated during darkness. The flag should not be subject to weather damage, so it should not be displayed during rain, snow and wind storms unless it is an all-weather flag.

It should be displayed often, but especially on national and state holidays and special occasions.

The flag should be displayed on or near the main building of public institutions, schools during school days, and polling places on election days. It should be hoisted briskly and lowered ceremoniously.

Image	Description
	When carried in procession with other flags the U.S. flag should be either on the marching right (the flag's right) or to the front and center of the flag line. When displayed on a float in a parade, the flag should be hung from a staff or suspended so it falls free. It should not be draped over a vehicle.
	When displayed with another flag against a wall from crossed staffs, the U.S. flag should be on its own right (left to a person facing the wall) and its staff should be in front of the other flag's staff.
	In a group of flags displayed from staffs, the U.S. flag should be at the center and the highest point.
	When the U.S. flag is displayed other than from a staff, it should be displayed flat, or suspended so that its folds fall free. When displayed over a street, place the union so it faces north or east, depending upon the direction of the street.
	When the U.S. flag is displayed from as projecting from a building, the union of the flag should be placed at the peak of the unless the flag is at half-staff. When suspended from a rope extending from the building on a pole, the flag should be hoisted out, union first from the building.
	When flags of states, cities or organizations are flown on the same staff, the U.S. flag must be at the top (except during church services conducted at sea by Navy chaplains)

The flag should never be draped or drawn back in folds. Draped red, white and blue bunting should be used for decoration, with the blue at the top and red at the bottom.

The flag may be flown at half-staff to honor a newly deceased federal or state government official by order of the president or the governor, respectively. On Memorial Day, the flag should be displayed at half-staff until noon.

### **Other Things Not to Do with the Flag**

Out of respect for the U.S. flag, never:

- dip it for any person or thing, even though state flags, regimental colors and other flags may be dipped as a mark of honor.

- display it with the union down, except as a signal of distress.

- let the flag touch anything beneath it: ground, floor, water, merchandise.

- carry it horizontally, but always aloft.

- fasten or display it in a way that will permit it to be damaged or soiled.

- place anything on the flag, including letters, insignia, or designs of any kind.

- use it for holding anything.

- use it as wearing apparel, bedding or drapery. It should not be used on a costume or athletic uniform. However, a flag patch may be attached to the uniform of patriotic organizations, military personnel, police officers and firefighters.

- use the flag for advertising or promotion purposes or print it on paper napkins, boxes or anything else intended for temporary use and discard.

During the hoisting or lowering of the flag or when it passes in parade or review, Americans should stand at attention facing the flag and place their right hand over the heart. Uniformed military members render the military salute. Men not in uniform should remove any headdress and hold it with their right hand at their left shoulder, the hand resting over the heart. Those who are not U.S. citizens should stand at attention.

When the flag is worn out or otherwise no longer a fitting emblem for display, it should be destroyed in a dignified way, preferably by burning.

## ORDINANCE NO. 874

### **AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE SECTION 6.150, "SPECIAL USE OF STREETS AND SIDEWALKS AND LARGE SPECIAL EVENTS SIGNS AND STREET BANNERS."**

WHEREAS, on July 18, 2022, the Wilsonville City Council ("Council") approved Resolution No. 2979 that adopted the Diversity, Equity and Inclusion Committee Strategic Plan (the "Plan"); and

WHEREAS, the Plan includes a Strategic Action item of "Visual representation (flags, symbols, holiday decor on City property);" and

WHEREAS, a flag policy is necessary to provide clear expectations and guidelines for the use of flags on City property; and

WHEREAS, the proposed flag policy that is the subject of Resolution No. 3028 incorporates and includes regulations regarding banners hung from City poles; and

WHEREAS, Wilsonville Code (WC) Section 6.150 includes regulations for the use of City poles to place banners for Large Special Events; and

WHEREAS, to ensure consistency between WC 6.150 and the proposed flag policy, minor revisions to WC 6.150 are necessary; and

WHEREAS, on December 13, 2022, the Diversity, Equity, and Inclusion Committee of the City of Wilsonville recommended the Council adopt the proposed revisions to WC 6.150.

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

Section 1. Findings. The Council adopts the above-stated recitals and the staff report accompanying this Ordinance as if fully set forth herein.

Section 2. WC 6.150(1) is hereby amended with strikethroughs representing proposed deletions and italicized, bold words representing proposed additions and, thus, to read as follows:

#### **6.150. Special Use of Streets and Sidewalks and Large Special Events Signs and Street Banners.**

(1) ...

(b) ...

6. Does not have guywires, strings, ropes, or other mechanisms securing the sign that could be a safety hazard; ~~and~~

7. Does not otherwise create a nuisance or hazard; **and**

**8. Meets any and all applicable requirements of this Section 6.150.**

Section 3. WC 6.150(3) is hereby amended with strikethroughs representing proposed deletions and italicized, bold words representing proposed additions and, thus, to read as follows:

(2) Banners on Public Lights and Other Poles. The purpose of the public pole banner program is to provide publicity for community events of general interest to Wilsonville residents and visitors and to provide a more festive character to the City's Town Center area, while maintaining design standards that provide for continued quality of life within Wilsonville. ***The public pole banner program is only available for City sponsored events. For purposes of this Subsection 6.150(2), "City sponsored events" means events that meet the following criteria: (1) the event is a Large Special Event; (2) the City is providing financial or in-kind products or services to support the event; and (3) the City's contribution is highlighted through public recognition, approved use of the City's logo, or other similar publicity. For avoidance of doubt, non-City sponsored events are prohibited from displaying banners on public poles unless otherwise allowed by the City's Public Works Plan in Subsection (a) below.***

Section 4. Effective Date. This Ordinance shall be declared to be in full force and effect beginning March 1, 2023.

SUBMITTED by the Wilsonville City Council at a regular meeting thereof this 5th day of January, 2023, and scheduled the second reading on January 19, 2023 commencing at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

---

Kimberly Veliz, City Recorder



ENACTED by the City Council on the \_\_\_\_ day of \_\_\_\_, 2023, by the following votes:

Yes: \_\_\_\_ No: \_\_\_\_

\_\_\_\_\_  
Kimberly Veliz, City Recorder

DATED and signed by the Mayor this \_\_\_\_ day of \_\_\_\_, 2023

\_\_\_\_\_  
JULIE FITZGERALD MAYOR

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Linville

Councilor Berry

Councilor Dunwell



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> January 5, 2023		<b>Subject: Ordinance Nos. 872 and 873 – 1<sup>st</sup> Reading</b> Annexation and Zone Map Amendment for Delta Logistics Site Expansion	
		<b>Staff Member:</b> Cindy Luxhoj, AICP, Associate Planner	
		<b>Department:</b> Community Development	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: January 5, 2023 <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: January 5, 2023 <input checked="" type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: January 19, 2023 <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial  <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable	
		<b>Comments:</b> The Coffee Creek Industrial Design Overlay District allows City Council adoption of the annexation and Zone Map amendment concurrent with or up to 120 days prior to the Development Review Board application (hearing scheduled for January 23, 2023).	
<b>Staff Recommendation:</b> Staff recommends Council adopt Ordinance Nos. 872 and 873 on 1 <sup>st</sup> Reading.			
<b>Recommended Language for Motion:</b> Two separate motions: I move to adopt Ordinance No. 872 on 1 <sup>st</sup> Reading. I move to adopt Ordinance No. 873 on 1 <sup>st</sup> Reading.			
<b>Project / Issue Relates To:</b>			
<input type="checkbox"/> Council Goals/Priorities:	<input checked="" type="checkbox"/> Adopted Master Plan(s): Coffee Creek Master Plan	<input type="checkbox"/> Not Applicable	

### ISSUE BEFORE COUNCIL:

Approve, modify, or deny Ordinance Nos. 872 and 873 to annex and rezone approximately 9.17 acres at 9710 SW Day Road within the Coffee Creek Master Plan area, enabling development of a warehouse/manufacturing building and associated site improvements.

### Ordinance No. 872 and 873 Staff Report

C:\Users\MeetingsOfficeUser2\AppData\Local\Temp\tmpF3CE.tmp

## **EXECUTIVE SUMMARY:**

The City adopted the Coffee Creek Industrial Form-based Code and Pattern Book in February 2018, establishing clear and objective development standards for street design and connectivity, site design and circulation, building form and massing, and building design and architecture to substantially minimize judgment about compliance. As part of this adoption, the City modified procedures governing City Council review of annexation and Zone Map amendments in Coffee Creek, allowing for City Council review of these requests without prior review or recommendation by the Development Review Board. This modification allows for the concurrent processing of the annexation and Zone Map amendment requests with the other related development permit applications.

The applicant, Delco Holdings, LLC, dba Delta Logistics, Inc., desires to expand their operations northward from their current location at 9835 SW Commerce Circle to construct a 56,116-square-foot warehouse/manufacturing development and associated improvements on the vacant property at 9710 SW Day Road. The applicant desires to annex the 9.17-acre property into Wilsonville and apply the City zoning designation of Planned Development Industrial – Regionally Significant Industrial Area (PDI-RSIA). This zoning designation is consistent with the site's Comprehensive Plan designation of "Industrial" and Metro's designation of the Coffee Creek Industrial Area as a Regionally Significant Industrial Area in Title 4 of the Urban Growth Management Functional Plan.

The Development Review Board will hold a public hearing on the application since the request includes waivers to the Form-based Code standards and a variance. The hearing is scheduled for February 13, 2023, for the proposed Stage 1 Preliminary Plan, Stage 2 Final Plan, Site Design Review, Waivers, Class 3 Sign Permit, Type C Tree Removal Plan, Standard Significant Resource Overlay Zone Map Verification, Standard Significant Resource Impact Report Review, and Variance applications. The provisions of Section 4.022 (.03) allow for City Council call-up of any final action taken by the Development Review Board and remain in effect for projects within Coffee Creek. The annexation and Zone Map amendment ordinances will expire 120 days from Council adoption if the Stage 2 Final Plan application is not approved by the Development Review Board.

## **EXPECTED RESULTS:**

Adoption of Ordinance Nos. 872 and 873 will bring this portion of the Coffee Creek Industrial Area into the City and zone the property for industrial development consistent with the Coffee Creek Master Plan.

## **TIMELINE:**

The annexation and Zone Map amendment will be in effect 30 days after the ordinances are adopted, pending approval of the Stage 2 Final Plan by the Development Review Board and upon filing the annexation records with the Secretary of State as provided by ORS 222.180.

**CURRENT YEAR BUDGET IMPACTS:**

None.

**COMMUNITY INVOLVEMENT PROCESS:**

Staff sent the required public hearing notices and has made materials regarding the application readily available to the public.

**POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

Annexation and development of the subject land will provide additional industrial development consistent with the goals of the Coffee Creek Master Plan.

**ALTERNATIVES:**

The alternatives are to modify, approve, or deny the annexation and Zone Map amendment requests.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Ordinance No. 872
  - A. Legal Description and Sketch Depicting Land/Territory to be Annexed
  - B. Petition for Annexation
  - C. Annexation Findings
2. Ordinance No. 873
  - A. Zoning Order ZONE22-0003 Including Legal Description and Sketch Depicting Zone Map Amendment
  - B. Zone Map Amendment Findings

**ORDINANCE NO. 872****AN ORDINANCE OF THE CITY OF WILSONVILLE ANNEXING APPROXIMATELY 9.17 ACRES OF PROPERTY LOCATED AT 9710 SW DAY ROAD FOR DEVELOPMENT OF A WAREHOUSE/MANUFACTURING BUILDING AND ASSOCIATED SITE IMPROVEMENTS.**

WHEREAS, an application has been submitted by Delco Holdings, LLC, dba Delta Logistics, Inc. – Owner/Applicant, in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code; and

WHEREAS, the subject site is located at 9710 SW Day Road, on Tax Lots 600 and 601, Section 2B, Township 3 South, Range 1 West, Willamette Meridian, Washington County, Oregon; and

WHEREAS, a petition (Exhibit B) submitted to the City requests annexation of certain real property legally described and depicted in Exhibit A; and

WHEREAS, Vladimir Tkach representing Delco Holdings, LLC, representing 100 percent of the property ownership within the annexation area signed the petition; and

WHEREAS, there are no electors located within the annexation area; and

WHEREAS, ORS 227.125 authorizes the annexation of territory based on consent of all owners of land and a majority of electors within the territory and enables the City Council to dispense with submitting the questions of the proposed annexation to the electors of the City for their approval or rejection; and

WHEREAS, the land to be annexed is within the Urban Growth Boundary and has been master planned as part of the Coffee Creek Industrial Area; and

WHEREAS, the land to be annexed is contiguous to the City and can be served by City services; and

WHEREAS, pursuant to Section 4.700 of the Development Code the City Council shall review quasi-judicial annexation requests in the Coffee Creek Industrial Design Overlay District without prior review or recommendation by the Development Review Board where concurrent with a quasi-judicial zone map amendment request as specified in Section 4.197 (.02) A; and

WHEREAS, pursuant to Section 4.700 of the Development Code this annexation ordinance expires 120 days from its effective date unless a Stage 2 Final Plan for the subject area is approved by the City; and

WHEREAS, on January 5, 2023, the City Council held a public hearing as required by Metro Code 3.09.050; and

WHEREAS, reports were prepared and considered as required by law; and because the annexation is not contested by any party, the City Council chooses not to submit the matter to the voters and does hereby favor the annexation of the subject tract of land based on findings and conclusions.

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

- Section 1. Findings. The tract of land, described and depicted in Exhibit A, is declared annexed to the City of Wilsonville.
- Section 2. Determination. The findings and conclusions incorporated in Exhibit C are adopted. The City Recorder shall immediately file a certified copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.050(g) and ORS 222.005. The annexation shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.
- Section 3. Effective Date. This Ordinance shall be declared to be in full force and effect thirty (30) days from the date of final passage and approval.

SUBMITTED by the Wilsonville City Council and read for the first time at a regular meeting thereof this 5<sup>th</sup> day of January, 2023, and scheduled the second reading on the 19<sup>th</sup> day of January, 2023, commencing at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

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Kimberly Veliz, City Recorder

ENACTED by the City Council on the 19<sup>th</sup> day of January, 2023, by the following votes:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

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Kimberly Veliz, City Recorder

DATED and signed by the Mayor this 19<sup>th</sup> day of January, 2023.

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JULIE FITZGERALD MAYOR

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Berry

Councilor Dunwell

Councilor Linville

EXHIBITS:

- A. Legal Description and Sketch Depicting Land/Territory to be Annexed
- B. Petition for Annexation
- C. Annexation Findings

# ORDINANCE NO. 872 EXHIBIT A



Item 16.

6950 SW Hampton St., Ste. 170  
Tigard, OR 97223-8330  
Ph.: (503) 941-9585  
Fax: (503) 941-9640  
www.weddlesurveying.com

April 13, 2021

Job No. 19-5727

## LEGAL DESCRIPTION FOR ANNEXATION



RENEWS: DECEMBER 31, 2022

## EXHIBIT "A"

A tract of land for Annexation purposes in the S.W. 1/4 and the N.W. 1/4 of Section 2, Township 3 South, Range 1 West, W.M., Washington County, Oregon, described as follows:

Being all of that tract of land described in Statutory Quitclaim Deed to Delco Holdings, LLC recorded January 19, 2021 as Document No. 2021-006744, Washington County Records, more particularly described as follows:

Beginning at the Northwest corner of Lot 4 of "Edwards Business Industrial Park", thence along the Easterly right-of-way line of the Bonneville Power Administration Keeler-Oregon City No. 2 transmission line (100.00 feet wide), North 00°25'43" West, 92.96 feet to an angle point therein;

Thence continuing along said Easterly right-of-way line, North 44°39'31" West, 139.80 feet to a point in the Easterly line of that tract of land described in Statutory Warranty Deed to Don L. Smith, recorded February 4, 2005 as Document No. 2005-012635, Washington County Records;

Thence along the Easterly line of said Smith tract, North 00°38'06" West, 297.10 feet to the Southerly right-of-way line of S.W. Day Road, 37.00 feet from centerline;

Thence along said Southerly right-of-way line, North 89°34'05" East, 844.33 feet to a point in the Westerly line of that tract of land described in Statutory Warranty Deed to Newco Oregon Inc., recorded August 9, 2017 as Document No. 2017-063075, said County Records;

Thence leaving the Southerly right-of-way line of said S.W. Day Road, South 00°20'45" East, 490.09 feet to the Northerly line of Lot 2 of said "Edwards Business Industrial Park" in the City Of Wilsonville;

Thence along the North line of said Lot 2, the North line of "Commerce Circle Condominiums" and the North line of Lot 4 of "Edwards Business Industrial Park", South 89°33'25" West, 745.04 feet to the Point of Beginning.

Containing therein 9.17 acres, more or less.

The Basis of Bearing for this description is per Survey No. 33753, Washington County Survey Records.



S.W. DAY ROAD

N 89°34'05" E 844.33'

37'  
37'

# EXHIBIT 'B' CITY ANNEXATION

IN THE S.W. 1/4 AND THE N.W. 1/4  
SECTION 2, T.3S., R.1W., W.M.  
WASHINGTON COUNTY, OREGON



SCALE: 1" = 100'  
APRIL 13, 2021



DOC. NO.  
2021-006744

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Michael D. Rennick*

OREGON  
JULY 25, 1995  
MICHAEL D. RENNICK  
2718

EXPIRES: DECEMBER 31, 2022

490.09'  
S 00°20'45" E

DOC. NO. 2017-063075

S 89°33'25" W 745.04'

LOT 2

POINT OF  
BEGINNING

"EDWARDS BUSINESS  
INDUSTRIAL PARK"

"COMMERCE  
CIRCLE  
CONDOMINIUMS"



6950 SW HAMPTON ST., STE. 170, TIGARD, OR 97223  
PH: (503) 941-9585 FAX: (503) 941-9640  
www.weddlesurveying.net

JOB NO. 5727

# ORDINANCE NO. 872 EXHIBIT B

Item 16.

## PETITION TO ANNEX TERRITORY INTO CITY OF WILSONVILLE

We, the undersigned owner(s) of the property described below and in the attached Legal Description and elector(s) residing at the referenced location hereby petition for and give consent to annexation of the property to the City of Wilsonville. We understand that the City will review this request in accordance with Chapter 4.700 of the City of Wilsonville Planning and Land Development Ordinance, Oregon Revised Statutes (ORS) Chapter 222, and applicable regional and local policies prior to approving or denying the request for annexation.

9710 SW Day Rd, Washington County OR, 97140

3S102B 0600, 0601

ADDRESS

TAX MAP/ LOT NUMBER

SIGNATURE

Vladimir Tkach for: Delco Holdings LLC, an  
Oregon Limited Liability Corporation

I am a:

☒ Property Owner

☐ Voter Registered at Address

PRINTED NAME

Vladimir Tkach

DATE

11/03/2021

ADDRESS

TAX MAP/ LOT NUMBER

SIGNATURE

I am a:

☐ Property Owner

☐ Voter Registered at Address

PRINTED NAME

DATE

ADDRESS

TAX MAP/ LOT NUMBER

SIGNATURE

I am a:

☐ Property Owner

☐ Voter Registered at Address

PRINTED NAME

DATE



ORDINANCE NO. 872 EXHIBIT B  
WASHINGTON COUNTY  
OREGON

Item 16.

**CERTIFICATION OF REGISTERED VOTERS  
FOR ANNEXATION PURPOSES\***

I hereby certify that the attached petition for the annexation of the territory listed herein to the CITY OF WILLSONVILLE contains, as of the date listed, the following information:

1 Number of signatures of individuals on petition.  
0 Number of active **registered voters** within the territory to be annexed.  
0 Number of **VALID signatures of active registered voters** within the territory to be annexed, on the petition.

Tax lot number(s): 3S102B00600/ 601  
\_\_\_\_\_  
\_\_\_\_\_

DIVISION: ELECTIONS  
COUNTY: WASHINGTON  
DATE: November 16, 2021  
NAME: Angie Muller  
TITLE: Senior Administrative Specialist

Angie Muller  
(Signature of Election Official)



\*This 'Certification of Registered Voters for Annexation Purposes' DOES NOT, in any way, make the determination if this petition meets the annexation requirements of the city/district listed.

Annexation certification sht rev4-043009

# ORDINANCE NO. 872 EXHIBIT B

Item 16.

## CERTIFICATION OF PROPERTY OWNERSHIP FOR PETITION TO ANNEX TERRITORY INTO CITY OF WILSONVILLE

9710 SW Day RD, Washington County, OR 97140  
Address (See attached Legal Description)

3S 1 02B 00600, 00601  
Tax Map/Lot Numbers

I certify that the attached petition for annexation of the described territory to the City of Wilsonville contains the names of the owners\* of a majority of the land area of the territory to be annexed, as shown on the last available complete assessment roll.

\*Owner means the owner of the title to real property or the contract purchaser of the real property.

TED FOSTER  
Printed Name

GIS TECH  
Title

  
Signature

11/12/21  
Date

CARTOGRAPHY  
Department

Washington County, Oregon  
County

ANNEXATION CERTIFIED

BY TF

NOV 12 2021

WASHINGTON COUNTY A & T  
CARTOGRAPHY



Ordinance No. 872 Exhibit C  
Annexation Findings

Delta Logistics Site Expansion

City Council  
Quasi-Judicial Public Hearing

<b>Hearing Date:</b>	January 5, 2023
<b>Date of Report:</b>	December 20, 2022
<b>Application No.:</b>	ANNX22-0003 Annexation
<b>Request/Summary:</b>	City Council approval of a quasi-judicial annexation of approximately 9.17 acres for a warehouse/manufacturing building and associated site improvements.
<b>Location:</b>	9710 SW Day Road. The property is specifically known as Tax Lots 600 and 601, Section 2B, Township 3 South, Range 1 West, Willamette Meridian, Washington County, Oregon
<b>Owner/Applicant/ Petitioner:</b>	Delco Holdings, LLC, dba Delta Logistics, Inc. (Contacts: Vladimir Tkach, Igor Nichiporchik)
<b>Applicant's Representative:</b>	Mackenzie (Contact: Lee Leighton, AICP)
<b>Comprehensive Plan Designation:</b>	Industrial
<b>Zone Map Classification (Current):</b>	FD-20 (Future Development – 20 Acre)
<b>Zone Map Classification (Proposed):</b>	PDI-RSIA (Planned Development Industrial – Regionally Significant Industrial Area)
<b>Staff Reviewer:</b>	Cindy Luxhoj AICP, Associate Planner
<b>Staff Recommendation:</b>	<u>Approve</u> the requested annexation.

**Applicable Review Criteria:**

<b><u>Development Code:</u></b>	
Section 4.700	Annexation
<b><u>Comprehensive Plan and Sub-elements:</u></b>	
Citizen Involvement	
Urban Growth Management	
Public Facilities and Services	
Land Use and Development	
Plan Map	
Transportation Systems Plan	
Coffee Creek Master Plan	
<b><u>Regional and State Law and Planning Documents:</u></b>	
Metro Code Chapter 3.09	Local Government Boundary Changes
ORS 222.111	Authority and Procedures for Annexation
ORS 222.125	Annexation by Consent of All Land Owners and Majority of Electors
ORS 222.170	Annexation by Consent Before Public Hearing or Order for Election
Statewide Planning Goals	

**Vicinity Map**

**Background / Summary:**

The subject area has long been rural/semi-rural adjacent to the growing City of Wilsonville. Metro added the 216 +/- gross acre area now known as the Coffee Creek Industrial Area to the Urban Growth Boundary in 2002 to accommodate future industrial growth. To guide development of the area, the City of Wilsonville adopted the Coffee Creek Industrial Master Plan in 2007. In 2018, the City adopted the Coffee Creek Industrial Area Form-based Code and accompanying Pattern Book for future development in Coffee Creek. Annexation of the 9.17-acre subject property will enable development consistent with the Coffee Creek Master Plan.

All property owners in the annexation area have consented in writing to the annexation. There are no electors residing on the subject property.

**Conclusion and Conditions of Approval:**

Staff recommends the City Council annex the subject property with the following condition:

Request: Annexation (ANNX22-0003)

<b>PDA 1.</b> The annexation ordinance will expire in 120 days without approval of a Stage 2 Final Plan for the subject property.
---

**Findings of Fact:**

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

**General Information****Application Procedures-In General**  
Section 4.008

The City's processing of the application is in accordance with the applicable general procedures of this Section.

**Initiating Application**  
Section 4.009

The owners of all property included in the application signed the application forms. Delco Holdings, LLC, dba Delta Logistics, Inc., initiated the application with their approval.

**Request A: Annexation (ANNX22-0003)****Comprehensive Plan****Allowed Annexation**  
Implementation Measure 2.2.1.a.

- A1.** The land proposed for annexation is located within the UGB and within the Coffee Creek Master Plan area. This area has been identified for industrial development and the applicant proposes to construct public services including roadway improvements, necessary infrastructure, and utility services to the site in accordance with City of Wilsonville standards.

**Annexation Review Standards**  
Implementation Measure 2.2.1.e.

- A2.** Metro and the City of Wilsonville have identified the Coffee Creek area for industrial and employment land uses. The City has undertaken years of planning work to adopt zoning and other regulations to guide and direct such annexation, development, and land use. The applicant responds to applicable approval standards, guidelines, and criteria to demonstrate that the proposal is consistent with all the applicable Metro and State policies, plans, and regulations. The project will be developed with public facilities and services as identified in the City's Capital Improvement Plan, and which are adequate to serve the site. The project type and use matches the goals and objectives of the City within the Coffee Creek Industrial Area.



**Development Code****Authority to Review Annexation**

Subsections 4.030 (.01) A, 11, 4.031 (.01) K, and 4.033 (.01) F.

- A3.** The subject annexation request has been determined to be quasi-judicial and is being reviewed by the City Council consistent with these subsections.

**Annexation**

Section 4.700

- A4.** The applicant has met all submittal requirements and procedures described in this Section including submission of a petition, legal descriptions describing the land to be annexed, an analysis of the relationship with the Comprehensive Plan, state statutes, Statewide Planning Goals, and Metro plans.

**Annexations in the Coffee Creek Industrial Design Overlay District**

Subsection 4.700 (.02) A.

- A5.** The subject property is located within the Coffee Creek Industrial Design Overlay District and the applicant requests an annexation concurrently with a quasi-judicial Zone Map amendment consistent with the requirements of Subsection 4.197 (.02) A. The annexation will be reviewed by City Council without prior review or recommendation by the Development Review Board. The ordinance adopting the annexation request states that the annexation expires 120 days after adoption unless a Stage 2 Final Plan receives final approval for the area subject to annexation. A Public Hearing is currently scheduled for January 23, 2023, for the Stage 2 Final Plan to be reviewed by the Development Review Board.

**Metro Code****Local Government Boundary Changes**

Chapter 3.09

- A6.** A public hearing was scheduled within 45 days of completeness. Notice has been mailed and posted on the property 20 days prior to the hearing and includes the required information. The decision will be mailed to Metro and other required parties. A petition has been submitted including property owner information, jurisdictional information, and a legal description of the property.

**Oregon Revised Statutes****Authority and Procedure for Annexation**  
ORS 222.111

- A7. The owners of the property have initiated the annexation. An election is not required pursuant to ORS 222.120.

**Procedure Without Election by City Electors**  
ORS 222.120

- A8. The City charter does not require elections for annexation, the City is following a public hearing process defined in the Development Code, and the request meets the applicable requirements in State statute including the facts that all property owners and a majority of electors within the annexed area consent in writing to the annexation. Annexation of the subject property thus does not require an election.

**Annexation by Consent of All Owners of Land and Majority of Electors**  
ORS 222.125

- A9. All property owners and a majority of electors within the territory proposed to be annexed have provided their consent in writing. However, a public hearing process is being followed as prescribed in the City's Development Code concurrent with a Zone Map amendment request and other quasi-judicial land use applications.

**Oregon Statewide Planning Goals****Goals 1, 2, 5, 6, 8, 9, 11, 12, 13**

- A10. The area requested to be annexed will be developed consistent with the City's Comprehensive Plan and the Coffee Creek Master Plan, both of which have been found to meet the Statewide Planning Goals.

**ORDINANCE NO. 873**

**AN ORDINANCE OF THE CITY OF WILSONVILLE APPROVING A ZONE MAP AMENDMENT FROM THE WASHINGTON COUNTY FUTURE DEVELOPMENT – 20 ACRE (FD-20) ZONE TO THE PLANNED DEVELOPMENT INDUSTRIAL – REGIONALLY SIGNIFICANT INDUSTRIAL AREA (PDI-RSIA) ZONE ON APPROXIMATELY 9.17 ACRES LOCATED AT 9710 SW DAY ROAD FOR DEVELOPMENT OF A WAREHOUSE/MANUFACTURING BUILDING AND ASSOCIATED SITE IMPROVEMENTS.**

WHEREAS, an application has been submitted by Delco Holdings, LLC, dba Delta Logistics, Inc. – Owner/Applicant, in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code; and

WHEREAS, the subject site is located at 9710 SW Day Road, on Tax Lots 600 and 601, Section 2B, Township 3 South, Range 1 West, Willamette Meridian, Washington County, Oregon; and

WHEREAS, certain real property within the Coffee Creek Industrial Area is being annexed into the City; and

WHEREAS, the City of Wilsonville desires to have the properties zoned consistent with their Wilsonville Comprehensive Plan Map designation of “Industrial” and the Metro Title 4 Map Designation of Regionally Significant Industrial Area rather than maintain the current Washington County zoning designation; and

WHEREAS, the Zone Map Amendment is contingent on annexation of the property to the City of Wilsonville, which annexation has been petitioned for concurrently with the Zone Map Amendment request; and

WHEREAS, the property is located within the Coffee Creek Industrial Area for which the City adopted the Coffee Creek Master Plan on October 15, 2007, and the Coffee Creek Industrial Design Overlay District on February 22, 2018, intended for application to the Master Plan area; and

WHEREAS, pursuant to Section 4.197 of the Development Code this Zone Map Amendment ordinance expires 120 days from its effective date unless a Stage 2 Final Plan for the subject area is approved by the City; and

WHEREAS, the City of Wilsonville Planning Staff analyzed the Zone Map Amendment request and prepared a staff report for City Council, finding that the application met the requirements for a Zone Map Amendment and recommending approval of the Zone Map Amendment, included as Exhibit B; and

WHEREAS, on January 5, 2023, the Wilsonville City Council held a public hearing regarding the above described matter, wherein the City Council considered the full public record, including the City Council staff report; took public testimony; and, upon deliberation, concluded that the proposed Zone Map Amendment meets the applicable approval criteria under the City of Wilsonville Development Code.

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

- Section 1. Findings. The City Council adopts, as findings and conclusions, the forgoing Recitals and the Zone Map Amendment Findings in Exhibit B, as if fully set forth herein.
- Section 2. Determination. The official City of Wilsonville Zone Map is hereby amended, upon finalization of the annexation of the property to the City, by Zoning Order ZONE22-0004, attached hereto as Exhibit A, from the Washington County Future Development – 20 Acre (FD-20) Zone to the Planned Development Industrial – Regionally Significant Industrial Area (PDI-RSIA) Zone.
- Section 3. Effective Date. This Ordinance shall be declared to be in full force and effect thirty (30) days from the date of final passage and approval.

SUBMITTED by the Wilsonville City Council and read for the first time at a regular meeting thereof this 5<sup>th</sup> day of January, 2023, and scheduled the second reading on the 19<sup>th</sup> day of January, 2023 commencing at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

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Kimberly Veliz, City Recorder

ENACTED by the City Council on the 19<sup>th</sup> day of January, 2023, by the following votes:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

---

Kimberly Veliz, City Recorder

DATED and signed by the Mayor this 19<sup>th</sup> day of January, 2023.

---

JULIE FITZGERALD MAYOR

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Berry

Councilor Dunwell

Councilor Linville

EXHIBITS:

- A. Zoning Order ZONE22-0004 Including Legal Description and Sketch Depicting Zone Map Amendment
- B. Zone Map Amendment Findings

# ORDINANCE NO. 873 EXHIBIT A

Item 17.

## BEFORE THE CITY COUNCIL OF THE CITY OF WILSONVILLE, OREGON

In the Matter of the Application of )  
Delco Holdings, LLC, dba Delta Logistics, Inc. )  
for a Rezoning of Land and Amendment ) **ZONING ORDER ZONE22-0004**  
of the City of Wilsonville Zoning Map )  
Incorporated in Section 4.102 of the )  
Wilsonville Code. )

The above-entitled matter is before the Council to consider the application of ZONE22-0004, for a Zone Map Amendment and an Order, amending the official Zoning Map as incorporated in Section 4.102 of the Wilsonville Code.

The Council finds that the subject property ("Property"), legally described and shown on the attached legal description and sketch, has heretofore appeared on the Washington County zoning map Future Development – 20 Acre (FD-20).

The Council having heard and considered all matters relevant to the application for a Zone Map Amendment, finds that the application should be approved.

THEREFORE IT IS HEREBY ORDERED that the Property, consisting of approximately 9.17 acres located at 9710 SW Day Road, on Tax Lots 600 and 601, Section 2B, as more particularly shown and described in the attached legal description and sketch, is hereby rezoned to Planned Development Industrial – Regionally Significant Industrial Area (PDI-RSIA), subject to conditions detailed in this Order's adopting Ordinance. The foregoing rezoning is hereby declared an amendment to the Wilsonville Zoning Map (Section 4.102 WC) and shall appear as such from and after entry of this Order. This Zone Map Amendment expires 120 days from adoption unless a Stage 2 Final Plan for the subject area is approved by the City.

Dated: This 19<sup>th</sup> day of January, 2023.

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JULIE FITZGERALD, MAYOR

APPROVED AS TO FORM:

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Amanda Guile-Hinman, City Attorney

# ORDINANCE NO. 873 EXHIBIT A

Item 17.

ATTEST:

---

Kimberly Veliz, City Recorder

Attachment: Legal Description and Sketch Depicting Land/Territory to be Rezoned

# ORDINANCE NO. 873 EXHIBIT A



Item 17.

6950 SW Hampton St., Ste. 170  
Tigard, OR 97223-8330  
Ph.: (503) 941-9585  
Fax: (503) 941-9640  
www.weddlesurveying.com

April 13, 2021

Job No. 19-5727

## LEGAL DESCRIPTION FOR ANNEXATION



## EXHIBIT "A"

A tract of land for Annexation purposes in the S.W. 1/4 and the N.W. 1/4 of Section 2, Township 3 South, Range 1 West, W.M., Washington County, Oregon, described as follows:

Being all of that tract of land described in Statutory Quitclaim Deed to Delco Holdings, LLC recorded January 19, 2021 as Document No. 2021-006744, Washington County Records, more particularly described as follows:

Beginning at the Northwest corner of Lot 4 of "Edwards Business Industrial Park", thence along the Easterly right-of-way line of the Bonneville Power Administration Keeler-Oregon City No. 2 transmission line (100.00 feet wide), North 00°25'43" West, 92.96 feet to an angle point therein;

Thence continuing along said Easterly right-of-way line, North 44°39'31" West, 139.80 feet to a point in the Easterly line of that tract of land described in Statutory Warranty Deed to Don L. Smith, recorded February 4, 2005 as Document No. 2005-012635, Washington County Records;

Thence along the Easterly line of said Smith tract, North 00°38'06" West, 297.10 feet to the Southerly right-of-way line of S.W. Day Road, 37.00 feet from centerline;

Thence along said Southerly right-of-way line, North 89°34'05" East, 844.33 feet to a point in the Westerly line of that tract of land described in Statutory Warranty Deed to Newco Oregon Inc., recorded August 9, 2017 as Document No. 2017-063075, said County Records;

Thence leaving the Southerly right-of-way line of said S.W. Day Road, South 00°20'45" East, 490.09 feet to the Northerly line of Lot 2 of said "Edwards Business Industrial Park" in the City Of Wilsonville;

Thence along the North line of said Lot 2, the North line of "Commerce Circle Condominiums" and the North line of Lot 4 of "Edwards Business Industrial Park", South 89°33'25" West, 745.04 feet to the Point of Beginning.

Containing therein 9.17 acres, more or less.

The Basis of Bearing for this description is per Survey No. 33753, Washington County Survey Records.



S.W. DAY ROAD

N 89°34'05" E 844.33'

37'  
37'

# EXHIBIT 'B'

## CITY ANNEXATION

IN THE S.W. 1/4 AND THE N.W. 1/4  
SECTION 2, T.3S., R.1W., W.M.  
WASHINGTON COUNTY, OREGON



SCALE: 1" = 100'  
APRIL 13, 2021



DOC. NO.  
2021-006744

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Michael D. Rennick*

OREGON  
JULY 25, 1995  
MICHAEL D. RENNICK  
2718

EXPIRES: DECEMBER 31, 2022

490.09'

S 00°20'45" E

DOC. NO. 2017-063075

DOC. NO.  
2005-012635  
N 00°38'06" W 297.10'

N 44°39'31" W  
139.80'

N 00°25'43" W  
92.96'

POINT OF  
BEGINNING

"EDWARDS BUSINESS  
INDUSTRIAL PARK"

S 89°33'25" W 745.04'

"COMMERCE  
CIRCLE  
CONDOMINIUMS"

LOT 2



6950 SW HAMPTON ST., STE. 170, TIGARD, OR 97223  
PH: (503) 941-9585 FAX: (503) 941-9640  
www.weddlesurveying.net

JOB NO. 5727



Ordinance No. 873 Exhibit B  
Zone Map Amendment Findings

Delta Logistics Site Expansion

City Council  
Quasi-Judicial Public Hearing

<b>Hearing Date:</b>	January 5, 2023
<b>Date of Report:</b>	December 20, 2022
<b>Application Nos.:</b>	ZONE22-0004 Zone Map Amendment
<b>Request/Summary:</b>	City Council approval of a quasi-judicial Zone Map amendment of approximately 9.17 acres.
<b>Location:</b>	9710 SW Day Road. The property is specifically known as Tax Lots 600 and 601, Section 2B, Township 3 South, Range 1 West, Willamette Meridian, Washington County, Oregon
<b>Owner/Applicant:</b>	Delco Holdings, LLC, dba Delta Logistics, Inc. (Contacts: Vladimir Tkach, Igor Nichiporchik)
<b>Applicant's Representative:</b>	Mackenzie (Contact: Lee Leighton, AICP)
<b>Comprehensive Plan Designation:</b>	Industrial
<b>Zone Map Classification (Current):</b>	FD-20 (Future Development – 20 Acre)
<b>Zone Map Classification (Proposed):</b>	PDI-RSIA (Planned Development Industrial – Regionally Significant Industrial Area)
<b>Staff Reviewer:</b>	Cindy Luxhoj AICP, Associate Planner
<b>Staff Recommendation:</b>	<u>Adopt</u> the requested Zone Map amendment.

**Applicable Review Criteria:**

<b><u>Development Code:</u></b>	
Section 4.110	Zones
Section 4.134	Coffee Creek Industrial Design Overlay District
Section 4.135.5	Planned Development Industrial – Regionally Significant Industrial Area Zone
Section 4.197	Zone Changes
<b><u>Comprehensive Plan and Sub-elements:</u></b>	
Citizen Involvement	
Urban Growth Management	
Public Facilities and Services	
Land Use and Development	
Plan Map	
Transportation Systems Plan	
Coffee Creek Master Plan	
<b><u>Regional and State Law and Planning Documents</u></b>	
Statewide Planning Goals	

**Vicinity Map**

**Summary:**

The applicant, Delco Holding, LLC, dba Delta Logistics, Inc., requests a zoning designation consistent with the proposed Comprehensive Plan Map designation of "Industrial". In addition to the Comprehensive Plan Map designation of "Industrial", Metro's Title 4, Industrial and Other Employment Areas Map shows the subject property as a "Regionally Significant Industrial Area." Consistent with this designation the applicant proposes the property be zoned as Planned Development Industrial - Regionally Significant Industrial Area (PDI-RSIA).

**Conclusion and Conditions of Approval:**

Staff recommends approval with the following conditions:

Request: Zone Map Amendment (ZONE22-0004)

<b>PDB 1.</b>	This action is contingent upon annexation of the subject property to the City of Wilsonville (ANNX22-0003).
<b>PDB 2.</b>	The Zoning Order adopting this zone map amendment will expire in 120 days without approval of a Stage 2 Final Plan for the subject property.

**Findings of Fact:**

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

### General Information

#### Application Procedures-In General Section 4.008

The City's processing of the application is in accordance with the applicable general procedures of this Section.

#### Initiating Application Section 4.009

The owners of all property included in the application signed the application forms. Delco Holdings, LLC, dba Delta Logistics, Inc., initiated the application with their approval.

### Request B: Zone Map Amendment (ZONE22-0004)

**Development Code**

#### Zoning Consistent with Comprehensive Plan Section 4.029

- B1.** The property is designated "Industrial" by the Comprehensive Plan. The applicant requests a zone change concurrently with a Stage 1 Master Plan, Stage 2 Final Plan, and other related development approvals. The proposed zoning designation of Planned Development Industrial - Regionally Significant Industrial Area (PDI-RSIA) is consistent with the Comprehensive Plan "Industrial" designation, and Metro's Title 4, Industrial and Other Employment Areas Map, which shows the property as a "Regionally Significant Industrial Area".

#### Base Zones Subsection 4.110 (.01)

- B2.** The requested zoning designation of Planned Development Industrial - Regionally Significant Industrial Area (PDI-RSIA) is among the base zones identified in this subsection.

#### Overlay Zones Subsection 4.110 (.02)

- B3.** The Coffee Creek Industrial Design Overlay District applies to properties zoned PDI-RSIA in the Coffee Creek Industrial Area and will apply to the subject property upon rezoning.

**Standards for Planned Development Industrial-Regionally Significant Industrial Area Zone****Purpose of PDI-RSIA**

Subsection 4.135.5 (.01)

- B4.** The zoning will allow only industrial uses consistent with the purpose stated in this subsection.

**Uses Typically Permitted**

Subsection 4.135.5 (.03)

- B5.** The proposed zoning will allow only uses consistent with the list established in this subsection.

**Zone Map Amendment Criteria****Zone Change Procedures**

Subsection 4.197 (.02) A. 1.-3.

- B6.** The request for a zone map amendment has been submitted as set forth in the applicable Code sections. The property is located within the Coffee Creek Industrial Design Overlay District and will be reviewed by City Council without prior review or recommendation by the Development Review Board. The Zoning Order adopting this Zone Map amendment will expire in 120 days without approval of the Stage 2 Final Plan. Expiration is not anticipated as a public hearing is scheduled for January 23, 2023, before the Development Review Board to approve the Stage 2 Final Plan and other development related approvals.

**Conformance with Comprehensive Plan Map, etc.**

Subsection 4.197 (.02) B.

- B7.** The proposed Zone Map amendment is consistent with the Comprehensive Map designation of "Industrial".

**Public Facility Concurrency**

Subsection 4.197 (.02) C. 4. and 8.

- B8.** As part of Stage 2 Final Plan reviews, concurrency standards are or will be applied to projects in the area being rezoned. Based on existing nearby utilities and utility master plans, the Transportation System Plan, and the Coffee Creek Master Plan, necessary facilities are or can be made available for development of the subject property consistent with the proposed zoning.

**Impact on SROZ Areas**

Subsection 4.197 (.02) C. 5.

- B9.** Significant Resource Overlay Zone (SROZ) is located within the area to be rezoned. As part of the Stage 2 Final Plan, SROZ Map Verification and Significant Resource Impact Report (SRIR) Review for the project, standards of the SROZ will be applied to proposed projects

in the area being rezoned and any impacts of development on the SROZ will be mitigated appropriately.

#### Development within 2 Years

Subsection 4.197 (.02) C. 6.

- B10.** Concurrently submitted land use approvals for the Delta Logistics Site Expansion project expire after two (2) years, so requesting the land use approvals assumes development would commence within two (2) years. However, in the scenario where the applicant or their successors do not commence development within two (2) years, allowing related land use approvals to expire, the zone change shall remain in effect. The applicant indicates they will begin development within two (2) years.

#### Development Standards and Conditions of Approval

Subsection 4.197 (.02) C. 7.

- B11.** As can be found in the findings for the accompanying requests, the applicable development standards will be met either as proposed or as a condition of approval.