

RESOLUTION NO. 2383

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND THE CITY OF SALEM FOR THE PROCESSING OF SEWAGE SLUDGE

WHEREAS, The City is authorized to enter into this Agreement pursuant to ORS 190.010 (2011), and

WHEREAS, Wilsonville's wastewater treatment plant is undergoing major renovation and new construction that are affecting the plant's sludge handling capabilities, thereby affecting the ability to control odors from the plant, and

WHEREAS, to better control odors impacting surrounding neighborhoods during the construction effort, Wilsonville temporarily desires another treatment plant to process their waste sludge and primary sludge, and

WHEREAS, Salem has extra capacity at the Willow Lake Water Pollution Control Facility (Willow Lake) to accept Wilsonville's sludge, and is willing to accept Wilsonville's sludge in accordance with an Intergovernmental Agreement.

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

1. The recitals above are incorporated by reference as if fully set forth herein.
2. The City Manager is authorized to execute the Intergovernmental Agreement with the City of Salem which is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.
3. This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 19th day of November, 2012, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

| | |
|-------------------------|-----|
| Mayor Knapp | Yes |
| Council President Núñez | Yes |
| Councilor Goddard | Yes |
| Councilor Starr | Yes |
| Councilor Fitzgerald | Yes |

Attachments:

Exhibit A – Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT FOR ACCEPTING
WASTEWATER TREATMENT SLUDGE**

This Intergovernmental Agreement (Agreement) is hereby entered into by the CITY OF SALEM (Salem), an Oregon municipal corporation, and the CITY OF WILSONVILLE (Wilsonville), also an Oregon municipal corporation (hereafter may be referenced individually as "party" or collectively as "parties").

Recitals:

WHEREAS, The parties are authorized to enter into this Agreement pursuant to ORS 190.010 (2011), and

WHEREAS, Wilsonville's wastewater treatment plant is undergoing major renovation and new construction that are affecting the plant's sludge handling capabilities, thereby affecting the ability to control odors from the plant, and

WHEREAS, to better control odors impacting surrounding neighborhoods during the construction effort, Wilsonville temporarily desires another treatment plant to process their waste activated sludge and primary sludge, and

WHEREAS, Salem has extra capacity at the Willow Lake Water Pollution Control Facility (Willow Lake) to accept Wilsonville's sludge.

NOW, THEREFORE, in consideration of the following mutual promises and obligations, Salem and Wilsonville agree as follows:

Section 1. Salem Shall:

- A. Accept from the Wilsonville wastewater treatment plant up to 25,000 gallons per day of thickened waste activated sludge and primary sludge with no objects larger than 3/4 inch in diameter (hereafter "sludge") for disposal at Willow Lake. Exceptions for volume will be handled on a case-by-case basis.
- B. Provide a location at Willow Lake for Wilsonville to offload/discharge their sludge. Under normal operations, the provided location will be a sludge (scum) pit designated by Salem. The parties recognize that from time to time modifications may be needed to the scum pit to receive the discharge or Salem may need to designate another location for offloading/discharging. If a modification is needed or a new discharge location is to be designated, Salem agrees to provide Wilsonville with timely notification in accordance with paragraph 1D below.
- C. Prior to discharge of sludge into Willow Lake, sample and analyze Wilsonville's sludge for loading content on a daily basis. At least one composite metals test

will be performed monthly.

D. Notify Wilsonville of known modification(s) and repair (hereinafter “modification(s)) required at Willow Lake needed to receive Wilsonville's sludge, including, but not limited to, estimated costs of the modification(s) and time to construct. For known minor modification(s) having zero cost to Wilsonville, such as a simple relocation of discharge, 24 hour notice is requested; however, simple directions to the delivery driver may suffice. For known modification(s) that will need to be constructed and for which Wilsonville will need to pay per Section 2C below, 14 day prior notice shall be provided. Notification shall include, but not be limited to, estimated costs of modification and time to construct or shall provide a time when same can be provided. Notwithstanding the aforementioned notice schedule, the parties do not contemplate there will be many modifications, if any, but simply wish to provide a reasonable time schedule should any arise and a reasonable opportunity to solve any associated problems cooperatively.

E. Bill Wilsonville on a monthly basis for all disposal costs of Wilsonville's sludge at Willow Lake and for all tests performed as a result of Wilsonville's sludge. The bill shall be based on the following:

- a. A rate of \$0.05 per gallon of sludge delivered to Willow Lake; and
- b. Time and materials costs for – the monthly metal tests and analysis of Wilsonville's sludge. The daily testing and analysis costs are included in the above \$.05 per gallon charge;

Section 2. Wilsonville Shall:

- A. Deliver and discharge its sludge to the -location designated by Salem, from time to time, to off-load sludge.
- B. Pay to Salem all costs billed by Salem, as set forth in Section 1(-E), within 30 days of the date Wilsonville receives the bill.
- C. Pay for all modification(s) required at Willow Lake needed to receive Wilsonville's sludge; provided, Wilsonville has received the notification of modification(s) set forth herein and agreed to pay for same. .
- D. Provide Salem at least 24 hours advance notice for any schedule change.

Section 3. General Provisions.

A. *Third-Party Beneficiaries.* There are no intended third-party beneficiaries to this Agreement. Salem and Wilsonville are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement. However, both parties acknowledge and accept that Wilsonville has and retains the right to execute separate contractual arrangements with CH2M-Hill for operation of

Wilsonville's Wastewater Treatment Plant, including transport, delivery, and discharge of waste sludge to Salem's facilities. The scope of agreements between Wilsonville and CH2M-Hill shall in no way affect the rights and responsibilities of the parties to this Agreement.

B. *Compliance with Applicable Laws.* Both parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement.

C: *Force Majeure.* Neither party shall be held responsible for delay nor default caused by fire, riot, acts of God, war or any other cause beyond the reasonable control of either party, respectively; provided, however, that in no event shall force majeure affect any party's payment obligation hereunder. Each party shall, however, make all reasonable efforts to remove or eliminate any cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. The parties in the exercise of good faith shall agree upon adjustments to the schedule and compensation for any additional direct and indirect costs resulting from such delays under this Agreement.

D. *Survival.* All rights and obligations of the parties shall cease upon termination or expiration of this Agreement, except for the rights and obligations of a party for payment, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Agreement.

E. *Notice and Communication.* Any communications between the parties or notices to be given shall be given in writing by personal delivery, by mailing the same, postage prepaid, or by electronically confirmed facsimile transmission to the following:

City of Wilsonville

Delora Kerber, PE, Director of Public Works
29799 SW Town Center Loop E, Wilsonville, OR 97070

City of Salem

Robert Chandler, Director of Public Works
555 Liberty Street SE, Room 325, Salem OR 97302
Phone 503.588.6008 Fax 503.588.6387

Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

F. *Independent Contracting Parties.* The parties intend that the relationship created by this Agreement is that of independent contracting parties. Neither party hereto shall be deemed an agent, partner, joint venture, or related entity of the other by reason of this

Agreement. Each party agrees that its employees and contractor(s) are not the employees of the other party and are not eligible for any benefits from the other party, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

G. *Successors and Assigns.* No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement. Salem and Wilsonville each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Agreement.

H. *Severability.* The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

I. *Legal Review and Rules of Construction.* Each party has had the opportunity to have an attorney of their choosing review this Agreement and advise the Party of the benefits and consequences of signing this Agreement. This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of contract construction and evidence shall apply.

J. *Governing Law; Venue; Consent to Jurisdiction.* This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Salem and Wilsonville that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County.

K. *Merger Clause; Waiver.* This Agreement, including all attachments and law, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

L. *Indemnification.* Wilsonville shall defend, indemnify, and hold harmless Salem

from all liability for personal injury or damage to life or property related to or arising out of transport, delivery, or discharge of sludge to Willow Lake, save and except for liability arising out of the negligence or intentional acts of Salem, its officers, employees, and/or agents.

M. *Insurance.* Each party agrees to maintain insurance levels or self-insurance in accordance with the Oregon Tort Claims Act for the duration of this Agreement at levels necessary to protect the public body from liability. Each party shall notify the other if a claim is made against the other pertaining to matters related to this Agreement.

N. *Execution of Agreement.* This Agreement may be executed in two or more counterparts each signed by their respective parties, each of which shall constitute an original, and all of which together shall constitute one and the same Agreement.

O. *Term and Termination.* The term of this Agreement shall start on the date of the last signature hereon. Salem or Wilsonville may terminate this Agreement by written mutual consent of the parties or upon either party providing upon not less than thirty days (30) days written notice to the other party and specifying the termination date.

IN WITNESS WHEREOF, the parties have, by approval of their respective governing bodies, caused this Agreement to be executed:

CITY OF SALEM

CITY OF WILSONVILLE

By: _____

By: _____

(Print Name) _____

Bryan Cosgrove
As Its: City Manager

As Its: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

_____, City Attorney
City of Salem, Oregon

Michael E. Kohlhoff, City Attorney
City of Wilsonville, Oregon