

RESOLUTION NO. 2628

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO: (1) THE FIRST AMENDMENT TO AGREEMENT REGARDING WATER TREATMENT PLANT DESIGN, CONSTRUCTION, OPERATION, AND PROPERTY OWNERSHIP; (2) THE WILLAMETTE WATER SUPPLY SYSTEM INTAKE FACILITY AGREEMENT WITH TUALATIN VALLEY WATER DISTRICT; AND (3) THE GROUND LEASE FOR RAW WATER PIPELINE WITH TUALATIN VALLEY WATER DISTRICT AND THE CITY OF HILLSBORO

WHEREAS, the City of Wilsonville (“Wilsonville”) and the Tualatin Valley Water District (TVWD) are the original and current owners in the Wilsonville Willamette River Water Treatment Plant (WRWTP) land and facilities, including the current Willamette Intake Facilities (WIF); and

WHEREAS, on or about July 6, 2000, Wilsonville and TVWD entered into an Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership (the “Agreement”) for the WRWTP that currently serves Wilsonville and Sherwood, and pursuant to that Agreement the WRWTP was constructed, and

WHEREAS, the Agreement provides for a transfer of the Managing Owner position from Wilsonville to TVWD if Wilsonville’s usage from the WRWTP is less than fifty percent (50%) of the total usage, but Wilsonville has continuously been the designated Managing Owner, managing the WRWTP since its construction, and desires to retain that position; and

WHEREAS, TVWD has determined, for seismic reasons and other considerations, that it will build a water treatment facility of its own; and

WHEREAS, TVWD, along with the City of Hillsboro and potentially other units of local government, plans to build the new water treatment facility at a location other than the WRWTP; and

WHEREAS, TVWD will most likely not obtain finished drinking water from the WRWTP but will retain ownership in the WRWTP and desires to use the WIF to serve its new plant; and

WHEREAS, TVWD intends to pump raw water from the river through the WRWTP WIF to its new, yet to be constructed, water treatment plant to be built at an undisclosed location in Washington County, with themselves and Hillsboro as the primary users of the new plant; and

WHEREAS, although Wilsonville stands to gain no use rights of the new raw water pipeline or new plant and only limited beneficial use of the intake facility upgrades, Wilsonville is amenable to allowing the foregoing for the benefit of other local governments in the region and the consideration set forth in the agreements referenced below; and

WHEREAS, Wilsonville, TVWD, and the City of Hillsboro (the “Parties”) have undertaken arm’s length negotiations for a period in excess of two years with regard to the terms and conditions of a Ground Lease, First Amendment, and Intake Agreement (“Water Agreements” described below), the Parties are satisfied that the terms and conditions are reasonable and rational given the impacts and benefits to be incurred; and

WHEREAS, The Parties are authorized to enter into the Water Agreements under the authority of ORS Chapter 190, ORS 271.310, and ORS 271.380; and

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

1. Wilsonville will lease to TVWD and Hillsboro (“Lessors”) a large area of land (primarily below the ground surface) in which to place an approximately six-foot (6’) diameter raw water pipeline approximately eight feet (8’) underground, stretching for approximately three (3) miles through Wilsonville. The Lease Term will be for 99 years.
2. In consideration of the Lease, Lessors will pay Wilsonville rent in the total cash amount of Seventeen Million One Hundred Eighty-Four Thousand One Hundred Twenty-Seven Dollars (\$17,184,127). Lessors will pay this rent in annual installments of \$173,577, payable in advance of each fiscal year, retroactive to July 1, 2016, and every July 1 up to and including on July 1, 2025. On July 1, 2026, a final lump sum rent payment in the amount of \$15,448,357 will be paid to Wilsonville. Construction is expected to be completed by no later than July 1, 2026.
3. As additional consideration, Lessors will make a minimum of six (6) significant infrastructure improvements to Wilsonville streets, which will benefit Wilsonville, as outlined in the attached Ground Lease, as Lessors construct in those various areas. Additionally, there will be other joint construction projects that Lessors will contribute to, to be negotiated at the time of the projects.
4. Lessors will also provide seismic upgrades to the existing intake facility owned by TVWD and Wilsonville, at TVWD’s expense, as well as some other seismic

improvements that will benefit Wilsonville's existing plant, at no financial cost to Wilsonville.

5. Although TVWD will continue to retain co-ownership in the existing WRWTP and land with Wilsonville, the Agreement between Wilsonville and TVWD will be amended to provide that Wilsonville will become the Managing Owner of the WRWTP in perpetuity unless Wilsonville elects to resign from that position.
6. The First Amendment adds a new section that provides that Wilsonville will give TVWD and the other municipalities an easement to run from the current WIF location westerly along the Willamette River, and then northerly through the property owned by TVWD and Wilsonville, in an exact location to be agreed upon by Wilsonville and TVWD ("Easement Agreement"). The Easement Agreement will also include area for several aboveground structures that will take up approximately two acres, as currently configured.
7. TVWD, as co-owner of the WRWTP real estate, will dedicate right-of-way to Wilsonville for an extension of Kinsman Road through a portion of the property, yet to be determined, for the future Boones Ferry Road to Brown Road east-west connector road and the Kinsman extension to the connector road.
8. After the effective date of the Water Agreements, TVWD agrees to pay a pro rata share of certain repairs and all improvements needed to the existing WIF, based on ownership rather than usage. The July 6, 2000 Agreement put all responsibility for such repairs on the users of the WRWTP (Wilsonville and Sherwood only).
9. Pursuant to negotiations, it has been agreed that Wilsonville will receive an additional five million gallons per day (5 MGD) in exchange for the Easement Agreement discussed above and a payment not to exceed \$125,000 to TVWD, based on actual cost to upgrade and permit the expanded WIF. Wilsonville is getting credit for the screen and permitting already done and is the only entity whose buy-in price is capped.
10. The City Manager is authorized to sign the Water Agreements in substantially the form as presented, with latitude to make minor revisions to reflect construction variances and clarifications.

11. This Resolution will become effective and is contingent upon the approval by City Council of an Intergovernmental Agreement for the Intake Facility, anticipated to occur on or about July 2017.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 1st day of May, 2017, and filed with the Wilsonville City Recorder this date.


TIM KNAPP, MAYOR

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

Attachments:

Exhibit A: Ground Lease for Raw Water Pipeline
Exhibit B: First Amendment to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership
Exhibit C: Willamette Water Supply System Intake Facility Agreement

GROUND LEASE FOR RAW WATER PIPELINE

This Ground Lease (the “Lease” or “Agreement”) is entered into effective the ____ day of _____, 2017 (the “Effective Date”), by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (hereinafter referred to as “Lessor”), the **City of Hillsboro**, a duly chartered home rule municipal government of the State of Oregon, and the **Tualatin Valley Water District** (“TVWD”), a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (hereinafter jointly and severally referred to as “Lessee”), for a raw water transmission pipeline under the following terms, conditions, and limitations. Lessor and Lessee may be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

- A.** The Parties are authorized to enter into this Lease under the authority of ORS Chapter 190, ORS 271.310, and ORS 271.380.
- B.** The Parties have undertaken arm’s length negotiations with regard to the rents, terms, and conditions of this Lease and, given the respective public interests to be furthered, and taking into consideration the various circumstances, are satisfied that the terms and conditions are reasonable and rational given the impacts and benefits to be incurred.

NOW, THEREFORE, incorporating the above Recitals as if fully set forth below, the Parties agree as follows:

AGREEMENT

1. PROPERTY.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the land described in **Section 2** to construct, reconstruct, operate, maintain, repair, replace, and remove a pipeline and necessary appurtenances for the transportation of raw water from the Willamette River to a treatment facility outside the City of Wilsonville, subject to all the terms, conditions, and provisions of this Lease.

2. DESCRIPTION OF LEASE AREA AND PROJECT AREA.

2.1. **Lease Area.** The leased property (“Lease Area”) is generally described as an area of subsurface land that begins in an area that, unless allowed otherwise in accordance with **Section 3.3**, will be a minimum of eight (8) feet below ground surface, is twelve (12) feet wide, and can range in depth from fourteen (14) to twenty-one (21) feet from the surface in order to house a 66 inch pipeline, together with such land as described below to reasonably accommodate appurtenances such as vent pipes, meters, vaults, and their screening, as may be required by Lessor

under its regulations or otherwise agreed to by the Parties. The minimum depth may be adjusted by Lessor, as provided in **Section 3.3**. See **Section 2.4** for a more detailed description of the Lease Area.

2.2. **Project Area.** The Project Area is composed of the following: Lease Area and all of the area located above it, plus Temporary Construction Areas during any given period of construction (“Project Area”). The Project Area, like the Lease Area, will expand as the construction progresses.

2.3. **Temporary Construction Areas.** At the time 30% construction plans required for initial construction, or for any subsequent maintenance, repair, reconstruction, or removal, are submitted by Lessee to Lessor for Lessor’s approval, Lessee shall request use of any needed reasonable adjacent area, which shall be added to the Project Area, for the temporary time to conduct construction, maintenance, repair, reconstruction, or removal of the pipeline and any appurtenances and screening. Lessor’s approval of the area shall not be unreasonably withheld, provided such area is located adjacent to the Project Area and does not interfere with Lessor’s use of the area or with any other third-party’s use of the area with a prior right to use the requested area. Upon Lessor’s approval, the area shall be included in the Project Area. Such approval shall not be deemed a waiver of any other condition or obligation regarding construction, maintenance, repair, reconstruction, or removal as provided for in this Lease.

2.4. **Description and Location of Lease Area.** The pipeline route map within the City of Wilsonville provides a general overall location of the Lease Area and Project Area. The map is marked **Exhibit A**, attached hereto, and incorporated by reference as if fully set forth herein. The City of Tualatin and Lessor have reached a preliminary agreement on a northern boundary between the two cities, along the center line of the proposed Basalt Creek Parkway. Subject to the final approval of the boundary agreement between the two cities, the northern terminus of the pipeline within Wilsonville is anticipated to be at the intersection of the Basalt Creek Parkway and Grahams Ferry Road. The southern terminus is intended to extend beyond the intersection of Wilsonville Road and Kinsman Road to tie into a raw water pipeline to be constructed over, under, and across the Willamette River Water Treatment Plant (“Treatment Plant”) site. The exact route and depth between the Treatment Plant site and the intersection of Wilsonville Road and Kinsman Road is being planned. Therefore, the Parties agree that at the time the proposed as-built plans are submitted to Lessor for the constructed pipeline and its appurtenances, Lessee shall also submit to Lessor a metes and bounds description of the Lease Area, prepared by a surveyor registered and licensed to do business in the State of Oregon. This legal description, together with the as-built plans showing the location of the pipeline and the appurtenances, will be marked as **Exhibits B and B-1**, considered as if attached hereto, and incorporated by reference as if fully set forth herein.

2.5. **Private Easement Areas.** Lessee has or will acquire certain private easement rights for Lessee’s pipeline and appurtenances within the City of Wilsonville, along certain parts of the route described in **Exhibit A**. Lessee shall use best efforts to provide Lessor with a copy of such easements, but inadvertent failure to do so shall not be deemed a violation of this Lease.

2.6. **Willamette River Water Treatment Plant Site.** The raw water pipeline segment over, under, and across the Treatment Plant site referenced in **Section 2.4** is not a part of the Lease

Area and is being addressed in a separate agreement by the Parties. Additionally, Lessor will require a right-of-way dedication for an extension of Kinsman Road through a portion of the Treatment Plant site for the future Boones Ferry Road to Brown Road east-west connector road and the Kinsman Road extension to the connector road. TVWD and Lessor, as joint owners of the Treatment Plant site, agree to execute a roadway dedication to the City of Wilsonville, with the location to be coordinated, determined, surveyed, and dedicated on or about July 1, 2017.

3. PURPOSE AND LIMITATIONS ON USE OF LEASE AREA.

3.1. **Permitted Use.** Lessee may install, operate, maintain, repair, replace, and remove one pipeline, to be owned and operated by Lessee at all times, with a maximum diameter of 66 inches, and a pressure range to be provided as soon as it can reasonably be calculated by Lessee. The pipeline shall only be used for the transportation of raw water from the Willamette River at the current point of diversion of the Treatment Plant intake supply facility. Lessee represents that the pressure will be significantly less than the pressure that would be required for treated water flow. Excepting appurtenances as otherwise described in this Lease, all of the pipeline located on Lessor's property must be located within the Lease Area.

3.2. **Compliance with Laws and Regulations.** Lessee will comply with all applicable laws, ordinances, rules, and regulations of the United States, State of Oregon, City of Wilsonville, County of Clackamas, County of Washington, and all other government authorities with jurisdiction over the Project Area, including, but not limited to, local fire codes, zoning regulations, and occupancy codes.

3.3. **Depth.** Lessor retains sole discretion to approve the depth of the pipeline based on current and future planned utility lines, allowing for reasonable conservative separation of lines to allow for installations, repairs, replacements, and removals. Except as otherwise provided herein, the top of the pipeline shall be a minimum of eight (8) feet from the surface (after construction and settlement), or the minimum depth as may be required by any applicable regulation, whichever is greater. Notwithstanding the foregoing, Lessor is aware that several existing utility lines may conflict with this minimum eight (8) foot depth. Therefore, in all cases, Lessee's pipeline must be located below existing water, sanitary, and storm utilities that cross the proposed alignment for the pipeline. Where the pipeline and Lease Area run parallel with existing utilities, pipeline installation depth and location must conform to the minimum depths specified herein, or with other depth and separation distance criteria as found in the City of Wilsonville Public Works Standards, if greater. Additionally, Lessor has planned deep sewer extensions in Garden Acres Road, Grahams Ferry Road, and Day Road that may conflict with the proposed general alignment and depth criteria of the Lease Area. Therefore, during preliminary design of the pipeline within or impacting these three (3) roads, Lessee must work with Lessor to coordinate pipeline design efforts to be consistent with the Lessor's planned utilities and must either modify the installed depth in these areas, as approved in writing by Lessor, as needed for the future gravity sewer lines serving the planned new developments in the Basalt Creek and Coffee Creek Planning Areas, or adjust the location of the pipeline within these segments of the right-of-way. This project and others will be addressed as provided in **Section 7.33**. Finally, there may be segments of the pipeline where the Parties mutually agree, in writing, that the depth can be less than the minimum eight (8) feet, and that will be determined during Lessor's design and plan review, as described in **Section 7.5**; provided, however,

that Lessor expects that the pipe, for the most part, should be at a generally consistent depth level. Once Lessor has approved the depth of any segment of the line, Lessor and Lessee shall both be entitled to rely upon that depth approval and it will not be changed without mutual agreement of both Parties.

3.4. **Appurtenances.** There shall be no surface or subsurface appurtenances to the pipeline (including, but not limited to, valves, vent pipes, meters, screens, fences, or signs) other than as specifically provided in 90% construction plans approved, in writing, by Lessor, or as otherwise agreed to by the Parties, in writing.

3.5. **Other Uses and Easements.** The Lease Area shall be used by Lessee only for the purposes set forth in this Lease. No other uses are allowed. Lessor may lease or grant easements, franchise agreements, or other rights of use to other parties or to itself over, along, under, or across the Lease Area (“Other Allowed Uses”); provided, however, such Other Allowed Uses do not materially interfere with Lessee’s Permitted Use. To the extent there are existing ingress and egress accesses and/or existing leases, easements, or franchises over, under, along, across, or above the Lease Area, Lessee shall locate and construct its pipeline in a manner that will not interfere with those existing uses. If Lessee damages any other utilities or improvements located within the Project Area or any Temporary Construction Areas, Lessee must immediately repair such damage, at Lessee’s expense. Lessor will not be responsible for any delay caused by another utility located within or about the Lease Area. One of the purposes of the eight (8) foot depth from the surface for the pipeline is in recognition of existing road surface and subsurface and that other utility services may exist or may need to be provided for over and across the Lease Area to service adjacent development. Lessor shall notify Lessee, in writing, of any such proposed additional use. Lessee shall provide to Lessor, within fifteen (15) Business Days of receipt of the notice, Lessee’s written consent, which shall not be unreasonably withheld. If Lessee objects, Lessee will provide a written statement as to why the proposed additional use will interfere with Lessee’s Permitted Use and will also indicate if Lessee believes there are any conditions that could be imposed that would allow Lessee to approve the other use, subject to those suggested conditions. If Lessee does not respond within the fifteen (15) Business Days, Lessee will be deemed to have consented to the proposed additional use, which will then be considered an Other Allowed Use. In the event of a disagreement, the Parties shall follow the dispute resolution process set forth in **Section 15**. Lessee shall have no right to provide additional leases, subleases, easements, or grants of use of any kind to the Lease Area; provided, however, this prohibition does not prevent Lessee from selling or otherwise transferring all or a portion of its right, title, and interest in the pipeline and Lease Area to another governmental entity, upon notice to Lessor and assumption of this Lease by such other governmental entity. In such case, Lessee shall be required to follow the assignment process set forth in **Section 20.2**.

3.6. **Lessor’s Use of Lessor’s Property.** Lessor retains, reserves, and shall continue to enjoy use of all of Lessor’s properties not located within the Lease Area, including the Project Area. If Lessor shall become owner of all or any part of any property where the pipeline is located, then any such property shall become a part of the Lease Area and subject to the terms and conditions of this Lease. Lessee shall execute all instruments that may be necessary or appropriate to effectuate this additional area’s inclusion in this Lease. Lessor reserves the right for the Lessor’s public purposes, at Lessor’s expense, to relocate the Lease Area or any part of the Lease Area and the

pipeline installed therein; provided that relocation can be accomplished to Lessee's satisfaction, that any disruption is minimal and without loss of service, and the relocated Lease Area and pipeline can be reasonably used for its intended purpose by Lessee. Lessor may exercise this right by giving Lessee a minimum of one hundred eighty (180) calendar days' prior written notice of the intention to relocate any portion of the Lease Area and pipeline and to coordinate a relocation plan with Lessee.

4. TERM.

The term of this Lease shall commence on the Effective Date of this Lease, and terminate on June 30, 2115 ("Expiration Date").

5. RENT FOR TRIPLE NET LEASE.

5.1. Rent in the sum of Seventeen Million One Hundred Eighty-Four Thousand One Hundred Twenty-Seven Dollars (\$17,184,127) shall be paid as follows:

5.1.1. Retroactive to July 1, 2016, Lessee shall pay to Lessor annual rent of One Hundred Seventy-Three Thousand Five Hundred Seventy-Seven Dollars (\$173,577), due in advance each July 1, up to and including July 1, 2025. In recognition of the prior Memorandum of Agreement between the Parties that allowed a segment of the pipeline to be constructed as part of the Kinsman Road extension project construction to proceed in advance of this Agreement, and in acknowledgment that this Agreement satisfies the Memorandum of Understanding as to user fee charges, the Construction Period for purposes of the Lease Term shall run from July 1, 2016 (the "Commencement Date") through June 30, 2026. The first Rent payment, for July 1, 2016, is due and payable within thirty (30) days of the Effective Date.

5.1.2. On or before July 1, 2026, the remaining balance of the Rent shall be prepaid to Lessor in the sum of Fifteen Million Four Hundred Forty-Eight Thousand Three Hundred Fifty-Seven Dollars (\$15,448,357) ("Lump Sum"). Payment of the amounts set forth in **Subsections 5.1.1 and 5.1.2** shall constitute all of the Rent due for the Lease Area, including any land where Lessor's pipeline is already located that may be acquired by Lessor in the future.

5.2. **Triple Net Lease.** This is a triple net lease, meaning Lessor will have no responsibility to make any expenditure in conjunction with the Lease Area. Lessee is responsible to pay any taxes, as set forth in **Section 5.10**, insurance, utilities, repairs, replacements, or any other costs associated with the Lease Area.

5.3. **AS IS.** The Lease Area is being leased in absolute AS IS condition and subject to other utilities and improvements located within the Lease Area. Lessor is not responsible for any site condition, including, but not limited to, any environmental site conditions encountered by Lessee in its construction, except as otherwise provided in **Section 11.2**. Lessee will be responsible for reporting any such conditions and remediating any such site conditions in accordance with state and federal law, at Lessee's expense.

5.4. **Additional Consideration.**

5.4.1. Lessee will be investing in seismic upgrades to the Treatment Plant site to protect its respective share of raw water intake facilities (“Intake Facilities”). Lessor owns a portion of the Intake Facilities. The site is currently owned by Lessor and TVWD. The Parties agree that Lessee shall undertake the seismic upgrade work, that the seismic upgrade work shall be completed by July 1, 2026, and that Lessee shall pay the entire cost of the upgrade, including Lessor’s entire share. Lessor will cooperate with Lessee, as reasonably requested by Lessee, to obtain federal and state grants to help fund the costs of the seismic upgrade.

5.4.2. Lessee also agrees to make those right-of-way enhancements commensurate with pipeline construction, as described in **Section 7.29** and City of Wilsonville requirements set forth in the **Public Works Plan Submittal Requirements and Other Engineering Requirements Revised for Willamette Water Supply Program Plan Submittals** (and any subsequent amendments thereto), attached hereto as **Exhibit C** and incorporated by reference as if fully set forth herein. In return, Lessor shall limit its public works permit fees to actual costs plus eight percent (8%).

5.4.3. Lessor and TVWD agree that Section 6.1 of the *Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership*, dated July 6, 2000, by and between the City of Wilsonville and Tualatin Valley Water District, shall be amended to provide that Wilsonville shall be designated as the managing owner, with full operation and control of the Treatment Plant that is the subject thereof, as more particularly set forth in that amendment to be entered into contemporaneously herewith. Additionally, a separate agreement shall be entered into by the Parties and other municipal parties concerning the governance, management, cost-sharing, operation, maintenance, repair, and replacement of the Intake Facilities prior to construction of the Intake Facilities.

5.5. **Security Deposit.**

5.5.1. Amount of Security Deposit. Upon execution of this Lease, Lessee will deposit with Lessor, and continuously maintain, a “Security Deposit” in the amount of Five Hundred Thousand Dollars (\$500,000) through final completion of the pipeline until it is placed into use and has been in use for a period of one (1) full year, and until full payment of all Rent has been received by Lessor, in the form set forth in **Subsection 5.5.3** below. Thereafter, the Security Deposit will be required to be reinstated in the event of a material violation of this Lease which is not promptly corrected by Lessee, as provided in **Subsection 13.1.1, 13.1.2, or 13.1.3.**

5.5.2. Increase in Security Deposit Based on Changes in Index. Five (5) years from the Effective Date, and every ten (10) years thereafter, the Security Deposit will be increased by a percentage equal to the percentage increase in the CPI-U, as defined in **Subsection 5.5.5**, measured from the Effective Date.

5.5.3. Form of Security Deposit. The Security Deposit must be in the form of a continuously maintained irrevocable standby letter of credit (the “Letter of Credit”), drawn on a bank reasonably acceptable to Lessor, in a form reasonably acceptable to Lessor, and with drawing instructions reasonably acceptable to Lessor.

5.5.4. Use of Security Deposit. The Security Deposit secures Lessee’s full and faithful performance and observance of all of Lessee’s obligations under this Lease and under any other written agreement between Lessee and Lessor specifically referring to the Security Deposit. Lessor may, but will not be obligated to, after ten (10) Business Days’ advance written notice is delivered to Lessee in accordance with **Section 18**, draw on and apply the Security Deposit to: (a) pay any delinquent Rent not paid within the applicable time period; and/or (b) remedy any violation of this Lease Lessee has failed to timely cure, as provided in **Subsection 13.1.3**. Lessor may additionally draw on the entire Security Deposit immediately, without notice to Lessee, upon receipt of a notice of nonrenewal of the Letter of Credit. If Lessor applies any of the Security Deposit to any of the above, Lessee will, immediately upon demand, replenish the Security Deposit to its full amount. If Lessee fully performs all of its obligations under this Lease, any Security Deposit then in effect may be cancelled within thirty (30) days after the Expiration Date or earlier termination of this Lease and delivery of the restored Lease Area back to Lessor, including removal of the pipeline, as described in **Section 12**. However, if a reasonable question exists concerning Lessee’s full compliance with this Lease, or if there is any obligation under this Lease to be performed after the Expiration Date or earlier termination of this Lease, Lessor may require that the Security Deposit remain in place until Lessor is satisfied that there has been no violation of this Lease and all obligations due under this Lease have been fully performed, even if it takes Lessor longer than thirty (30) days to make such a determination to Lessor’s reasonable satisfaction.

5.5.5. Consumer Price Index. The Consumer Price Index Rate will be an amount calculated by increasing the then-current Security Deposit amount by a percentage equal to Lessor’s calculation of the percentage change over the period from the Commencement Date to the Adjustment Date of the “Consumer Price Index—U.S. City Average for all Items for All Urban Consumers (1982 through 1984=100)” published in the *Monthly Labor Review* by the Bureau of Labor Statistics of the United States Department of Labor (“CPI-U”), using the CPI-U most recently published sixty (60) days before the Adjustment Date as the ending date of the adjustment period. In the event that the change in the CPI-U for the relevant period decreases, the Security Deposit will remain unchanged. If this Index is no longer in use, then the index or like measuring device as designated by the United States Government shall apply.

5.6. **Late Charge.** If Lessee fails to pay any Rent required to be paid under this Lease within ten (10) Business Days after it is due, Lessor may elect to impose a late charge of the higher of twelve percent (12%) of the overdue payment or the highest rate allowed by Oregon law at the time the payment becomes past due. Lessor’s election not to impose a late charge in any instance does not waive Lessor’s other rights and remedies for the late payment nor Lessor’s right to later charge and collect a late charge for the late payment or any other overdue amount. Acceptance of payment of a late charge by Lessor will not constitute a waiver of Lessee’s default with respect to

the overdue amount in question, nor will it prevent Lessor from exercising any other rights or remedies granted under this Lease, by law or in equity.

5.7. **Lessee's Payment of Rent.** Lessee's payment of Rent does not constitute a waiver of Lessee's right to allege default by Lessor or otherwise preclude Lessee from seeking enforcement of Lessor's obligations or exercising any other right or remedy granted under this Lease, by law, or in equity.

5.8. **Time and Place of Payments.** Lessee will pay Rent to Lessor, in advance, as set forth in this **Section 5**, without abatement, deduction, or offset. Rent will be paid on or before the due date. Payment of all Rent will be made to Lessor, Attention Finance Director, to the address set forth in **Section 18** or such other place as Lessor may designate in accordance with the requirements of **Section 18**.

5.9. **Partial Payment of Rent.** Lessor's acceptance of a partial payment of Rent does not constitute a waiver of any Event of Default (defined in **Section 13**), nor does it prevent Lessor from exercising any of its other rights and remedies granted to Lessor under this Lease, by law or in equity. Any endorsements or statements on checks of waiver, compromise, payment in full, or any other similar restrictive endorsement will have no legal effect. Lessee will remain in violation of the rental terms of this Lease and will remain obligated to pay all Rent due, even if Lessor has accepted a partial payment of Rent. Acceptance of a late but full payment of Rent, including all interest and late charges, will constitute a waiver and satisfaction of that late payment only, and does not constitute a waiver of any rights related to any other late payment, violation, or other Default under this Lease.

5.10. **Taxes.** In the event any real or personal property taxes are imposed upon Lessor or Lessee by any governmental body, other than Lessor, by reason of the pipeline or this Lease, Lessee shall assume and pay all such taxes. Lessee agrees to pay, on or before the date they become due, all taxes, assessments, special assessments, user fees, and other charges, however named, that, after the Effective Date and before the expiration of this Lease, may become a lien or that may be levied by any state, county, city, district, or other governmental authority (other than Lessor) on the Lease Area, any interest of Lessee acquired under this Lease, or any possessory right that Lessee may have in or to the Lease Area or Project Area by reason of its occupancy thereof, as well as all taxes, assessments, user fees, or other charges on all property, real or personal, owned or leased by Lessee in or about the Lease Area (collectively, "Taxes"), together with any other charge levied wholly or partly in lieu thereof. To the extent that Lessee qualifies for tax-exempt status with regard to any Taxes described herein, Lessee may apply for an exemption; however, until a written exemption is obtained and presented to Lessor, Lessee will pay all Taxes due under this **Section 5.10**. If Lessee fails to pay Taxes before any delinquency, then, in addition to all other remedies set forth in this **Section 5.10**, Lessor will automatically have the right, but not the obligation, to pay the Taxes and any interest and penalties due thereon, any time after Lessor gives Lessee ten (10) Business Days' written notice that Taxes are past due and Lessee continues to fail to pay the past due Taxes within that ten (10) Business Day period. Lessee will immediately reimburse Lessor for any sums so paid.

6. OPTION TO NEGOTIATE NEW LEASE.

If the pipeline is still in good, safe condition and repair and if the pipeline continues to be in continuous and primary use for its intended purposes, then commencing July 1, 2096, and continuing through December 31, 2096, Lessee may notify Lessor, in writing, that Lessee wishes to enter into negotiations for a new ground lease. Lessor shall then set a date, within sixty (60) days of the date of the written notice provided by Lessee, to begin negotiations for a new lease. The Parties shall have until June 30, 2099 to reach agreement on a new lease and, if agreement is reached, the new lease must be fully executed on or before the Expiration Date of this Lease.

7. LESSEE OBLIGATIONS DURING CONSTRUCTION.

7.1. **Lessor's Project Manager.** Lessor's current Project Manager is Eric Mende, P.E. Lessor shall give Lessee prompt written notice of any redesignation of its Project Manager. In addition to a Project Manager, Lessor may have a full time construction oversight inspector on site (On-Site Inspector) and if Lessor elects to do so, Lessor will supply Lessee with contact information for the On-Site Inspector.

7.2. **Lessee's Project Manager.** Lessee's current Project Manager is Mike Britch, P.E. In the event that Lessee's Project Manager is changed, Lessee shall give Lessor prompt written notification of such redesignation.

7.3. **Project Authority.** In the event Lessor or Lessee receives any communication from the other that is not directly from the Project Manager, the Party receiving the communication shall request verification from the other Party's Project Manager, which verification must be promptly furnished. In the event of any dispute or disagreement with any observation of the On-Site Inspector, however, such dispute will be communicated to and addressed by Lessor's Project Manager.

7.4. **Project Schedule.** Lessee shall provide Lessor with a projected overall construction schedule for the pipeline that identifies the preliminary schedule for design and construction of all discrete segments or phases. The overall construction schedule shall also identify Lessee's desired sequencing of any segments or phases, i.e., which segments or phases need to come before any subsequent segments or phases and the estimated time period which Lessee forecasts will be required to complete the design and construction of the discrete segments or phases. Because of its speculative nature, the overall construction schedule is intended for planning purposes only and is not intended to be binding. Lessee shall periodically update the overall construction schedule and provide Lessor with a copy.

7.5. **Lessor Plan Review.** In accordance with Lessor's regulations and then current Public Works Standards, Lessor shall have the right to review, comment on, approve, or disapprove Lessee's design plans at 30%, 60%, and 90%, and final construction plans and specifications. If disapproved, Lessor will provide the reasons for disapproval and any suggested revisions. During such plan review, Lessor may agree, in writing, to a change in the minimum pipe depth of eight (8) feet if Lessor, in its sole discretion, determines that allowing a lesser depth will not adversely impact other projects or utilities.

7.6. **Removal of Trees, Landscaping, Utilities, and Structures.** Prior to any activity that changes the condition of trees, landscaping, utilities, stormwater flow, or structures in the Project Area (“Impacted Improvements”), Lessee shall provide Lessor a written accounting for each Impacted Improvement. Lessee shall identify such Impacted Improvements at the 30% plan stage and account fully for the Impacted Improvements at the 90% plan stage. For trees, Lessee shall provide Lessor with a description of each affected tree by type and diameter (above three (3) inches diameter only, measured three (3) feet from ground level), and structure by dimension and description. Lessee shall compensate Lessor or the applicable damaged utility for the damage or loss to any Impacted Improvement at current market value. Lessee shall compensate the owner of any structure for the loss of any structure prior to its removal or being damaged, in an amount to be determined by a qualified independent appraiser, at Lessee’s expense. Any tree deemed by Lessor to be a significant tree under Lessor’s regulations shall not be removed and shall be protected, with oversight by an arborist approved by Lessor. Any tree that is not significant will be mitigated for in accordance with Lessor’s then current tree removal ordinance.

7.7. **Fences, Drains, and Dewatering.** Lessee shall construct and maintain appropriate temporary fencing and provisions for maintaining drainage during the period of construction so uses conducted on property adjoining the Project Area can be maintained; this will include temporary fencing to contain animals, ditches, drain lines, and/or low impact drainage facilities to allow surface water drainage, and the like. Upon completion of construction, any fences, ditches, and drains will be reinstalled in a manner and condition equal to or better than that existing prior to construction. Lessee shall comply with all construction dewatering requirements and shall be responsible for all sediment control and stream contamination, as more particularly set forth below.

7.8. **Work Standards.** Lessee shall supervise and direct all design and construction regarding the pipeline. Lessee shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the design and construction of the pipeline. Lessee shall evaluate the jobsite safety within the Project Area throughout construction and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If Lessee determines that such means, methods, techniques, sequences, or procedures may not be safe, Lessee shall give written notice to Lessor no later than three (3) days after Lessee’s determination and shall not proceed with that portion of the design or construction of the pipeline until Lessee makes the jobsite safe. Notwithstanding the foregoing, Lessee further has the duty to Lessor to ensure that all activities conducted in the Project Area are in accordance with good, workmanlike standards in the industry, and in accordance with the terms of this Agreement and Lessor’s Public Works Standards. Lessor’s Public Works Standards and the provisions of this Lease must be adhered to at all times. With respect to construction work at the intersection of Kinsman Road and Wilsonville Road, including making the improvements described in **Section 7.29(1)**, restricted open trench construction will be allowed by Lessor, in accordance with the following City Engineer directive pertaining to temporary traffic control and lane closures: All construction shall occur between the hours of 8:00 p.m. and 5:00 a.m. and, during that time, Wilsonville Road must remain open to vehicles with at least one lane in each direction at all times. The contractor will be permitted to place both directions of traffic on one side of the road, allowing half of the road to be closed at a time. A limited duration closure that occurs between the hours of 9:00 a.m. and 3:00 p.m.; construction that

keeps one lane open with flaggers; or a full nighttime road closure with detour will be considered for approval by the City Engineer on a case by case basis.

7.9. Construction in the Project Area and Temporary Construction Areas. All construction within the Project Area and Temporary Construction Areas shall be in compliance with all applicable City of Wilsonville Public Works Standards, as they may be amended from time to time, unless otherwise provided in any permit issued by Lessor. The Public Works Standards are incorporated by reference as if fully set forth herein. Prior to performing any construction or maintenance in the Project Area, Lessee shall apply for and obtain all necessary permits, including a City of Wilsonville public works permit. Except as otherwise provided in this Lease, Lessee shall pay, prior to issuance, all applicable fees of the requisite permits and give appropriate notices to any licensees or permittees of Lessor or other utility service providers which may be affected by the proposed construction. To obtain a permit to construct or maintain in the Project Area, plans shall be submitted to Lessor that comply with the Wilsonville Public Works Plan Submittal Requirements as illustrated in **Exhibit C – 2016 Public Works Plan Submittal Requirements and Other Engineering Requirements Revised for Willamette Water Supply Program Plan Submittals**; provided the requirements in effect at the time of plan submittal will apply.

7.10. Emergency Repairs. In the event that emergency repairs are necessary, Lessee shall immediately notify Lessor of the need for such repairs. Lessee may initiate such emergency repairs, and shall apply for appropriate permits as soon as reasonably practicable but in no event later than seventy-two (72) hours after discovery of the emergency. Lessee shall comply with all applicable Lessor regulations relating to such excavations or construction, including the payment of permit or license fees. Any temporary repairs made shall be permanently repaired by Lessee as expeditiously as possible. Lessee will make a good faith effort to make permanent repairs within a time period of one hundred twenty (120) days from the date of temporary repairs being performed unless the Parties otherwise agree in writing to extend the period. If Lessee fails to immediately make any needed repairs that, without being made, would impede the right-of-way, endanger public health or safety, or could result in damage to the Project Area, other Lessor property, or private property, Lessor shall have the right, but not the obligation, to make the repair. If Lessor elects to make the repair, and there is time, Lessor will notify Lessee of its intent to make the emergency repair by calling the emergency number provided in **Section 18.2** and leaving a message for Lessee, and charge Lessee Lessor's actual cost of making the repairs, which shall bear interest at the then current judgment rate of interest until paid in full. If Lessor makes emergency repairs as provided in this **Section 7.10**, Lessee will remain responsible to make all future repairs and pay all future costs and/or damages in the Project Area, even if caused by, arising out of, or related to Lessor's emergency repairs.

7.11. Restoration of Project Area. Whenever Lessee excavates, damages, or disturbs the surface above or adjacent to the Lease Area for any purpose, Lessee shall promptly restore the surface above or adjacent to the Lease Area, to the satisfaction of Lessor, in strict accordance with Lessor's applicable Public Works Standards, ordinances, and codes, the provisions of this Lease, and any permit issued by Lessor. In the event there is no applicable ordinance, code, or permit, Lessee shall promptly restore the disturbed area to at least its prior condition. Unless otherwise provided in any permit issued by Lessor, and pending permanent restoration, when any opening is made by Lessee in a hard surface pavement in any public right-of-way, Lessee shall, within twenty-

four (24) hours, temporarily backfill, pave, plate, and/or otherwise bring the disturbed or damaged surface to a safe and travelable condition and take all reasonable and legal safety precautions to prevent injury. Lessor may, after providing notice to Lessee, or without notice where Lessor determines the disturbance or damage may create a risk to public health or safety, backfill or repave any opening made by Lessee, and the expense thereof shall be paid by Lessee. Lessor may, after providing notice to Lessee, remove and/or repair any temporary or permanent work done by Lessee that, in the determination of Lessor, is inadequate or unsafe. Additionally, if Lessee fails to immediately make any needed repairs that, without being made, would impede the right-of-way or access to, from, or over any of Lessor's other property, endanger public health or safety, or could result in damage to Lessor's other property or private property, Lessor shall have the right, but not the obligation, to make the repair without notice. In the case of any repair made by Lessor that is otherwise Lessee's obligation to make, Lessor will charge Lessee Lessor's actual cost of making the repairs, which shall bear interest at the then current judgment rate of interest until paid in full. Notwithstanding the foregoing, if there is time, Lessor will notify Lessee of its intent to make an emergency repair by calling the emergency number provided in **Section 18.2** and leaving a message for Lessee. If Lessee then promptly arrives at the scene, Lessor will allow Lessee to promptly make the repair or complete the repair. If Lessor does make the repair because Lessee fails to timely do so, Lessee nonetheless remains solely responsible for assuring the repair is adequate and is further responsible to make any additional or further repairs, and to pay all costs thereof and/or damages caused thereby, arising out of or related to Lessor's repair.

7.12. **Lessor's Right to Inspect.** Lessor shall have the right to inspect all construction or installation work performed by Lessee as it deems necessary to ensure compliance with the terms of this Agreement, other pertinent provisions of law, and any permit issued by Lessor. However, Lessor does not exercise any control over the construction methodology of the pipeline and, to the extent Lessor provides notice to Lessee or to any contractors or subcontractors constructing the pipeline regarding safety concerns of Lessor, Lessee alone shall be and remain responsible and liable for the safety, efficiency, and adequacy of the construction means, methods, techniques, sequences, and procedures, irrespective of whether or not Lessee makes any change as a result of any notice provided by or received from Lessor.

7.13. **Cost of Inspections.** All costs of Lessor's inspection, oversight, and supervision, as set forth in this Lease or in the Public Works Standards, shall be paid by Lessee within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials, and equipment and in accordance with **Section 5.4.2** with respect to public works permit fees.

7.14. **Temporary Crossings.** Lessee shall construct temporary crossings, in accordance with all safety standards, across open trenches and ditches to assure continued access, ingress, and egress for Lessor and other property owners, and their lessees, workers, and guests, to areas adjacent to the Project Area. Any streams located along or across the Project Area shall be maintained in a manner that flow is not disrupted during construction, and flow upon completion of construction can be maintained at the same rate and volume as prior to construction, with all workmanlike and accepted standards being followed for erosion of stream banks.

7.15. **Soils.** Lessee shall follow the "double ditch" construction method for pipeline construction outside of a paved roadway, segregating top soil removed, and replacing top soil above

sub-soils. Lessee shall implement measures to avoid re-deposited topsoil being compacted to any degree greater than existed prior to construction. Lessee will reseed or resod, as applicable, the Project Area, and replace shrubs and other plantings so that, upon completion of construction, the Lease Area has an appearance and contains plantings similar to those that existed prior to construction, to the degree reasonably practicable.

7.16. Handling of Construction Debris. Lessee will be responsible for the legal and proper sanitary handling of all construction debris, excess soils and rocks, trash and other debris for the Project Area and will provide for its timely removal. Lessee will gather, sort, and transport all garbage, refuse, and recyclable materials from the Project Area. Lessee will provide and use suitable fireproof receptacles for all trash and other refuse temporarily stored in the Project Area. Except as otherwise provided for in the applicable permit, Lessee will not permit boxes, cartons, barrels, pallets, scrap piles, or other similar items to be piled or stored within the Project Area. Lessee will not allow trash or debris of any nature to accumulate in the Project Area and will store all trash and debris in a manner that will prevent it from being an environmental, health, or safety hazard or creating an unsightly condition in and around the Project Area. Lessor encourages Lessee to cooperate with available recycling programs and to recycle in accordance with state, federal, and local requirements.

7.17. Safety Requirements. Lessee will conduct its operations, activities, and duties under this Lease in a safe manner and in compliance with all safety standards imposed by applicable federal, state, and local laws and regulations. Lessee will require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee under this Lease. Lessee will exercise due and reasonable care and caution to prevent and control fire on or in the Project Area and, to that end, will provide and maintain fire suppression equipment approved by FM Global or an equivalent insurance company and other fire protection equipment as may be required under applicable governmental laws, ordinances, statutes, and codes for the purpose of protecting the improvements adequately and restricting the spread of any fire from the Project Area to any property adjacent to the Project Area, all at Lessee's sole cost and expense. Lessee will be solely responsible for provision and maintenance of fire extinguishers. Lessee will immediately provide Lessor with a copy of any notification from OSHA concerning any violation or alleged violation of safety laws or regulations.

7.18. Compliance with Labor Laws. Lessee must at all times, including during construction, comply with all applicable state and federal laws pertaining to wage and hour and health and safety regulations. Lessee will also comply with all its own collective bargaining requirements to avoid labor disturbances in the Project Area. Lessee should promptly notify Lessor in the event of any threatened labor action. Lessee will also reasonably cooperate with Lessor to mitigate the impact of labor disturbance with respect to access to the Project Area and operations within the Project Area, regardless of the source of the labor dispute. Lessee shall be liable to Lessor for any damages suffered by Lessor as a result of a labor action against Lessee that prevents Lessor from accessing any of its ongoing construction projects.

7.19. Compliance with Environmental Laws. Lessee shall comply with all applicable Environmental Laws, as described in **Section 11**. Lessee shall not use, dispose of, or release within the Project Area, or on lands adjacent thereto, or permit to exist or to be used, disposed of, or

released any substances (other than those Lessee has been licensed or permitted by applicable public authorities to use in the Project Area) which are defined as “Hazardous Substances” in **Section 11**. Should any Hazardous Substance be accidentally released, Lessee shall notify Lessor immediately and contemporaneously with notifying the applicable regulatory agencies of such event, with a copy of such notice to Lessor. Lessee shall be responsible for and timely pay all costs of clean-up, remediation, fines, and other costs related to and arising from the event, including, but not limited to, penalties. Lessee shall be responsible for and shall comply with all applicable laws and regulations as to any required permitting, licenses, and fees related thereto concerning, relating to, or arising from Lessee’s use of the Project Area, this Lease, or the pipeline.

7.20. **Liens.** Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment that have been provided or ordered with Lessee’s consent to the Project Area. If any lien is filed against the Project Area that Lessee wishes to protest, then Lessee will immediately notify Lessor of the basis for its protest and must deposit cash with Lessor, or procure a bond acceptable to Lessor, in an amount sufficient to cover the cost of removing the lien from the Project Area. Failure to remove the lien or furnish the cash or a bond acceptable to Lessor within ten (10) Business Days will constitute an Event of Default (defined in **Section 13**) under this Lease, and Lessor will be entitled to satisfy the lien without further notice to Lessee, and Lessee will immediately reimburse Lessor for any sums paid to remove any such lien.

7.21. **Lessor Access to Project Area.** Lessor and its respective agents have the right to enter the construction portion of the Project Area for the purposes of: (a) confirming the performance by Lessee of all obligations under this Lease, (b) doing any other act that Lessor may be obligated or have the right to perform under this Lease, and (c) for any other lawful purpose. Such entry will be made on reasonable advance notice and during normal business hours, when practical, except in cases of emergency or a suspected violation of this Lease or the law. Lessee waives any claim against Lessor for damages for any injury or interference with Lessee’s business, any loss of occupancy or quiet enjoyment of the Project Area, or any other loss occasioned by the entry except to the extent caused by the negligence or willful misconduct of Lessor. Lessor will use reasonable efforts to disturb Lessee’s operations as little as reasonably possible during any of Lessor’s repair and maintenance work. Lessee will provide Lessor with keys to all gates and doors in, on, or about the Project Area, and Lessor will have the right to use any and all means that Lessor may deem reasonable to open the gates and doors in an emergency to obtain entry to the Project Area.

7.22. **Identification of Contractors.** Prior to construction, Lessor shall be provided, in writing, the name, address, email, and telephone number of, and a contact person for, each independent contractor and subcontractor that enters upon the Project Area. Nothing herein shall limit the obligation, liability, and responsibility of Lessee for any and all actions and activities occurring in connection with construction and Lessee’s uses in general of the Project Area. All identified contractors must meet the insurance requirements provided in **Section 10**.

7.23. **Liability for Contractors.** Lessee is solely responsible to Lessor for all acts or omissions of any of its contractors, subcontractors, suppliers, agents, and employees. Lessor shall be entitled to such damages or may seek any other remedies directly against Lessee for any act, omission, or construction defect caused by any of the foregoing third parties, and Lessor shall have

no obligation or responsibility to first sue or make a claim against any of said third parties but will rather be entitled to hold Lessee primarily, directly, and fully responsible and liable for any and all acts or omissions caused by any of the foregoing third parties.

7.24. **As-Built Survey.** Upon completion of construction, and prior to the pipeline being placed in any service, Lessee shall provide Lessor with an electronic and hard copy of an as-built survey that reflects the location of the pipeline, its depth and diameter; the location of any appurtenances and any connection to the pipeline; and the pipeline Lease Area and any Private Easement area, prepared by and stamped by a licensed surveyor in good standing in the State of Oregon. Lessee shall provide Lessor with a supplemental survey that reflects any subsequent corrections or changes to the pipeline, appurtenances, and/or Lease Area.

7.25. **Construction Drawings.** Construction Drawings shall be submitted to Lessor at 30% design, 60% design, and 90% design in order to verify alignment, appurtenances, and potential impacts to Lessor and Lessor's property. At any of these stages, Lessor will have authority to require reasonable changes or alterations to any aspect of design that Lessor deems could create an adverse impact, including, but not limited to, alignment, depth, relocation of utilities, and natural resource impacts, excepting once Lessor has approved depth, as provided in **Section 3.3**, that approval cannot be changed or withdrawn without mutual agreement of the Parties.

7.26. **Stop Work Order.** Lessor's Project Manager shall have the right, but not the obligation, to suspend work in the Project Area and give written notice to Lessee or Lessee's general contractor of such suspension when construction practices are materially violating any Lease term or are anticipated to create a health or safety issue or property damage. A stop work order may be issued if any materials being used do not conform to specifications. The suspension will remain in effect until appropriate corrections are made. In no case shall Lessor incur any liability for any suspension of work, unless such suspension was done with a willful and malicious intent. In all cases except emergency, Lessor will inform Lessee and Lessee's contractor of the violation and will only issue the stop work order if Lessee and Lessee's contractor fail to take immediate action to resolve the violation or safety hazard. Notwithstanding the foregoing, Lessor is under no obligation to issue a stop work order. Lessor's Project Manager's role is not one of supervision or safety management. Nothing contained in this Section or anywhere else in the Agreement shall be interpreted to obligate Lessor to act in any situation, nor shall it shift any of Lessee's responsibilities for safety and compliance with all laws to Lessor in any way. No responsibility for the safety of the work, construction means, methods, techniques, sequences, or procedures shall attach to Lessor by virtue of any action or inaction.

7.27. **Site Security.** Lessee shall be responsible for securing the work area twenty-four (24) hours per day, seven (7) days per week, to prevent vandalism or injury due to attractive nuisance.

7.28. **Wildlife and Wetlands.** Lessee must provide for the protection of wildlife, wetlands, and other natural resources at all time in and about the Project Area. Lessee must obtain all required permits, and provide copies to Lessor, from all applicable regulatory agencies, including, but not limited to, the Department of State Lands, Army Corps of Engineers, National Environmental Policy Act, and National Marine Fisheries Service.

7.29. **Right-of-Way Enhancement Projects and Deficiencies.** As additional consideration for this Lease, Lessee has agreed to make the following improvements or upgrades to Lessor's existing deficient infrastructure on or about the Project Area to bring it up to current City of Wilsonville Public Works Standards at the time of pipeline construction in those areas, at Lessee's sole cost (collectively "Enhancement Projects"). The Enhancement Projects Lessee has agreed to make and pay for are depicted on the map attached hereto as **Exhibit D** and incorporated by reference herein:

1. Truck turning radius improvements at the northeast corner of Wilsonville Road and Kinsman Road (including correction or construction of curb ramps to meet ADA standards at all intersection corners), as depicted on **Exhibit E**, attached hereto and incorporated by reference herein.
2. Truck turning radii at the northeast and northwest corner of Boeckman Road and 95th Avenue (including correction or construction of curb ramps to meet ADA standards).
3. Correct curb ramps at all intersection ramps along the pipeline route to meet ADA standards.
4. Sidewalk infill on west side of 95th Avenue (approximately 500 feet) and associated street tree replacement.
5. Sidewalk infill on south side of Ridder Road (approximately 1700 feet).
6. Streetlight infill on 95th Avenue, just north of the intersection of 95th and Ridder Road.

By mutual agreement, these Enhancement Projects may be adjusted during the **Section 7.5** plan review process. Additionally, if Lessee, including any of its contractors or subcontractors, discovers any defective or damaged utilities located in the Project Area not caused by Lessee's construction, Lessee will promptly notify Lessor of such discovery. Lessor may then direct Lessee to repair the defect or damage while working in the area and to charge Lessor its actual costs of making the repair or, alternatively, Lessor may use its own contractors to make the repair, but Lessor and Lessee will work in good faith to coordinate the repair(s) so that such repair does not unreasonably disrupt Lessee's construction.

7.30. **Damage to Property and Utilities.** Lessee will promptly repair any damage caused to the property or utilities of others caused by its construction or ongoing pipeline operations and will be responsible to defend, indemnify, and hold harmless Lessor, as more particularly described in **Section 16**.

7.31. **Detailed Construction Schedule and Staffing.** Prior to Lessee conducting any construction or construction-preparation activities in the Project Area (other than surveying and measuring), Lessee shall provide Lessor a written construction schedule, which Lessee shall continuously update with its contractors and share with Lessor on not less than a quarterly basis.

7.32. **Coordinated Construction Schedules.** For construction of any discrete segment or phases by Lessee, or any construction project by Lessor that may impact Lessee's construction schedule or Project Area, Lessee and Lessor shall jointly establish a detailed and binding design and construction schedule for the purpose of avoiding delays or adverse impacts on the other Party's

project(s). Any deviation from the agreed-upon schedule must be approved by both Parties in writing. If agreement cannot be reached, the Party seeking to deviate from the schedule must wait until the other Party's project(s) reach a state such that the schedule change will not interfere with or delay the other project(s). For construction by Lessee in the Project Area, the Parties may agree to rely on the construction schedule described in **Section 7.4** above. As used in this **Section 7.32**, "interfere with" includes, but is not limited to, change or deviation from the agreed-upon schedule that can reasonably be expected to result in the closure of more than one roadway in Wilsonville or that would have a negative traffic impact, unless agreed to in advance by Lessor.

7.33. Joint Construction Projects Between Lessee and Lessor. Lessor and Lessee shall develop a separate agreement for construction or maintenance projects that are to be jointly undertaken between Lessee and Lessor. Regardless of whether Lessor or Lessee is managing and contracting for the Joint Construction Project, if the Joint Construction Project includes new road or road widening construction, the costs for all improvements located above the Lease Area, including the pavement section or other finished surface over the Lease Area, shall be apportioned to Lessee, and the remaining payment or other finished surface shall be apportioned to Lessor.

7.34. Public Outreach and Communication. For any construction in the Project Area that has the potential for impacting adjacent properties, businesses, utilities, and their occupants, Lessor and Lessee shall mutually and cooperatively work together to develop a written program for notice and outreach to the affected property owners and occupants. Lessee will be solely responsible for all costs associated with such program and will have a designated 24-hour attended hotline with contact information that will be readily available to the public (for example, located on its website and the Lessor's website), as well as posted along the Project Area under construction, so that any impacted parties may immediately contact Lessee to advise of any complaints, issues, or problems associated with the construction. Lessee will defend, indemnify, and hold Lessor harmless from any claims or causes of action that result from any aggrieved third party due to Lessee's use, operations, or activities within the Project Area.

7.35. Relocation of Existing Utilities and Appurtenances. In the event that relocation of existing utilities and appurtenances are required or desired to facilitate Lessee's pipeline installation, in compliance with Lessor's Public Works Standards, the design of said relocation shall be subject to Lessor's review and approval. All costs for design, coordination, and construction of the relocated facilities shall be the sole responsibility of Lessee.

7.36. Compliance with State and Federal Historic Preservation. To the extent applicable, Lessee must follow all state and federal law requirements with respect to performing an assessment for the protection of significant environmental, archeological, and historic resources under the National Environmental Policy Act of 1969, as amended, 42 USC § 470 *et seq.* (NEPA), and the National Historic Preservation Act of 1966, as amended, 16 USC § 470 *et seq.* (NHPA), as well as other applicable state and federal laws pertaining to the foregoing.

8. LESSEE OBLIGATIONS BEYOND CONSTRUCTION.

8.1. Excavation or Construction Concerning Replacement, Repair, or Removal. In the event any replacement, repair, or removal of the pipeline shall necessitate a Temporary

Construction Area, then the process under **Section 2.3** shall apply. The standards and requirements applicable for initial construction activities set forth in this Lease shall apply equally to the replacement, repair, or removal activities.

8.2. **Warnings.** Lessee shall provide Lessor with written notice as to whether water being transported in the pipeline is subject to an increase in pressure over the assigned maximum pressure and what, if any, effect that may have on pipeline joints and welds and on operations. If Lessee determines that for safety reasons signing is necessary, such signs shall meet Lessor's signage regulations.

8.3. **Maintenance Obligations; Contact Person.** Maintenance of the Project Area applicable to the pipeline use, and maintenance of the pipeline and any related approved appurtenances, shall be the sole obligation of Lessee. Upon completion of construction and prior to the pipeline being placed in service, Lessee shall provide Lessor with a written maintenance and inspection plan and schedule for Lessee's maintenance, upkeep, and inspection of the pipeline and Project Area. Lessee shall therewith provide Lessor with a contact person designated by Lessee, including name, address, 24/7 telephone access number, fax number, and email. The contact person shall have information and knowledge pertinent to the pipeline and Project Area in order to address questions and concerns from Lessor or the public. In the event the contact person is replaced or changed by Lessee, Lessor shall be given reasonable prior written notice of the change, along with the required information for the new contact person. Lessee shall provide Lessor with at least an annual inspection report documenting the overall condition of the pipeline, any maintenance, repairs, or replacements performed, and any areas of concern.

8.4. **Access to Project Area by Lessee.** The as-built survey described in **Section 7.24** above, shall specifically depict the access areas whereby Lessee will have access to the pipeline and pipeline Project Area. Other than in case of emergency, or as scheduled, in writing, with Lessor for inspection, maintenance, repair, or replacement, Lessee will not access the Project Area from points other than the stated access areas. In the event any appurtenant facilities are permitted in the Project Area, such appurtenances shall be protected by such reasonable means as is customary in the industry and in keeping with Wilsonville City Code and regulations. No protective means shall obstruct full access by Lessor to Lessor's property unless Lessor is given a key and the right of ingress and egress at Lessor's discretion. Unless otherwise provided in this Lease, no person or entity shall have access to the Project Area other than Lessor and Lessee, their contractors, or employees, and then only for purposes of inspection, maintenance, repair, and replacement of the pipeline or allowed appurtenances, in accordance with the terms, conditions, and provisions of this Lease. The City of Wilsonville is an underground utilities district and all appurtenances must be located underground unless otherwise approved, in writing, by Lessor, which approval shall not be unreasonably withheld. Nothing in this Section prohibits Lessor's access to the Project Area.

9. MUTUAL GOOD FAITH COOPERATION.

The Parties shall mutually cooperate in good faith with each other in their interactions and dealings with the terms, conditions, and provisions of this Lease.

9.1. **Informal Dispute Resolution.** The Parties agree to engage in informal dispute resolution, but if a dispute cannot be resolved within ten (10) Business Days, the dispute shall be submitted to formal mediation, as set forth in **Section 15**.

9.2. **Lease Contacts Following Construction.** Lessor and Lessee will each appoint a person to be the primary contact to resolve any issues that may arise between the Parties under this Lease. That information shall be provided in writing and will include the name, address, telephone number, email address, and other pertinent contact information for the person. Each Party will provide an alternate contact person in the event the primary contact person is unavailable.

9.3. **Security.** To the extent any exhibits to this Lease or plans and as-built surveys referenced in this Lease provide the location of the pipeline and the Parties determine the disclosure of which will impose a security threat, the Parties shall treat such Lease provisions, exhibits, plans, and surveys as confidential and exempt from disclosure under applicable provisions of ORS 192.501 and/or ORS 192.502, with Lessee being responsible to defend against any claim for public records disclosure.

10. INSURANCE.

10.1. **Insurance Amounts and Policies.** The insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage that Lessor is willing to accept to help ensure full performance of all terms and conditions of this Lease. All insurance required of Lessee by this Lease must meet all the minimum requirements set forth in this **Section 10**. Copies of all policies required hereunder shall be provided to Lessor and, if a change in policy shall occur, that change shall be promptly provided to Lessor. Additionally, an updated Certificate of Insurance must be provided annually, showing all policies remain in full force and effect. Any modification to policies or new policies shall be provided to Lessor.

10.2. **Certificates; Notice of Cancellation.** On or before the Effective Date, Lessee will provide Lessor with certificates of insurance establishing the existence of all insurance policies required under this Lease. Thereafter, Lessor must receive notice of the expiration or renewal of any policy at least thirty (30) days before the expiration or cancellation of any insurance policy. No insurance policy may be canceled, revised, terminated, or allowed to lapse without at least thirty (30) days' prior written notice to Lessor. Insurance must be maintained, without any lapse in coverage, continuously for the duration of this Lease. Cancellation of insurance without Lessor's consent will be deemed an immediate Event of Default (defined in **Section 13**) under this Lease. Lessee will give Lessor certified copies of Lessee's policies of insurance promptly upon request. In addition, Lessee will require its general contractor and all subcontractors to maintain the same level of insurance and provide proof of insurance. Should Lessee determine to require less insurance from the general contractor or any subcontractor, Lessee will be responsible for any shortfall in coverage.

10.3. **Additional Insured.** Lessor will be named as an additional insured in each required liability policy and, for purposes of damage to the Project Area, as a loss payee. The insurance will not be invalidated by any act, neglect, or breach of contract by Lessee. On or before the Effective

Date, Lessee must provide Lessor with a policy endorsement naming Lessor as an additional insured as required by this Lease. Lessor shall also be named as an additional insured under the general contractor's general liability policy.

10.4. **Company Ratings.** All policies of insurance must be written by companies having an A.M. Best rating of "A" or better, or the equivalent. Lessor may, upon thirty (30) days' written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A" rating. Notwithstanding the foregoing A.M. Best rating requirements, Lessee may procure insurance coverage through municipal insurance pools, such as City-County Insurance Services, Special District Insurance Services, or similar organizations that may supersede those organizations in the future.

10.5. **Required Insurance.** At all times during this Lease, Lessee will provide and maintain the following types of coverage:

10.5.1. Commercial General Liability Insurance. Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease, 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 Lease and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$10,000,000** for each occurrence and **\$10,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$10,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$100,000**, and Medical Expense (any one person) in the minimum amount of **\$20,000**. The policy must also cover damage to the Project Area and to adjoining properties from water damage, mold, or equipment failure due to the pipeline or activities related thereto. The policy must also include an endorsement for "XCU" hazards.

10.5.2. Business Automobile Liability Insurance. If Lessee will be using a motor vehicle in the performance of any work on the pipeline and/or any activities in the Project Area, Lessee shall provide Lessor a certificate indicating that Lessee has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$5,000,000**.

10.5.3. Pollution Liability Coverage. During construction activities, and any time Hazardous Substances are being used within the Project Area, other than in small quantities as generally needed for landscaping or as cleaning supplies, Lessee or Lessee's contractor shall carry full environmental coverage, including sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of chemicals, fuels, oils, lubricants, de-icing, anti-freeze, or other hazardous materials, or disturbance of any Hazardous Substances, as that term is defined in this Lease under **Subsection 11.1.5**, during the performance of any work on the pipeline and/or other activities in the Project Area or as a result of any pipe rupture, leakage, or other failure, written on an "occurrence" form policy. Lessee 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 **\$10,000,000** for each occurrence and **\$20,000,000** general aggregate. If said insurance is carried by Lessee's contractor, in lieu of Lessee, then Lessee must ensure that Lessor is named as an additional insured on the pollution policy in accordance with all requirements for naming Lessor as an additional insured. Nothing contained herein, however, shall be construed to relieve Lessee from claims by Lessor for environmental damage or Environmental Costs. Lessor shall maintain a direct right of action against Lessee and shall not be required to first seek relief through the insurance carrier or general contractor.

10.5.4. Workers Compensation Insurance. Lessee and all employers providing work, labor, or materials within the Project Area 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. Coverage shall include Employer's Liability Insurance with coverage limits of not less than **\$1,000,000** each accident.

10.5.5. Additional Insured Coverage and Endorsements. Additional Insured coverage under Lessee's and Lessee's general contractor's Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 11 85, 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 Lessor at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder.

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

10.6. **Duty to Maintain Minimum Insurance Coverages.** Any lapse or material adverse change in insurance coverage by Lessee shall constitute an Event of Default under this Lease, as provided in **Subsection 13.1.2.**

10.7. **Indexing.** Within six (6) months of the five (5) year anniversary date of this Lease, and each subsequent fifth (5th) anniversary, Lessor may request in writing, and Lessee shall agree to

institute, new insurance amounts based on the original insurance amounts indexed to the Producers Price Index for All Commodities, issued for the anniversary month by the U.S. Department of Labor, Bureau of Labor Statistics. Should such index be discontinued and/or replaced, a conversion to a substitute or replacement index shall be accomplished using normally accepted conversion factors. Such adjusted amounts shall be rounded off to the nearest Thousand Dollars (\$1,000) amount. Failure of Lessor to request an adjustment for any five (5) year period shall not preclude a full adjustment at a subsequent five (5) year anniversary if requested.

11. ENVIRONMENTAL OBLIGATIONS OF LESSEE.

11.1. **Definitions.** References to the acts, omissions, and liabilities of Lessee in this Section include liability and responsibility for any act or omission of Lessee's employees, agents, officers, contractors, and suppliers. As used in this Lease, the following terms are defined as follows:

11.1.1. Best Management Practices. "Best Management Practices" means those environmental or operational standards: (a) implemented by a business or industry group pertinent to Lessee's operations as a matter of common and accepted practice, (b) articulated by a trade association or professional association pertinent to Lessee's operations, (c) developed by Lessee for use in its operations, (d) developed by pertinent state or local regulatory agencies for a business or industry group pertinent to Lessee's operations, or (e) developed from time to time by Lessor in cooperation with Lessee.

11.1.2. Environmental Audit. "Environmental Audit" means an environmental site assessment and compliance audit satisfying, at a minimum, the "all appropriate inquiry" requirements of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC § 9601(35)(B); the Oil Pollution Act, as amended, 33 USC § 2703(d)(4); 40 CFR Part 312; ORS 465.255(6); ASTM E1527-13 (Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process); and any other compliance assessment or auditing standards, including ASTM E2107-06 (Standard Practice for Environmental Regulatory Compliance Audits), relevant and appropriate to Lessee's use of the Project Area, or the successors to any of these criteria or standards. If as a result of such an Environmental Audit, additional evaluation, testing, analysis, or supplemental audit work is recommended, then the Environmental Audit includes the additional evaluation, testing, analysis, or supplemental audit work scoped and performed in accordance with commercially reasonable practices.

11.1.3. Environmental Costs. "Environmental Costs" include, but are not necessarily limited to: (a) costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (b) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (c) the cost, expense, or loss to Lessor as a result of any injunctive relief, including preliminary or temporary injunctive relief, applicable to Lessor or the Project Area; (d) all expenses of evaluation, testing, analysis, cleanup, remediation, removal, and disposal relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals, and experts; (e) all expenses of reporting the existence of Hazardous Substances or the violation of

Environmental Laws to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (f) any and all expenses or obligations, including, without limitation, attorney and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom, whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone and telefax charges, and other expenses; and (g) any damages, costs, fines, liabilities, and expenses that are claimed to be owed to any federal, state, or local regulating or administrative agency.

11.1.4. Environmental Laws. “Environmental Laws” include any and all federal, state, and local statutes, regulations, rules, and ordinances (including those of the Oregon Department of Environmental Quality (DEQ), the Environmental Protection Agency (EPA), or any such state or federal successor agency) now or hereafter in effect, as they may be amended from time to time, that in any way govern materials, substances, or products and/or relate to the protection of health, safety, or the environment.

11.1.5. Hazardous Substances. “Hazardous Substances” include, but are not necessarily limited to, any substance, material, or product defined or designated as hazardous, toxic, radioactive, or dangerous, regulated wastes or substances, or any other similar term in or under any Environmental Laws as now apply or may apply in the future.

11.1.6. Hazardous Substance Release. “Hazardous Substance Release” includes the spilling, discharge, deposit, injection, dumping, emitting, releasing, placing, leaking, migrating, leaching, and seeping of any Hazardous Substance into the air or into or on any land, sediment, or waters, except any release in compliance with Environmental Laws and specifically authorized by a current and valid permit issued under Environmental Laws with which Lessee is in compliance at the time of the release, but not including within the exception any such release in respect of which the State of Oregon has determined that application of the State’s Hazardous Substance removal and remedial action rules might be necessary to protect public health, safety, or welfare, or the environment.

11.1.7. Natural Resources Damage. “Natural Resources Damage” is the injury to, destruction of, or loss of natural resources resulting from a Hazardous Substance Release or raw water release. The measure of damage is the cost of restoring injured natural resources to their pre-release baseline condition, compensation for the interim loss of injured natural resources pending recovery, and the reasonable cost of a damage assessment. Natural resources include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state, an Indian tribe, or a local government.

11.2. **Existing Environmental Condition**. As generally stated in **Section 5.3**, Lessor makes no representations or warranties with respect to the Project Area and will not be responsible to Lessee for any cleanup of any Hazardous Substance that may be discovered as a result of or exacerbated by Lessee’s activities in the Project Area. To determine the condition of the Project Area, pre-construction, Lessee will be responsible for conducting an Initial Audit (defined in **Subsection 11.17.1**) to reasonably determine the existing condition and whether it is acceptable for

Lessee's intended installation and use. Because "but for" this Lease, Lessor would have no reason to disturb any existing conditions, Lessor will have no responsibility to Lessee to remediate or otherwise address any existing environmental condition in order to allow for Lessee's intended use or construction activities. Notwithstanding any other provision of this Lease, excepting this **Section 11.2** and **Subsection 11.10.2**, if Lessee disturbs or discovers a reportable pre-existing Hazardous Substance by virtue of any of its activities under this Lease, regardless of who caused it or when it occurred, Lessee shall be responsible for any reporting and remediation required by any state or federal agency and will indemnify and hold Lessor harmless from any remediation responsibility, regardless of who caused the Hazardous Substance Release. Notwithstanding the foregoing, this responsibility will not apply if Lessor had actual knowledge of the Hazardous Substance Release and did not disclose it to Lessee. Lessor hereby represents that it knows of no such pre-existing Hazardous Substance Release. Lessor will take whatever action is reasonably necessary to assign any rights of contribution it may have, as the land owner, to Lessee against any third party, excepting Lessor, that Lessee has reason to believe has caused the discovered Hazardous Substance Release. Whether a reportable quantity or not, Lessee will be required to clean up any Hazardous Substance Release in a way that will not exacerbate the pre-existing condition.

11.3. **Limited Business Use of Hazardous Substances.** Subject to the other provisions of this **Section 11**, Lessee is permitted to use, handle, and store Hazardous Substances as necessary to conduct its Permitted Use, and in quantities needed to conduct its Permitted Use, in compliance with applicable Environmental Laws, Best Management Practices, and the provisions of this Lease. Lessee will be using heavy equipment containing Hazardous Substances, including fuels and lubricants. Lessee shall diligently monitor the use and storage of all such equipment in order to prevent any Hazardous Substance Release therefrom.

11.4. **Hazardous Substance Storage Tanks.** Lessee may not operate mobile storage tanks (including fueling trucks), Aboveground Storage Tanks ("AST"), or any AST facility for the storage of Hazardous Substances except with the prior written consent of Lessor, which consent may be granted or denied in Lessor's sole discretion. For the purposes of this **Section 11.4**, "Aboveground Storage Tank" or "AST" means any tank, including fueling tank, with a capacity of greater than 55 gallons. No underground storage tanks are allowed to be installed by Lessee in the Project Area. If any mobile fueling trucks are allowed and are used, they may not be left unattended at any time.

11.5. **Spill Prevention and Response Plan.** During any period of construction when Lessee is using Hazardous Substances within the Project Area, Lessee will maintain a written Spill Prevention and Response Plan ("SPAR Plan") that addresses the measures to be followed by Lessee to prevent, control, and perform corrective actions in the event of a Hazardous Substance Release at or from the Project Area. In addition to meeting all requirements of applicable law, the SPAR Plan will address the measures Lessee will take to prevent Hazardous Substance Releases and to respond immediately to any Hazardous Substance Release. A copy of the SPAR Plan will be maintained at the Project Area construction office, and a copy will be provided to Lessor. The SPAR Plan will be revised and updated to reflect current operations of Lessee within the Project Area, as necessary. Lessor will be provided a copy of all such revisions and updates. In addition to any elements required by Environmental Laws, Lessee will address the following in its SPAR Plan or, at its

option, in a separate document: (a) procedures for the proper receipt, storage, and dispensing of Hazardous Substances authorized as a Permitted Use, including the maintenance, observation and monitoring, safety checks, and safe practices applicable to the Lessee's use of Hazardous Substances; (b) procedures for regular inspection of each AST system, including, but not limited to, confirmation that each such system and key components, such as pumps, hoses, and fittings, are in good and safe working condition; (c) procedures for promptly, but in no case later than within forty-eight (48) hours of acquiring relevant information or knowledge, notifying Lessor of any suspected or confirmed Hazardous Substance Release, and for verbal and written notification to appropriate regulatory agencies under applicable Environmental Laws required in connection therewith; (d) operating procedures for spill contingency and emergency response to Hazardous Substance Releases, including the designation of individuals responsible for directing the removal, response, and restoration actions for the releases; (e) procedures to address large Hazardous Substance Releases that on-site resources may be inadequate to manage, including, but not limited to, identification of an outside 24-hour emergency response contractor to handle large Hazardous Substance Releases; (f) procedures to keep Lessor timely informed during the course of Lessee's response to a Hazardous Substance Release; (g) provision for prompt use of on-site spill response equipment designed to keep a Hazardous Substance Release from reaching other property, storm water or sanitary sewers, or area groundwater or surface waters; (h) provision for trained on-site personnel to operate any Lessee spill response equipment during filling and dispensing operations and to be available on call at all other times; (i) provision for prompt regular submission to Lessor of copies of all relevant permits, consents, approvals, reports, and other correspondence with any regulatory agencies pertaining to compliance in any material respect with Environmental Laws; and (j) provision for training of personnel to implement Lessee's SPAR Plan and Lessee's compliance with applicable Environmental Laws.

11.6. **Soil or Waste.** Lessee will not store, treat, deposit, place, or dispose of treated or contaminated soil, industry by-products, or any other form of waste in the Project Area without the prior written consent of Lessor, which consent may be granted or denied in Lessor's sole discretion.

11.7. **Environmental Inspection.** Lessor reserves the right to inspect for Hazardous Substances and/or Lessee's management of Hazardous Substances in the Project Area at any time, and from time to time, with notice to Lessee, except in the case of a suspected emergency or violation, then without notice. During active construction, Lessor's representative will be free to inspect any area at any time as long as such inspection does not delay Lessee's construction. If a delay will be caused, Lessor will give Lessee a minimum of eight (8) hours' notice, except in the case of a suspected emergency or ongoing violation of Environmental Law. Thereafter, if Lessor at any time during the Lease term or any extension thereof has reason to believe that Lessee is handling Hazardous Substances contrary to the requirements of this Lease, in violation of this Lease, or in any manner that may allow contamination of the Project Area, Lessor may, without limiting its other rights and remedies, cause to be conducted a Special Audit with respect to the matters of concern to Lessor. Lessee will cooperate with all such audits. If Lessor's suspicions are confirmed by the audit, Lessee will reimburse Lessor for the full cost of the audit.

11.8. **Safety and Security.** Under the terms of this Lease, Lessee must comply with all applicable state, federal, and local laws and ordinances. As a part of this requirement, Lessee will maintain material safety data sheets for each and every Hazardous Substance used by Lessee, or

Lessee's agents, employees, contractors, licensees, or invitees in the Project Area, as required under the Hazard Communication Standard in 29 CFR § 1910.1200, as it may be amended, redesignated, or retitled from time to time, and comparable state and local statutes and regulations. To ensure that such information is available to Lessor in the event of a spill or other emergency, all the information will be kept current at all times, and a copy of all such materials will be kept in a place known to and easily accessible to Lessor. Additionally, during periods of construction when Hazardous Substances, or equipment containing Hazardous Substances, is stored on site by Lessee or any of its contractors, Lessee will be responsible for securing the Project Area from vandalism and will be responsible to remediate any Hazardous Substance Release caused by vandalism.

11.9. Disposal of Hazardous Substances. Lessee will not dispose of any Hazardous Substance, regardless of the quantity or concentration, within the storm or sanitary sewer drains or plumbing facilities within the Project Area. The disposal of Hazardous Substances will be in approved containers, and Hazardous Substances will be removed from the Project Area only in accordance with the law. If Lessee knows, or has reasonable cause to believe, that any Hazardous Substance Release has come to be located on or beneath the Project Area, Lessee must immediately give written notice of that condition to Lessor, whether or not the Hazardous Substance Release was caused by Lessee.

11.10. Lessee's Liability.

11.10.1. Hazardous Substance Releases. Except as provided in **Subsection 11.10.2**, Lessee will be responsible for any Hazardous Substance Release in the Project Area, on other properties, in the air, or in adjacent or nearby waterways (including groundwater) that results from, or occurs in connection with, Lessee's occupancy or use of the Project Area. Lessee is responsible for securing the Project Area to prevent vandalism or the dumping of Hazardous Substances within the Project Area during any Lessee construction periods.

11.10.2. Limitation of Lessee's Liability. Notwithstanding anything to the contrary provided in this Lease, particularly in **Subsection 11.12.2**, Lessee will have no responsibility for any Hazardous Substances or Hazardous Substance Releases that: (a) are caused by Lessor or the agents, employees, or contractors of Lessor, which occur after the date of Lessee's Initial Audit; (b) a Hazardous Substance Release caused by a third party unrelated to Lessor or Lessee, or their respective agents, employees, or contractors, that occurred after the Effective Date; or (c) except as provided in **Section 11.2**, a Hazardous Substance Release that Lessee can demonstrate migrated into the Project Area from a source off-premises that was not caused by Lessee and was not exacerbated by Lessee's activities on or about the Project Area. Nothing in this **Subsection 11.10.2** shall be construed to restrict Lessee's ability to seek contribution or reimbursement from any responsible third party, excepting Lessor, as provided in **Section 11.2**. Nothing in this **Subsection 11.10.2** shall be construed to limit Lessee's responsibilities under **Section 11.2** and, in the case of any ambiguity, **Section 11.2** shall control. Finally, in the event of a joint construction project between Lessor and Lessee within the Project Area after the Effective Date hereof, as described in **Section 7.33**, Lessor and Lessee will equitably apportion any discovered Hazardous Substance Release remediation and will share the cost of investigating the source of the Hazardous Substance Release and, if caused by a third party, will share in the cost of

pursuing recovery and/or contribution from such third party. Lessor and Lessee will ensure that this apportionment is agreed upon in the separate written agreement for joint construction before the joint project begins construction. In the event of a dispute with respect to apportionment, **Dispute Resolution Section 15** will apply.

11.10.3. Lessee's Environmental Indemnity. Without in any way limiting the generality of the General Indemnity set forth in **Section 16.2**, Lessee will be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Lessor, taking into account insurance defense requirements), indemnify, and hold harmless Lessor from and against all Environmental Costs claimed against or assessed against Lessor arising, in whole or in part, from acts or omissions of Lessee (including Lessee's own employees, agents, contractors, or suppliers) on or about the Project Area. Lessee will be responsible to promptly and fully address and remediate any claims for natural resources damages, as directed by the agency assessing such damage claim. Notwithstanding the foregoing, Lessee will not be responsible for, and does not indemnify Lessor for, any actions of Lessor, including Lessor's own employees, agents, contractors, suppliers, or any other tenant of Lessor that cause environmental damage or a violation of any Environmental Law within the Project Area after the Initial Audit, as provided in **Subsection 11.12.2**.

11.11. **Reimbursement for Damages**. Lessee will fully compensate Lessor for harm to Lessor's real or personal property caused by the acts or omissions of Lessee. This compensation will include reimbursement to Lessor for any diminution in value of, or lost revenue from, the Lease Area or other Lessor owned property caused by a Hazardous Substance Release, including damages for loss of, or restriction on use of, rentable or usable property or of any amenity of the Lease Area, including, without limitation, damages arising from any adverse impact on the leasing or sale of all or part of the Project Area as a result thereof.

11.12. **Environmental Remediation**.

11.12.1. Immediate Response. In the event of a violation of applicable Environmental Laws, a violation of an environmental provision of this Lease, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which Lessee is responsible under this Lease, Lessee will immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or to investigate, contain, and stop the Hazardous Substance Release and remove the Hazardous Substance.

11.12.2. Remediation. As a part of the foregoing response, Lessee will promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release is remediated and that any violation of any applicable Environmental Law or environmental provision of this Lease is corrected. Lessee will remediate, at Lessee's sole expense, any Hazardous Substance Release for which Lessee is responsible under this Lease and will restore the Project Area to its baseline condition, as established in the Initial Audit (defined in **Subsection 11.17.1**). Lessee will also remediate any Hazardous Substance Release for which it is responsible under this Lease on any other impacted property or bodies of water. The obligations of Lessee under this **Subsection 11.12.2** are subject to the limitations on Lessee's liability set forth in **Subsection 11.10.2**.

11.13. Natural Resources Damages Assessment and Restoration. Lessee will promptly undertake, at Lessee's sole expense, all actions necessary to ensure that any Natural Resources Damage associated with Lessee's use or occupancy of the Project Area is investigated, determined, quantified, assessed, and permanently restored and compensated for, to the extent legally required by any natural resource trustee with jurisdiction over the matter.

11.13.1. Report to Lessor. Within thirty (30) days following completion of any investigatory, containment, remediation, or removal action required by this Lease, Lessee will provide Lessor with a written report outlining, in detail, what has been done and the results thereof.

11.13.2. Lessor's Approval Rights. Except in the case of an emergency or an agency order requiring immediate action, Lessee will give Lessor advance notice before beginning any investigatory, remediation, or removal procedures. Lessor will have the right to approve or disapprove the proposed investigatory, remediation, or removal procedures and the company or companies and individuals conducting the procedures that are required by this Lease or by applicable Environmental Laws, whether in the Project Area or any affected property or water. Lessor will have the right to require Lessee to contract for and fund oversight by any governmental agency with jurisdiction over any investigatory, containment, removal, remediation, and restoration activities and to require Lessee to seek and obtain a determination of no further action or an equivalent completion-of-work statement from the governmental agency. The agency's no further action letter or an equivalent completion-of-work statement may be subject to reasonable conditions that Lessee must fulfill within a defined period of time before which Lessee will be released from responsibility under this Lease.

11.14. **Notice to Lessor.** Lessee will immediately notify Lessor upon becoming aware of: (a) any violation or alleged violation of any Environmental Law; (b) any leak, spill, release, or disposal of a Hazardous Substance in, on, under, or adjacent to the Project Area or threat of or reasonable suspicion of any of the same; and (c) any notice or communication to or from a governmental agency or any other person directed to Lessee or any other person relating to such Hazardous Substances in, on, under, or adjacent to the Project Area or any violation or alleged violation of, or noncompliance or alleged noncompliance with, any Environmental Laws with respect to the Project Area. Although the raw water contained in the pipeline is not a Hazardous Substance, Lessee will have the same responsibility to notify Lessor of a spill or leak of the raw water and to remediate any damage caused thereby, whether to Lessor's property or the property of others.

11.15. **Certification.** Not later than thirty (30) days after receipt of written request from Lessor, Lessee will provide a written certification to Lessor, signed by Lessee, that certifies that Lessee has not received any notice from any governmental agency regarding a violation of or noncompliance with any Environmental Law; or, if such a notice was received, Lessee will explain the reason for the notice, explain what has been done to remedy the problem, and attach a copy of the notice. Lessee will also certify that Lessee has obtained and has in force all permits required

under Environmental Law. Lessee will make copies of all such permits available to Lessor upon request.

11.16. Documentation of Hazardous Substances. During construction and for a period of two (2) years thereafter, Lessee will maintain for periodic inspection by Lessor and deliver to Lessor, at Lessor's request, true and correct copies of the following documents related to the use, handling, storage, transportation, treatment, disposal, and/or emission of Hazardous Substances, concurrently with the receipt from or submission to a governmental agency: permits; approvals; reports and correspondence; storage and management plans; material safety data sheets (MSDS); spill prevention control and countermeasure plans; other spill contingency and emergency response plans; notice of violations of any Environmental Laws; plans relating to the installation of any storage tanks to be installed in, under, or around the Project Area (but the installation of tanks will be permitted only after Lessor has given Lessee its written consent to do so, which consent may be withheld in Lessor's sole discretion).

11.17. Hazardous Substance Reporting.

11.17.1. Initial Audit. Lessee shall cause an Environmental Audit of the Project Area to be performed by a duly licensed environmental services provider in the business of conducting Phase I and Phase II audits in the State of Oregon in accordance with local and national standards. This Environmental Audit will be provided to Lessor. The foregoing audit is referred to herein as the "Initial Audit." This Initial Audit will serve as a baseline for determination of current environmental condition and potential future environmental liability. The scope of the Initial Audit will be determined by Lessee.

11.17.2. Special Audit. If Lessor, at any time during the Lease Term or any extension thereof, has reason to suspect that Hazardous Substances are being or have been created, used, handled, stored, generated, disposed, placed, or transported contrary to the requirements of this Lease, in violation of applicable Environmental Laws, or in any manner that has resulted, or is likely to result, in a Hazardous Substance Release, then Lessor may, after written communication of those reasons to Lessee, without limiting its other rights and remedies, request that Lessee conduct a special Environmental Audit ("Special Audit") of the Project Area with respect to the environmental matters of concern to Lessor. If Lessee declines or fails to conduct a Special Audit, then Lessor may proceed to conduct the Special Audit. If no Hazardous Substance Release or violation of Environmental Laws is discovered, Lessor will pay for the Special Audit. If a Hazardous Substance Release or Environmental Laws violation is discovered and is identified as the responsibility of Lessee, as provided by this Lease, Lessee will pay for the Special Audit.

11.17.3. Exit Audit. Upon expiration or earlier termination of this Lease, Lessor will conduct, and Lessee will pay for, an exit Environmental Audit ("Exit Audit") of the Project Area to determine: (a) the environmental condition of the Project Area, (b) whether any Hazardous Substance Release has occurred or exists on or about the Project Area, and (c) whether there is evidence of any violation of Environmental Laws or the provisions of this Lease. The Exit Audit shall, at a minimum, (1) certify that a diligent investigation of the Project Area has been conducted, including a specific description of the work performed,

and (2) either (a) certify that diligent investigation of the Project Area has revealed no evidence of a Release of Hazardous Substances or violation of Environmental Laws, or (b) if a Release or violation of Environmental Laws is detected, identify and describe (i) the types and levels of Hazardous Substances detected; (ii) the physical boundaries of the Release, including operation other than the Project Area; (iii) the actual and potential risks to the environment from such Release or violation; and (iv) the procedures and actions necessary to remedy the Release or violation in compliance with Environmental Laws and the requirements of this Lease. If such Exit Audit discloses a Release of Hazardous Substances by Lessee (including any of its contractors, employees, or agents), a violation of Environmental Laws by Lessee, or a Default by Lessee of its obligations under this Lease, including **Section 11.2**, Lessee shall pay the expense of performing all remediation.

11.17.4. Audit Requirements. The scope of any Special Audit and the Exit Audit will be reasonably determined by Lessor, in consultation with Lessee, consistent with the definition of Environmental Audit in **Subsection 11.1.2**. If any Special Audit or the Exit Audit recommends additional testing or analysis, or recommends an additional audit, then, unless otherwise agreed to in writing by Lessor and Lessee, Lessee will perform the additional recommended testing, analysis, or audit, and the records and results of the additional work will be considered a part of the audit that triggered the need for the additional work. Lessor and Lessee will each receive a signed copy of any such report prepared under this Lease.

11.17.5. Audit Results. The Initial Audit will be used as a baseline for determining the current environmental condition of the Project Area and Lessee's potential future environmental responsibility under this Lease. If the presence of a Hazardous Substance, a Hazardous Substance Release, a violation of Environmental Laws, or a violation of an environmental provision of this Lease is discovered or disclosed in the Project Area during Lessee's construction or by virtue of the Initial Audit, Lessee will be responsible for all response, remediation, restoration, and Environmental Costs arising from the Hazardous Substance, Hazardous Substance Release, violation of Environmental Laws, and any required clean-up, as determined by the applicable government reporting agency. The Exit Audit will be used to assess the environmental condition of the Project Area at the termination of the Lease. If any reportable quantity of any Hazardous Substance is discovered through the Exit Audit that is located in an area where Lessee has been performing work since the Initial Audit, and the Hazardous Substance identified is one that Lessee used during the Lease, then Lessee will be responsible for all environmental remediation unless Lessee can establish that Lessee did not cause or contribute to that Hazardous Substance Release.

11.17.6. Limitation on Lessor Liability. Lessor shall have no liability to Lessee for any Hazardous Substance Release caused by any third party, even if Lessor gave that third party permission to use the Project Area, but Lessee shall have a direct right of recourse against such third party. As used herein, a third party does not include Lessor's own contractors, agents, or employees operating in the Project Area on Lessor's behalf after the date of the Initial Audit who cause a Hazardous Substance Release, for which Lessor will then be responsible. Lessor shall have no liability for any Hazardous Substance Release

within the Project Area unless actually caused by Lessor after the Initial Audit. If any Hazardous Substance is discovered by the Initial Audit, or during Lessee's construction, Lessor will have no obligation to Lessee to remediate or contribute to the remediation of any discovered Hazardous Substance due to Lessor's ownership of the land. Lessee shall be responsible for such remediation and Lessee shall not seek contribution from Lessor.

11.17.7. Lessor's Environmental Indemnity. Without in any way limiting the generality of the General Indemnity set forth in **Section 16.3**, Lessor will be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Lessee, taking into account insurance defense requirements), indemnify, and hold harmless Lessee from and against all Environmental Costs claimed against or assessed against Lessee arising from acts of Lessor on or about the Project Area after the date of the Initial Audit. Lessor will be responsible to promptly and fully address and remediate any claims for Natural Resources Damages, as directed by the agency assessing such damage claim. Notwithstanding the foregoing, Lessor will not be responsible for, and does not indemnify Lessee for any actions of Lessee or any other third party (excluding Lessor's own employees, agents, contractors, or suppliers) that cause environmental damage or a violation of any Environmental Law within the Project Area.

12. TERMINATION, ABANDONMENT, AND SITE RESTORATION.

12.1. If Lessor believes that Lessee has abandoned its use of the Lease Area, Lessor shall provide written notice, articulating the reason for its belief thereof, to Lessee through the designated contact person maintained by Lessee under this Lease, said notice to be sent by certified mail and facsimile. Unless Lessee has responded within thirty (30) calendar days after such notice has been sent, by providing Lessor with a written response articulating the reasons why abandonment has not occurred, then Lessor may proceed to record an affidavit providing notice of abandonment and termination of this Lease with the Clackamas County Recorder's office. If Lessee does provide a written statement disputing Lessor's finding of abandonment, the dispute resolution process of **Section 15** will apply. In the event the Lease is terminated early for any reason, all Rent that has been paid will remain the sole property of Lessor. See also **Subsection 13.2.1**.

12.2. Within thirty (30) days following termination of this Lease, Lessee may request a meeting with Lessor to discuss removal plans for the pipeline or to propose other options to removal, with the clear understanding that whether or not to require removal of the pipeline and consider other options shall be within the sole discretion of Lessor. Lessor's decision will be final and is not subject to mediation. Within ninety (90) days following termination of this Lease, Lessor will provide written notice to Lessee as to whether Lessor will require removal of the pipeline, in whole or in part. If removal is required, Lessor and Lessee will meet within thirty (30) days from the date of notice by Lessor for removal to arrange a removal plan that minimizes disruption to Lessor's city streets. If Lessor elects to have the pipe removed, Lessee shall promptly remove the pipe and all related appurtenances from or in the Project Area. Upon any removal, Lessee shall reclaim the Project Area to elevations and surface composition the same as prior to such removal, or as needed or caused by filling the pipeline, with Lessee being required to provide necessary fill and topsoil, landscape materials, and asphalt or concrete, as applicable, including any base rock or drainage facilities and utilities in order to sufficiently reclaim the Project Area to pre-existing or

better condition. Lessee shall separately compensate Lessor for any losses and damages to the Project Area incurred by reason of any defective or deficient reclamation and removal. Lessee shall also be liable for and shall indemnify Lessor against any claims for damage, destruction, or injury to any third party as a result of Lessee's removal and reclamation work, or filling the pipeline in, on or about the Lease Area. Removal work plan is subject to Lessee review and written approval.

13. LESSEE DEFAULT.

13.1. **Event of Default.** The following will constitute an "Event of Default" if not cured within the applicable cure period as set forth below:

13.1.1. Default in Rent. Failure of Lessee to pay any Rent or other charge within ten (10) Business Days after written notice from Lessor shall be an Event of Default.

13.1.2. Lapse of or Change in Insurance Coverage. Should Lessee allow any provided insurance policies to lapse or to be materially changed without Lessor's prior written consent, such lapse or material change will be an Event of Default if not cured within three (3) Business Days of lapse of coverage or any material change in coverage.

13.1.3. Default in Other Covenants. Failure of Lessee or any of its contractors, subcontractors, suppliers, agents, or employees to comply with any term or condition or to fulfill any obligation of this Lease (other than the payment of Rent or other charges) within thirty (30) days after written notice by Lessor specifying the nature of the Default with reasonable particularity will be an Event of Default. If the Default is of such a nature that it cannot be completely remedied within the thirty (30) day period, Lessee will be in compliance with this provision if Lessee begins correction of the Default within the thirty (30) day period and, thereafter, proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Notwithstanding the foregoing, if Lessee violates the same provision of this Lease more than two (2) times in any rolling twelve (12) month period, measured from the date notice of the violation is given by Lessee, then the violation will constitute an immediate Event of Default for which no further notice or cure period need be granted by Lessor; provided however, if there is a third violation of the same Lease provision that occurs within the same twelve (12) month period that is of a truly de minimis and inadvertent nature and Lessee promptly cures it within thirty (30) days or less, Lessor will not declare an immediate Default.

13.1.4. Insolvency. Any of the following will be an Event of Default: An assignment by Lessee or any one of them for the benefit of creditors; filing by Lessee of a voluntary petition of bankruptcy; adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within ninety (90) days after filing; or attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ninety (90) days. Provided, however, if one or more Lessee remains solvent and is in full compliance with this Lease, and all Rent has been paid, insolvency by one of the Lessees will not be an

Event of Default under this Lease as long as the remaining Lessees continue to fully and timely perform.

13.2. **Remedies on Default.** If an Event of Default occurs, Lessor, at Lessor's sole option, may terminate this Lease by notice, in writing, in accordance with **Section 18**. The notice may be given before or within any of the above-referenced cure periods or grace periods for Default and may be included in a notice of failure of compliance, but the termination will be effective only on the expiration of the above-referenced cure periods or grace periods.

13.2.1. Termination. If this Lease is terminated, Lessor will be entitled to recover promptly, without waiting until the due date, any past due Rent together with future Rent that would otherwise become due and owing up to and through the date fixed for expiration of the Lease Term; any damages suffered by Lessor as a result of the Event of Default, including, without limitation, all obligations of Lessee; and the reasonable costs of reentry, including, without limitation, the cost of any cleanup, site restoration, and removal of Lessee's pipeline and other Lessee property, or any other expense occasioned by Lessee's failure to quit the Lease Area upon termination and to leave it in the condition required at the expiration of this Lease; and any attorney fees, court costs, and fees. Following termination, reentry, or abandonment, Lessor may relet the Lease Area if Lessor deems appropriate, without any obligation to return any Rent, which shall be deemed forfeited and not damages to be mitigated. Lessor will have no obligation to mitigate damages, except as required by Oregon law at the time of termination, and will have no obligation to return any Rent. Notwithstanding the foregoing, however, if such default occurs prior to payment of the final Lump Sum, as described in **Subsection 5.1.2**, Lessee will not be required to make that final Lump Sum payment as long as Lessee fully restores the Project Area to good clean condition, in regard to its pre-existing condition, including removal of any pipe or other Lessee improvements, and such restoration takes place within twelve (12) months of the termination of the Lease. Until the Project Area is fully restored, Rent will continue to accrue and be due and owing, and if not fully restored on or before July 1, 2026, then the full Lump Sum will be due and owing, nonrefundable, and not prorated.

13.2.2. Reentry After Termination. If the Lease is terminated or abandoned for any reason, Lessee's liability for damages will survive the termination, and the rights and obligations of the Parties will be as follows:

(a) Lessee will vacate the Project Area immediately; remove its pipeline and any personal property of Lessee, including its pipeline (the pipeline may be left in place only if agreed to, in writing, in Lessor's sole discretion, as provided in **Section 12**), that Lessee is required to remove and restore at the end of the Lease Term; and perform any cleanup, alterations, or other work necessary to leave the Lease Area in the condition required at the end of the term.

(b) Lessor may reenter, take possession of the Project Area, and remove any persons or personal property by legal action or by self-help with the use of reasonable force and without liability for damages.

13.2.3. Damages. Damages will be limited to forfeiture of all Rent paid, or due and owing, as provided in **Section 13.2.1**, plus other actual damages, but excluding consequential or punitive damages.

13.2.4. Right to Sue More than Once. In an Event of Default, Lessor may elect to continue this Lease and to sue periodically to recover damages, and no action for damages will bar a later action for damages subsequently accruing.

13.2.5. Equitable Relief. Lessor may seek injunctive relief or an order of specific performance from any court of competent jurisdiction, requiring that Lessee perform its obligations under this Lease.

13.3. **No Waiver of Default**. No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of partial Rent during the continuance of any breach, will constitute a waiver of the breach or of the agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, will be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

13.4. **Remedies Cumulative and Nonexclusive**. Each right and remedy of Lessor contained in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease, or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Lessor of any such rights or remedies will not preclude the simultaneous or later exercise by Lessor of any other such rights or remedies. All such rights and remedies are nonexclusive.

13.5. **Curing Lessee's Default**. If Lessee fails to perform any of Lessee's obligations under this Lease, Lessor, without waiving the failure, may (but will not be obligated to) perform the same for the account of and at the expense of Lessee (using Lessee's Security Deposit or Lessor's own funds, when required), after the expiration of the applicable cure period set forth in **Subsection 13.1.3**, or sooner in the case of an emergency. Lessor will not be liable to Lessee for any claim for damages resulting from such action by Lessor. Lessee agrees to reimburse Lessor, on demand, for any amounts Lessor spends in curing Lessee's Default. Any sums to be so reimbursed will bear interest at the Delinquency Rate.

13.6. **Administrative Costs**. If Lessor gives Lessee one written notice of a violation of a specific provision of this Lease, and Lessee violates the same provision again during the subsequent twelve (12) month period, then in addition to all other rights and remedies set forth herein, Lessee agrees to reimburse Lessor for Lessor's actual administrative costs incurred in connection with any such subsequent violation. Failure by Lessee to pay the costs will be deemed an immediate Event of Default subject to all remedies set forth in this **Section 13**. Such subsequent violation will trigger reinstatement of the Security Deposit, as described in **Section 13.7**.

13.7. **Reestablishment of Security Deposit.** In the event of any of the following violations of the Lease, Lessee will be required to reinstate the Security Deposit described in **Section 5.5**: (a) two or more violations of the same Lease provision within any given one (1) year period); (b) a lapse in the required insurance coverage not cured within three (3) Business Days; (c) a violation of any Environmental Law or Hazardous Substance Release that results in a fine or citation; or (d) any Event of Default not cured within the applicable cure period, or agreed upon extension thereof, after which Lessor elects to allow the Lease to continue.

14. LESSOR DEFAULT.

14.1. Breach by Lessor.

14.1.1. Notice of Breach. Lessor will not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this **Subsection 14.1.1**, a reasonable time will in no event be less than thirty (30) days after receipt by Lessor of written notice from Lessee specifying what obligation of Lessor has not been performed; however, a Lessor Event of Default will not occur if Lessor's performance is commenced within the thirty (30) day period and thereafter diligently pursued to completion.

14.1.2. Insolvency. In the event of an assignment by Lessor for the benefit of creditors; filing by Lessor of a voluntary petition of bankruptcy; adjudication that Lessor is bankrupt or the appointment of a receiver of the properties of Lessor; the filing of an involuntary petition of bankruptcy and failure of Lessor to secure a dismissal of the petition within ninety (90) days after filing; or attachment of or the levying of execution on the leasehold interest and failure of Lessor to secure discharge of the attachment or release of the levy of execution within ninety (90) days, Lessee may terminate this Lease or, to the greatest extent allowed by law, seek to enforce its terms against any trustee.

14.1.3. No Self-Help. In the event that Lessor fails to cure any breach within the applicable cure period, Lessee will be entitled to seek any of the remedies provided in **Subsection 14.1.4**, but will not be entitled to take self-help action.

14.1.4. Remedies in the Event of a Lessor Default. If an uncured Event of Default is committed by Lessor, Lessee will be entitled to any remedies available at law or in equity for breach of lease; however, damages will be limited to actual damages, excluding consequential and punitive damages.

14.2. **No Waiver of Default.** No failure by Lessee to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no payment of Rent during the continuance of any breach, will constitute a waiver of the breach or of the agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessor, and no breach by Lessor, will be waived, altered, or modified except by a written instrument executed by Lessee. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and

condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

14.3. **Remedies Cumulative and Nonexclusive.** Each right and remedy of Lessee contained in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease, or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Lessee of any such rights or remedies will not preclude the simultaneous or later exercise by Lessee of any other such rights or remedies. All such rights and remedies are nonexclusive.

15. **DISPUTE RESOLUTION.**

15.1. **Mediation.** Should any dispute arise between the Parties to this Lease, the Parties agree to meet informally to negotiate the problem, upon notice from one Party to the other specifying the dispute that needs to be resolved. If such informal negotiation fails, the Parties will mediate the dispute using a professional mediator, and the Parties will split the cost of the mediator. A Party desiring mediation shall provide the other Party with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The Parties will cooperate in good faith to select the mediator within seven (7) days of either Party requesting mediation, and may adopt any procedural format that seems appropriate for the particular dispute. Mediation should be scheduled within fourteen (14) days of selection of the mediator, or as soon as possible, based on availability. In the event the Parties cannot agree on a mediator, the Parties will ask any circuit court judge to appoint a mediator. The mediator will then set the ground rules for the mediation. In the event a written settlement agreement cannot be reached by the Parties within thirty (30) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon, in writing, by the Parties, then the Parties may either agree to binding arbitration or, if all Parties do not agree, then either Party may seek legal relief through the circuit court in Clackamas County, or U.S. District Court if jurisdiction is available.

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

15.3. **Injunctive Relief and Specific Performance.** Notwithstanding **Section 15.1** or **15.2**, even if the Parties agree to mediation or arbitration, either Party may still request immediate equitable remedies of either specific performance or injunctive relief to occur while mediation or arbitration is pending or ongoing. The Parties will otherwise agree to abate the court case pending resolution.

16. **LIABILITY, INDEMNITIES, AND REIMBURSEMENT.**

16.1. **Liability.** Lessee shall be strictly liable for all claims for damages, losses, or injury to person or property caused by or arising out of Lessee's use or occupancy of the Project Area, except to the extent any such claim arises from the direct negligence or willful misconduct of

Lessor, including Lessor's contractors, agents, or employees acting on Lessor's behalf. See also **Section 11** pertaining to Lessee's environmental liability and indemnities.

16.2. **Lessee's General Indemnity.** Lessee agrees to defend (using legal counsel reasonably acceptable to Lessor, taking into account insurance defense requirements), indemnify, reimburse, and hold harmless Lessor from and against any and all claims, demands, damages to person or property, including Lessor's own property, causes of action for injury or death, fines, penalties, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), liabilities, losses, proceedings, and/or suits that may be imposed on or claimed against Lessor, in whole or in part, directly or indirectly, arising from or in any way connected with (a) any act, omission, or negligence by Lessee or its partners, officers, directors, members, managers, agents, employees, invitees, contractors, subcontractors, and suppliers; (b) any use, occupation, management, or control of the Project Area by Lessee, including, but not limited to, the sudden or accidental release of raw water that causes damage to person or property; (c) any condition created in or about the Project Area by Lessee, including any accident, injury, or damage occurring on or about the Project Area during this Lease, unless caused by Lessor or a third party unrelated to Lessee; (d) any breach, violation, or nonperformance of any of Lessee's obligations under this Lease; or (e) any damage caused on or to the Project Area during Lessee's use or occupancy thereof, unless caused by Lessor or a third party unrelated to Lessee. As used throughout this **Section 16**, "Lessee" includes all of Lessee's partners, officers, directors, members, managers, agents, employees, invitees, contractors, consultants, and suppliers. To the greatest extent allowed by law, this indemnity shall apply to any claim, however caused, or regardless of the legal grounds and basis, in which Lessor is named.

16.3. **Lessor Indemnity of Lessee.** Lessor agrees to defend (using legal counsel reasonably acceptable to Lessee, taking into account insurance defense requirements), indemnify, reimburse, and hold harmless Lessee from and against any and all claims, demands, damages to person or property, including Lessee's own property, causes of action for injury or death, fines, penalties, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), liabilities, losses, proceedings, and/or suits that may be imposed on or claimed against Lessee as a result of Lessor's own direct negligence or willful misconduct within the Project Area. Lessor will not be liable to Lessee for any act or omission of any third party to whom Lessor may have also granted access to the Project Area.

16.4. **Survival.** This **Section 16** will survive the termination of this Lease with respect to all matters arising or occurring before surrender of the Lease Area by Lessee, including, but not limited to, pipe removal and property restoration.

16.5. **Scope of Indemnity.** For purpose of this **Section 16**, references to "Lessor" are deemed to include its respective officers, directors, employees, agents, invitees, consultants, and contractors.

17. CONDEMNATION.

If the Lease Area or any interest therein is taken as a result of the exercise of the right of eminent domain or under threat thereof (a "Taking"), this Lease will terminate with regard to the portion that

is taken by condemnation authority. If Lessee determines that the portion of the Lease Area taken does not feasibly permit the continuation of the operation of the pipeline, this Lease will terminate. The termination will be effective as of the date of the Taking. Any condemnation award relating to the land will be the property of Lessor. Lessee will not be entitled to any proceeds of any such real property award, except Lessee will be entitled to any compensation attributed by the condemning authority to Lessee's relocation expense, pipeline and related appurtenances, prepaid Rent, or loss or interruption of business.

18. NOTICES AND EMERGENCY CONTACT NUMBERS.

18.1. **Notices.** All notices required under this Lease will be deemed to be properly served when hand-delivered or on the third Business Day after mailing via certified mail, return receipt requested, to the last address previously furnished by the Parties hereto in accordance with the requirements of this **Section 18**. Until hereafter changed by the Parties by notice, in writing, sent in accordance with this **Section 18**, notices must be sent to the following addresses:

To Wilsonville: City of Wilsonville
 Attn: Finance Director
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

with copy to: Wilsonville City Attorney
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Hillsboro: City of Hillsboro
 Attn: Water Director
 150 East Main Street
 Hillsboro, OR 97123

with copy to: City Attorney
 150 East Main Street
 Hillsboro, OR 97123

To TVWD: Tualatin Valley Water District
 Attn: Chief Executive Officer
 1850 SW 170th Avenue
 Beaverton, OR 97003

with copy to: District Counsel
 1850 SW 170th Avenue
 Beaverton, OR 97003

The addresses to which notices are to be delivered may be changed by giving notice of the change in address in accordance with this Notice provision.

18.2. **Emergency Contact Numbers.** Lessor's 24-hour emergency contact number is 1-866-252-3614. Lessee's 24-hour emergency contact number is [REDACTED]. The emergency number may be changed by giving notice as provided above.

19. CHANGES IN LAW.

The Parties acknowledge that Lessor has no obligation to allow Lessee to place a pipe through Wilsonville without Lessor's agreement. Accordingly, the Parties have agreed to this Agreement and have affirmatively relied upon it in allowing the pipe to be placed in the Lease Area for ninety-nine (99) years for the agreed upon Rent and other consideration contained herein. The Parties agree that this Lease is fair, reasonable, and mutually advantageous to the Parties at the time it is entered into and shall be binding for the duration of its Term, regardless of future changes in law or circumstance, unless modification is mutually agreed to, in writing, by the Parties. Neither Party will attempt to change any law in order to void the terms of this Lease.

20. GENERAL PROVISIONS.

20.1. **Covenants, Conditions, and Restrictions.** This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, loans, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record as of the date of this Lease regarding the Lease Area and to any applicable land use or zoning laws or regulations.

20.2. **Assignments Without Release.** This Lease shall be binding upon, inure to the benefit of, and be applicable to Lessor and Lessee and their respective heirs, personal representatives, successors, and assigns. Lessee shall not assign this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that if all Rent due has been paid, Lessee may assign this Lease to an intergovernmental entity organized under ORS 190 as a municipal water provider for the purpose of constructing and operating the pipeline and related public water facilities. In the event of any assignment by Lessee or any successive lessee, the assignment will be without release and Lessee shall remain fully responsible for all obligations, responsibilities, and liabilities of Lessee under this Lease (including, but not limited to, requirements as to indemnity and insurance).

20.3. **Nonwaiver.** The waiver by either Party of strict performance of any provision of this Lease will not be a waiver of or prejudice the Party's right to require strict performance of the same provision in the future or of any other provision.

20.4. **Attorney Fees.** If any suit, action, or other proceeding (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing Party will 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. Payment of all such fees also applies to any administrative proceeding, petition for review, trial, and appeal. Whenever this Lease requires one Party to defend the other Party, the defense will

be by legal counsel acceptable to the Party to be defended, understanding that claims are often covered by insurance, with the insurance carrier designating the defense counsel.

20.5. **Time of Essence.** Time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Lease.

20.6. **No Warranties or Guarantees.** Lessor makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Lease Area, or suitability of the Lease Area for Lessee's use. Lessor will not be responsible for any loss, damage, or costs that may be incurred by Lessee by reason of any such condition. In no event will any Lessor approval, consent, acquiescence, or authorization given to Lessee be construed as Lessor's representation or warranty that such matter being approved, consented to, authorized, or acquiesced is appropriate, suitable, practical, safe, or in compliance with any applicable state or federal law, and Lessee will remain solely responsible and liable for any action taken by Lessee.

20.7. **Governing Law.** This Lease is governed by and will be construed according to the laws of the State of Oregon, without regard to its choice-of-law provisions. Any action or suit to enforce or construe any provision of this Lease by either Party will be brought in the Circuit Court of the State of Oregon for Clackamas County or in United States Federal Court for the District of Oregon if there are jurisdiction and grounds.

20.8. **Survival.** Any covenant or condition (including, but not limited to, environmental obligations and all indemnification agreements) set forth in this Lease, the full performance of which is not specifically required before the expiration or earlier termination of this Lease, and any covenant or condition that by its terms is to survive, will survive the expiration or earlier termination of this Lease and will remain fully enforceable thereafter.

20.9. **Partial Invalidity.** If any provision of this Lease is held to be unenforceable or invalid, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties to the extent possible. In any event, all the other provisions of this Lease will be deemed valid and enforceable to the fullest extent.

20.10. **Modification.** This Lease may not be modified except in writing, signed by all Parties.

20.11. **Successors.** The rights, liabilities, and remedies provided in this Lease will extend to the heirs, legal representatives and, as far as the terms of this Lease permit, successors and assigns of the Parties. The words "Lessor," "Lessee," and their accompanying verbs or pronouns, whenever used in the Lease, apply equally to all persons, firms, or corporations that may be or become Parties to this Lease.

20.12. **Calculation of Time.** Unless referred to in this Lease as Business Days, all periods of time referred to in this Lease include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period extends to include the next day that is not a Saturday, Sunday, or Legal Holiday. "Legal Holiday" means any

holiday observed by the federal government. “Business Day” means any day Monday through Friday, excluding Legal Holidays when Lessor’s City Hall is closed for business.

20.13. **Exhibits Incorporated by Reference.** All exhibits attached to this Lease are incorporated by reference as if fully set forth herein.

20.14. **Interpretation of Lease; Status of Parties.** This Lease is the result of arm’s length negotiations between Lessor and Lessee and will not be construed against Lessor by reason of its preparation of this Lease. Nothing contained in this Lease will be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship, between the Parties hereto.

20.15. **Force Majeure.** The time for performance of any of Lessee’s or Lessor’s obligations hereunder will be extended for a period equal to any hindrance, delay, or suspension in the performance of that Party’s obligations beyond the Party’s reasonable control, and directly impacting the Party’s ability to perform, caused by any of the following events: unusually severe acts of nature, including floods, earthquakes, hurricanes, and other extraordinary weather conditions; civil riots, war, terrorism, or invasion; any delay occurring in receiving approvals or consents from any governmental authority, including DEQ or other agency review of environmental reports (as long as an application for the approval or consent was timely filed and thereafter diligently pursued); major fire or other major unforeseen casualty; labor strike that precludes the Party’s performance of the work in progress; or extraordinary and unanticipated shortages of materials (each a “Force Majeure Event”). Lack of funds or willful or negligent acts of a Party will not constitute a Force Majeure Event. Further, it will be a condition to any extension of the time for a Party’s performance hereunder that the Party notify the other Party within five (5) Business Days, or as soon thereafter as reasonably practicable, following the occurrence of the Force Majeure Event and diligently pursue the delayed performance as soon as is reasonably possible.

20.16. **Prior Agreements Superseded.** This Lease supersedes any prior verbal or written agreement between the Parties with respect to the Lease Area and any Project Area, except the *Cooperative Improvement (Utility) Agreement* between the State of Oregon, the City of Wilsonville, Tualatin Valley Water District, and the City of Hillsboro, dated April 22, 2016; the *Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership*, dated July 6, 2000, by and between the City of Wilsonville and Tualatin Valley Water District, as it may be amended; and the *Accord Agreement*, dated June 19, 2001.

20.17. **Capacity to Execute; Mutual Representations.** Lessor and Lessee each warrant and represent to one another that this Lease constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, each Party represents that its governing process has been followed in order to authorize the execution, delivery, and performance of this Lease by it. The individuals executing this Lease each warrant that they have full authority to execute this Lease on behalf of the entity for whom they purport to be acting.

20.18. **Entire Agreement.** This Lease, together with all exhibits attached hereto and plans and as-builts expressly referenced in this Lease, and by this reference incorporated herein,

constitutes the entire agreement between Lessor and Lessee with respect to the leasing of the Lease Area.

20.19. **Counterparts.** This Lease may be executed in one or more counterparts.

20.20. **Memorandum of Lease.** Lessee may record a Memorandum of Lease in the form attached hereto as **Exhibit F**.

IN WITNESS WHEREOF, this Lease is executed as of the ___ day of _____, 2017.

CITY OF WILSONVILLE, by and through
its elected officials

APPROVED AS TO LEGAL FORM:

By: _____
Bryan Cosgrove, City Manager

By: _____
Barbara A. Jacobson, City Attorney

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2017,
by Bryan Cosgrove, as City Manager of the City of Wilsonville.

Notary Public – State of Oregon

CITY OF HILLSBORO, by and through
its elected officials

APPROVED AS TO LEGAL FORM:

By: _____
Michael Brown, City Manager

By: _____
Christopher Crean, City Attorney

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 2017,
by Michael Brown, as City Manager of the City of Hillsboro.

Notary Public – State of Oregon

TUALATIN VALLEY WATER DISTRICT,
by and through its elected officials

APPROVED AS TO LEGAL FORM:

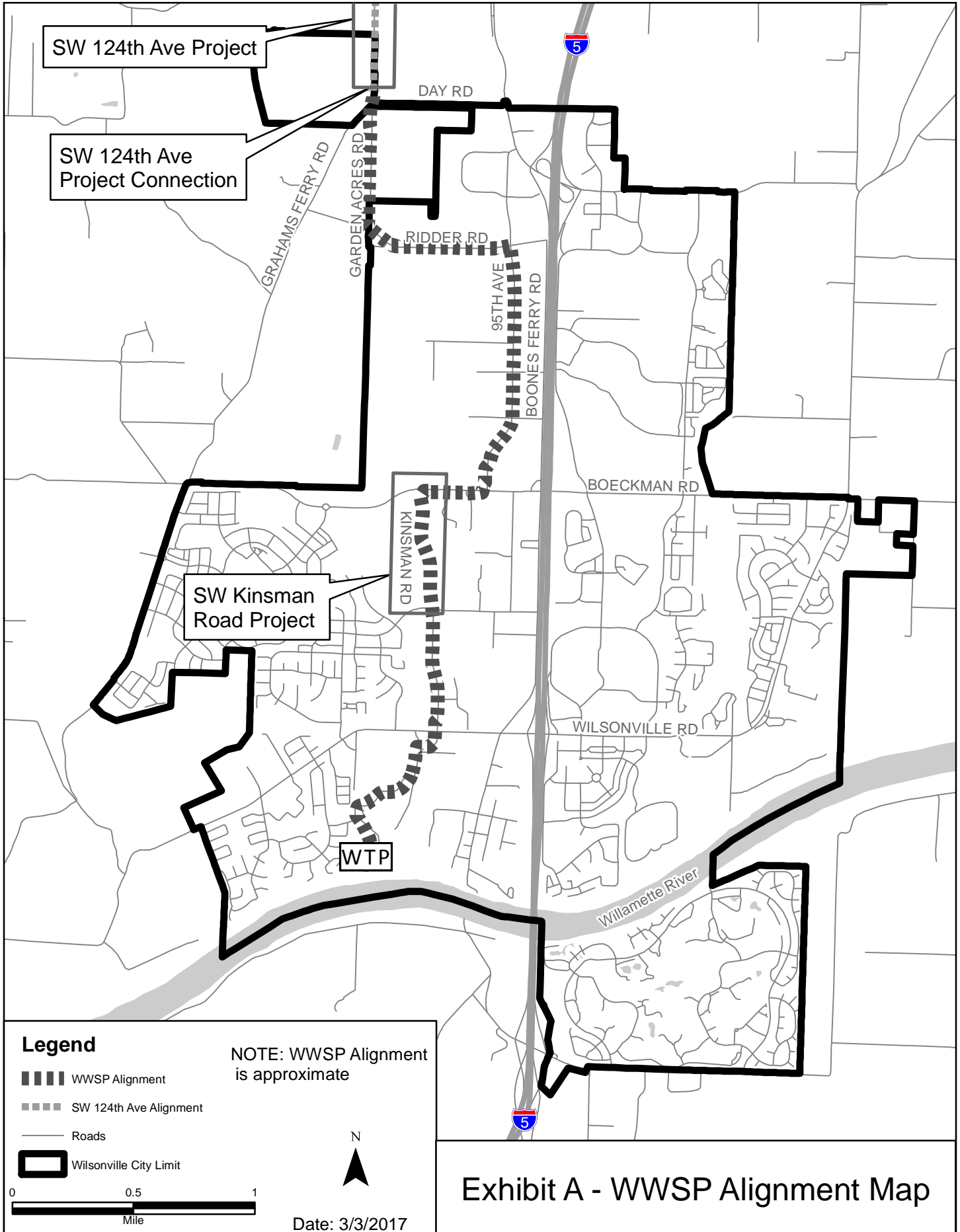
By: _____
Richard Schmidt, Board President

By: _____
Clark Balfour, Counsel

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 2017,
by Richard Schmidt, as Board President of the Tualatin Valley Water District.

Notary Public – State of Oregon



SW 124th Ave Project

SW 124th Ave Project Connection

SW Kinsman Road Project

WTP

KINSMAN RD

DAY RD

GRAHAM'S FERRY RD

GARDEN ACRES RD

RIDDER RD

95TH AVE

BOONES FERRY RD

BOECKMAN RD

WILSONVILLE RD

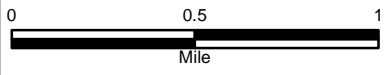
Willamette River



Legend

- WWSP Alignment
- ▤▤▤▤ SW 124th Ave Alignment
- Roads
- ▭ Wilsonville City Limit

NOTE: WWSP Alignment is approximate



Date: 3/3/2017

Exhibit A - WWSP Alignment Map

Exhibit C
2016 Public Works Plan Submittal Requirements
and Other Engineering Requirements

Revised for Willamette Water Supply Program Plan Submittals

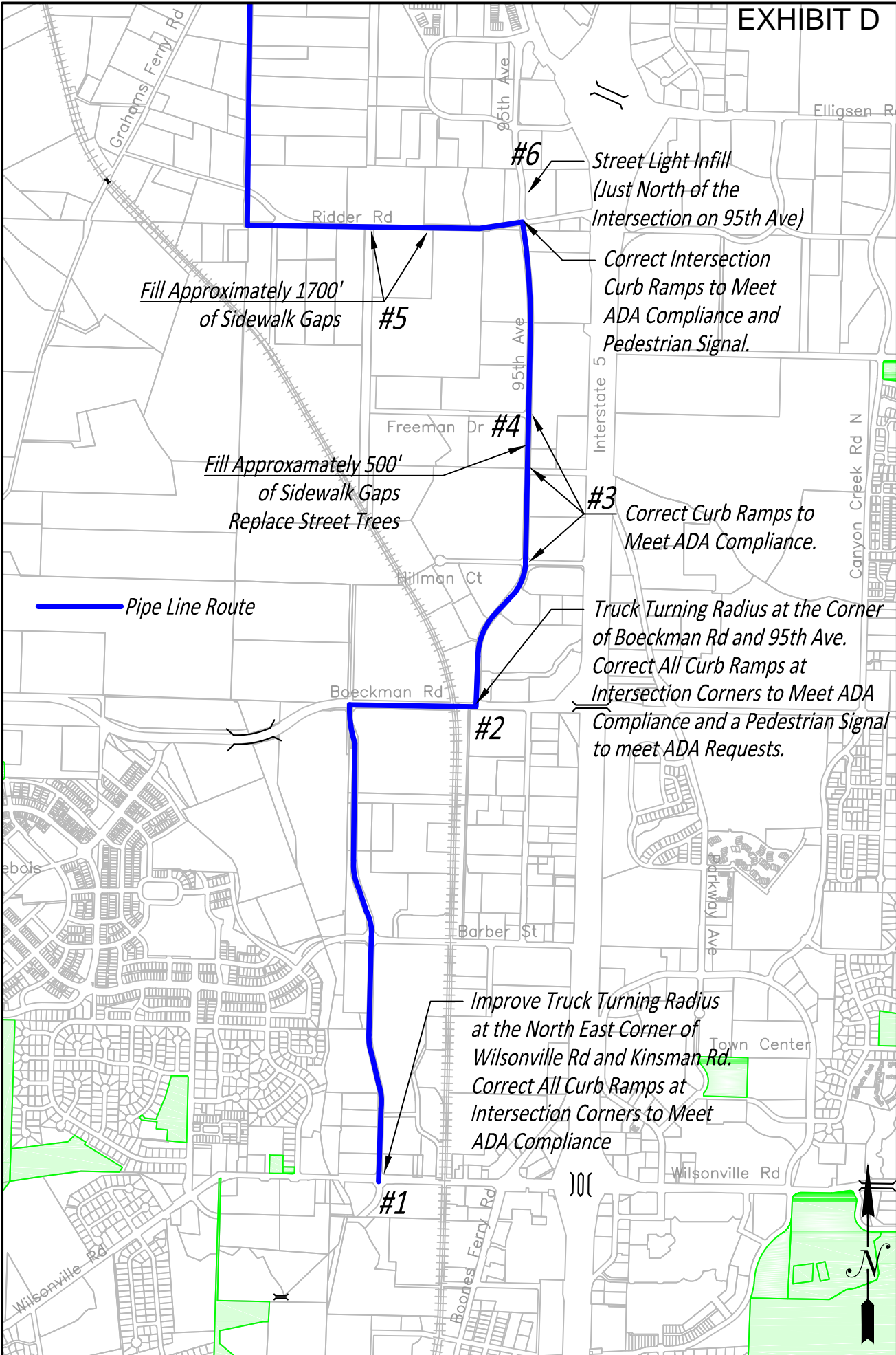
Note: These requirements are typical and can be expected to change from time to time – the requirements at the time of plan submittal will apply

1. All construction or improvements to public works facilities or within the public right-of-way shall be in conformance with the City of Wilsonville Public Works Standards - 2015.
2. Lessee shall submit insurance requirements to the City of Wilsonville as set forth in the Ground Lease.
3. No construction of, or connection to, any existing or proposed utility/improvements will be permitted until all plans are approved by City Staff, all fees have been paid, all necessary permits, rights-of-way and easements have been obtained and City Staff is notified a minimum of 24 hours in advance.
4. All utility/improvement plans submitted for review shall be based upon a 22”x 34” format and shall be prepared in accordance with City of Wilsonville Public Works Standards.
5. Plans submitted for review shall meet the following general criteria:
 - a. Design of any utility improvements in the right-of-way shall be approved at the time of the issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.
 - b. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities, shall be shown in a lighter, grey print. Proposed improvements shall be shown in bolder, black print.
 - c. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
 - d. All proposed on and off-site public/private utility improvements shall comply with State of Oregon and City of Wilsonville requirements and any other applicable codes.
 - e. Design plans shall identify existing and proposed locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes, and any other public or private utility within the general construction area.
 - f. As per City of Wilsonville Ordinance No. 615, all new utilities and ancillary equipment, including but not limited to pipelines, gas, telephone, cable, fiber-optic, and electric improvements, shall be installed underground. Existing overhead utilities shall be undergrounded unless otherwise agreed to, in writing, by the City.
 - g. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
 - h. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
 - i. Existing/proposed rights-of-way, easements, and adjacent driveways shall be identified.
 - j. All engineering plans shall be printed to PDF, combined to a single file, stamped and digitally signed by a Professional Engineer registered in the State of Oregon.
 - k. All plans submitted for review shall be in the form of a digitally signed PDF and three printed sets.

6. Submit plans in the following general format and order (as applicable) for all public works construction, including utilities in the right-of-way:
 - a. Cover sheet.
 - b. City of Wilsonville construction note sheet.
 - c. General construction note sheet.
 - d. Existing conditions plan.
 - e. Erosion control and tree protection plan.
 - f. Site plan; include property line boundaries, water quality pond boundaries, sidewalk improvements, rights-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
 - g. Grading plan, with one-foot contours.
 - h. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
 - i. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
 - j. Street plans.
 - k. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference.
 - l. Water and sanitary sewer plans; number all lines, manholes, and cleanouts for easier reference.
 - m. Detailed plan for stormwater detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although stormwater detention facilities are typically privately maintained, they will be inspected by engineering, and the plans must be part of the Public Works Permit set.
 - n. Detailed plan for water quality facility (both plan and profile views). Note that although stormwater quality facilities are typically privately maintained, they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set.
 - o. Composite franchise utility plan.
 - p. City of Wilsonville detail drawings.
 - q. Illumination plan.
 - r. Striping and signage plan.
 - s. Landscape plan.
7. Lessee shall install, operate, and maintain adequate erosion control measures in conformance with the standards adopted by City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements, until such time as approved permanent vegetative materials have been installed.
8. Lessee shall work with the City's Natural Resources department before disturbing any soil on the respective site. If five or more acres of the site will be disturbed, Lessee shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If one to less than five acres of the site will be disturbed, a 1200-CN permit from the City of Wilsonville is required.

9. Lessee shall be in conformance with all stormwater and flow control requirements for the proposed development per City of Wilsonville Public Works Standards.
10. A stormwater analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
11. Lessee shall be in conformance with all water quality requirements for the proposed development per City of Wilsonville Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project, Lessee shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
12. Stormwater quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
13. All survey monuments on the subject site, or that may be subject to disturbance within the construction area, and the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated, or destroyed as a result of any construction, Lessee shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to City Staff.
14. Sidewalks, crosswalks, and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
15. A City approved energy dissipation device shall be installed at all proposed storm system outfalls. Storm outfall facilities shall be designed and constructed in conformance with City of Wilsonville Public Works Standards.
16. Lessee shall provide a 'stamped' engineering plan and supporting information that shows the proposed street light locations meet the appropriate AASHTO lighting standards for all proposed streets and pedestrian alleyways.
17. All required pavement markings, in conformance with the Transportation Systems Plan and the Bike and Pedestrian Master Plan, shall be completed in conjunction with any conditioned street improvements.
18. Street and traffic signs shall have a high-intensity prismatic finish meeting ASTM 4956 Spec Type 4 standards.
19. Lessee shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.

20. Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP), or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
21. For any new public easements created with the project, Lessee shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate easement document (on City approved forms).
22. Mylar Record Drawings: At the completion of the installation of any required public improvements or utilities in the right-of-way, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally approved by City Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. mylar, an electronic copy in AutoCAD - current version, and a digitally signed PDF.



Fill Approximately 1700' of Sidewalk Gaps

#5

Fill Approximately 500' of Sidewalk Gaps Replace Street Trees

#4

#3

Correct Curb Ramps to Meet ADA Compliance.

Truck Turning Radius at the Corner of Boeckman Rd and 95th Ave. Correct All Curb Ramps at Intersection Corners to Meet ADA Compliance and a Pedestrian Signal to meet ADA Requests.

#2

Improve Truck Turning Radius at the North East Corner of Wilsonville Rd and Kinsman Rd. Correct All Curb Ramps at Intersection Corners to Meet ADA Compliance

#1

— Pipe Line Route



29900 SW KINSMAN RD

KINSMAN ROAD

PROPOSED DRIVEWAY

PROPOSED RIGHT-OF-WAY

PROPOSED STORMWATER PLANTER

PROPOSED SIDEWALK

9815 SW WILSONVILLE RD
(FRED MEYER FUEL CENTER)

PROPOSED BIKE LANE

EXIST.
RIGHT-OF-WAY

PROPOSED SIGNAL POLE

PROPOSED ISLAND

WILSONVILLE ROAD



File: N:\e\p\2015\315005-10-Wilsonville-ADA-Ramp-Replacement\CAD\LOT\Exhibit\5005-EXH-RightTurnLane.dwg TAB: EXH
Plotted: 6/2/16 at 9:56am By: Jordan

Right Turn Lane - Concept Plan

Kinsman Road & Wilsonville Road
City of Wilsonville, Oregon



After recording, return to:
Tualatin Valley Water District
Attn: Chief Executive
1850 SW 170th Avenue
Beaverton, OR 97003

MEMORANDUM OF GROUND LEASE FOR RAW WATER PIPELINE

This Memorandum of Ground Lease (“Memorandum”) is made and entered into on this ____ day of _____, 2017 by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (“Lessor”), the **City of Hillsboro**, a duly chartered home rule municipal government of the State of Oregon, and the **Tualatin Valley Water District**, a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (hereinafter jointly and severally referred to as “Lessee”), as follows:

1. Ground Lease Area Legal Description. The Lease Area is described on **Exhibit A**, attached hereto and incorporated by reference herein.
2. Ground Lease Purpose. The allowed use is for the installation, operation, maintenance, repair, and replacement for a raw water transmission pipeline, as more particularly described in the Lease.
3. Ground Lease Term. The term of this Lease is commenced on _____, 2017 and shall terminate on June 30, 2115, unless terminated earlier in accordance with the terms of the Ground Lease.
4. Other Ground Lease Terms. The sole purpose of this Memorandum is to provide constructive notice of the existence of this Ground Lease. In the event of a conflict between the terms of the Ground Lease and this Memorandum, the terms of the Ground Lease shall control. The entire Ground Lease may be made available by contacting any of the parties thereto whose contact information is as follows:

To Wilsonville: City of Wilsonville
 Attn: Finance Director
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

EXHIBIT F

To Hillsboro: City of Hillsboro
Attn: Water Director
150 East Main Street
Hillsboro, OR 97123

To TVWD: Tualatin Valley Water District
Attn: Chief Executive
1850 SW 170th Avenue
Beaverton, OR 97003

IN WITNESS WHEREOF, the parties have respectively executed this Memorandum effective as of the date first above written. This Memorandum may be executed in counterpart.

CITY OF WILSONVILLE, by and through
its elected officials

APPROVED AS TO LEGAL FORM:

By: _____
Bryan Cosgrove, City Manager

By: _____
Barbara A. Jacobson, City Attorney

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2017,
by Bryan Cosgrove, as City Manager of the City of Wilsonville.

Notary Public – State of Oregon

EXHIBIT F

CITY OF HILLSBORO, by and through
its elected officials

APPROVED AS TO LEGAL FORM:

By: _____
Michael Brown, City Manager

By: _____
Christopher Crean, City Attorney

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 2017,
by Michael Brown, as City Manager of the City of Hillsboro.

Notary Public – State of Oregon

EXHIBIT F

TUALATIN VALLEY WATER DISTRICT,
by and through its elected officials

APPROVED AS TO LEGAL FORM:

By: _____
Richard Schmidt, Board President

By: _____
Clark Balfour, Counsel

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 2017,
by Richard Schmidt, as Board President of the Tualatin Valley Water District.

Notary Public – State of Oregon

FIRST AMENDMENT TO AGREEMENT REGARDING WATER TREATMENT PLANT
DESIGN, CONSTRUCTION, OPERATION, AND PROPERTY OWNERSHIP

This First Amendment to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership is entered into by **Tualatin Valley Water District**, a domestic water supply district organized under ORS Chapter 264 (TVWD), and the **City of Wilsonville**, a municipal corporation of the State of Oregon (Wilsonville), and is effective this ____ day of _____, 2017. TVWD and Wilsonville may also be referred to as Party or Parties.

RECITALS

- A. On or about July 6, 2000, the Parties entered into the Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership (“Agreement”) regarding the Property and Supply Facilities as defined in the Agreement.
- B. On or about June 19, 2001, the Parties entered into an Accord Agreement to supplement the terms of the Agreement.
- C. Pursuant to the Agreement and the Accord Agreement, the Parties caused the Property to be improved and the Supply Facilities constructed, with Wilsonville immediately taking water from the Supply Facilities and anticipating that TVWD alone, or with the Willamette River Water Coalition, an ORS Chapter 190 intergovernmental entity, would expand part or all of the Supply Facilities and take drinking water from the Supply Facilities.
- D. Section 6 of the Agreement, *Operation and Management of the Supply Facilities; Future Agreement*, provides for designation of a Managing Owner and duties. Section 6.1 provides for a transfer of the Managing Owner position from Wilsonville to TVWD if the Willamette River Water Treatment Plant (WRWTP) usage by Wilsonville is less than fifty percent (50%) of the total usage. Wilsonville has continuously been the designated Managing Owner, managing the Supply Facilities since the Supply Facilities were constructed.
- E. TVWD, along with the City of Hillsboro and potentially other units of local government, plans to build a new Willamette Water Supply System Water Treatment Plant (WWSS WTP) at a location other than the Property, so TVWD will most likely not obtain finished drinking water from the WRWTP. TVWD, Wilsonville, Sherwood, Hillsboro, and other potential partners in the WWSS WTP or the WRWTP will jointly share in the expansion, use, operation, and maintenance of upgraded intake facilities, as more particularly described below, located on the Property, all according to the Willamette Intake Facilities Intergovernmental Agreement currently under negotiation.
- F. TVWD and Wilsonville have negotiated a Ground Lease that provides for the location, design, construction, operation, maintenance, repair, and replacement of a raw water transmission line from the Property through, under, and along Wilsonville rights-of-way to the ultimate future northern boundary of Wilsonville. One of the elements of consideration by TVWD for the Ground Lease is to amend the Agreement to vest Wilsonville as the permanent Managing Owner of the WRWTP.

- G. TVWD and Wilsonville also desire to make other amendments to the Agreement as set forth below.

AGREEMENT

In consideration of the execution of a mutually acceptable Ground Lease for use of the Wilsonville rights-of-way by TVWD, the City of Hillsboro, and other municipal entities for water system facilities, and incorporating by reference the Recitals as if fully set forth herein, TVWD and Wilsonville hereby amend the Agreement as follows:

1. Definitions. The following two Definitions are added to Section 1: "Willamette Intake Facilities" means the fish screens, the intake pipe, the caisson (aka wet well), the pump station building, electric panel, conduit and wiring, and other appurtenances up to the System Separation Point, as defined in the Willamette Intake Facilities Intergovernmental Agreement. "Willamette River Treatment Plant ("Plant") Assets" means the Real Property and Supply Facilities that are the subject of this First Amendment.

2. Section 2.2.8 is hereby removed and replaced in its entirety with the following:

"2.2.8 The cost of maintenance, repair, and replacement of all Plant Assets, excluding the Intake Facilities, shall be proportioned to each owner on the basis of capacity used, as set forth in Section 4 of the Agreement. With respect to the Intake Facilities, the cost of maintenance, repair, and replacement will be allocated in accordance with the Willamette Intake Facilities Intergovernmental Agreement, which will provide that allocation will be based on ownership interest, irrespective of capacity used, effective July 1, 2017. This requirement will be included in the Willamette Intake Facilities Intergovernmental Agreement ("IGA"). If this provision is not included in the IGA, TVWD agrees to pay the pro rata share of all parties, excluding Wilsonville and Sherwood. Notwithstanding the foregoing and for clarification, routine operating and maintenance costs directly associated with the production of water for consumption, while Wilsonville and Sherwood (as a successor in interest to TVWD) are the only users, will continue to be allocated in accordance with the proportionate use of each user, including TVWD's current and future successors and assigns."

3. A new Section 2.2.11 is added to include the following:

"2.2.11 Right-of-Way Dedication: The Parties will execute a right-of-way dedication to the City of Wilsonville for an extension of Kinsman Road through a portion of the Property, yet to be determined, for the future Boones Ferry Road to Brown Road east-west connector road and the Kinsman Road extension to the connector road. This dedication will be beneficial to the Parties and will be without charge."

4. A new Section 2.2.12 is added to include the following:

"2.2.12 New Raw Water Pipeline Easement: Wilsonville hereby agrees to grant an easement to TVWD, Hillsboro, and other named municipalities for the new Willamette Intake Facilities and the routing of a new 66-inch diameter Raw Water Pipeline from the System Separation Point westerly along the Willamette River and then northerly along

and through the Property, including location and placement of a structure for electrical and other water system equipment and appurtenances on Area 1, as shown on Exhibit A, attached hereto and incorporated by reference herein, and all as more particularly described in the Willamette Water Supply System Intake Facility Agreement (“Intake Agreement”), to be executed contemporaneously herewith between TVWD and Wilsonville. In consideration of the granting of this easement, TVWD will transfer the ownership of 5 MGD of its capacity in the existing Raw Water Pipeline to Wilsonville.”

- 5. Section 6.1 of the Agreement is replaced in its entirety with a new Section 6.1, to read as follows:

“6.1 Managing Owner

Wilsonville is hereby designated as Managing Owner, with authority to manage, operate, repair, and replace the Plant Assets that comprise the Willamette River Water Treatment Plant, excluding the Willamette Intake Facilities. Wilsonville will also be responsible for operations and management of the Willamette Intake Facilities (“Intake Facilities”) until the Intake Facilities are upgraded and the parties to the Willamette Intake Facilities Intergovernmental Agreement, other than Wilsonville and Sherwood, begin to draw water through the Intake Facilities. A Managing Agent for the Intake Facilities will be named pursuant to the Willamette Intake Facilities Intergovernmental Agreement. If Wilsonville elects, in its sole discretion, to resign as Managing Owner of the Willamette River Water Treatment Plant, it will give all other then-current owners notice thereof, and all owners, including Wilsonville, will mutually agree to a new Managing Owner.”

- 6. This First Amendment is expressly conditioned and contingent upon the execution of a Ground Lease between the Parties for the raw water pipeline and right-of-way usage. If that Ground Lease is not executed, this First Amendment shall be void without further action of the Parties.
- 7. Except as expressly modified herein, the terms and conditions of the Agreement and Accord Agreement, referenced in Recitals A and B, remain in full force and effect.

TUALATIN VALLEY WATER DISTRICT

CITY OF WILSONVILLE

By: _____
MARK KNUDSON, P.E.
Chief Executive Officer

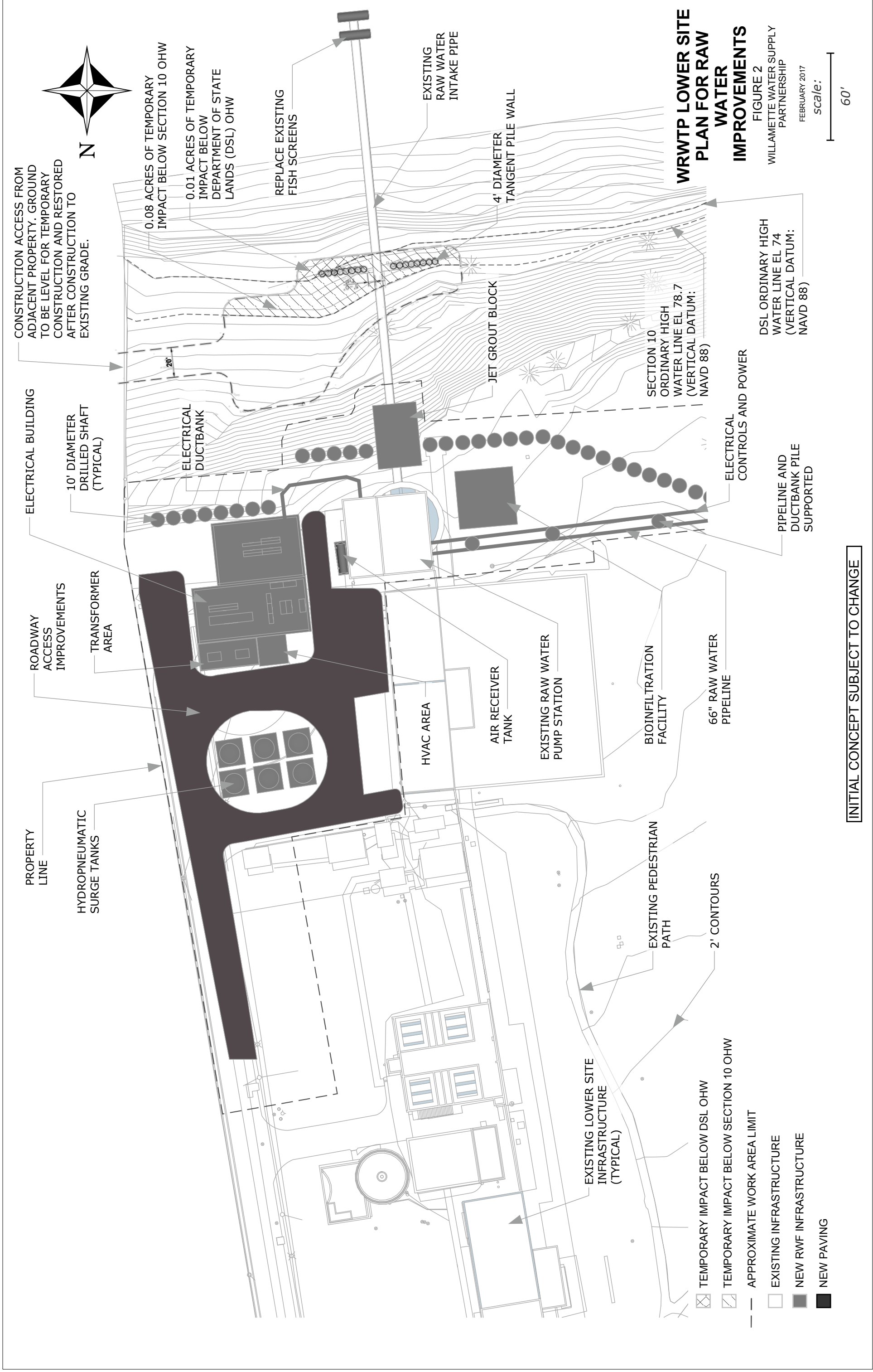
By: _____
BRYAN COSGROVE
City Manager

APPROVED AS TO FORM:

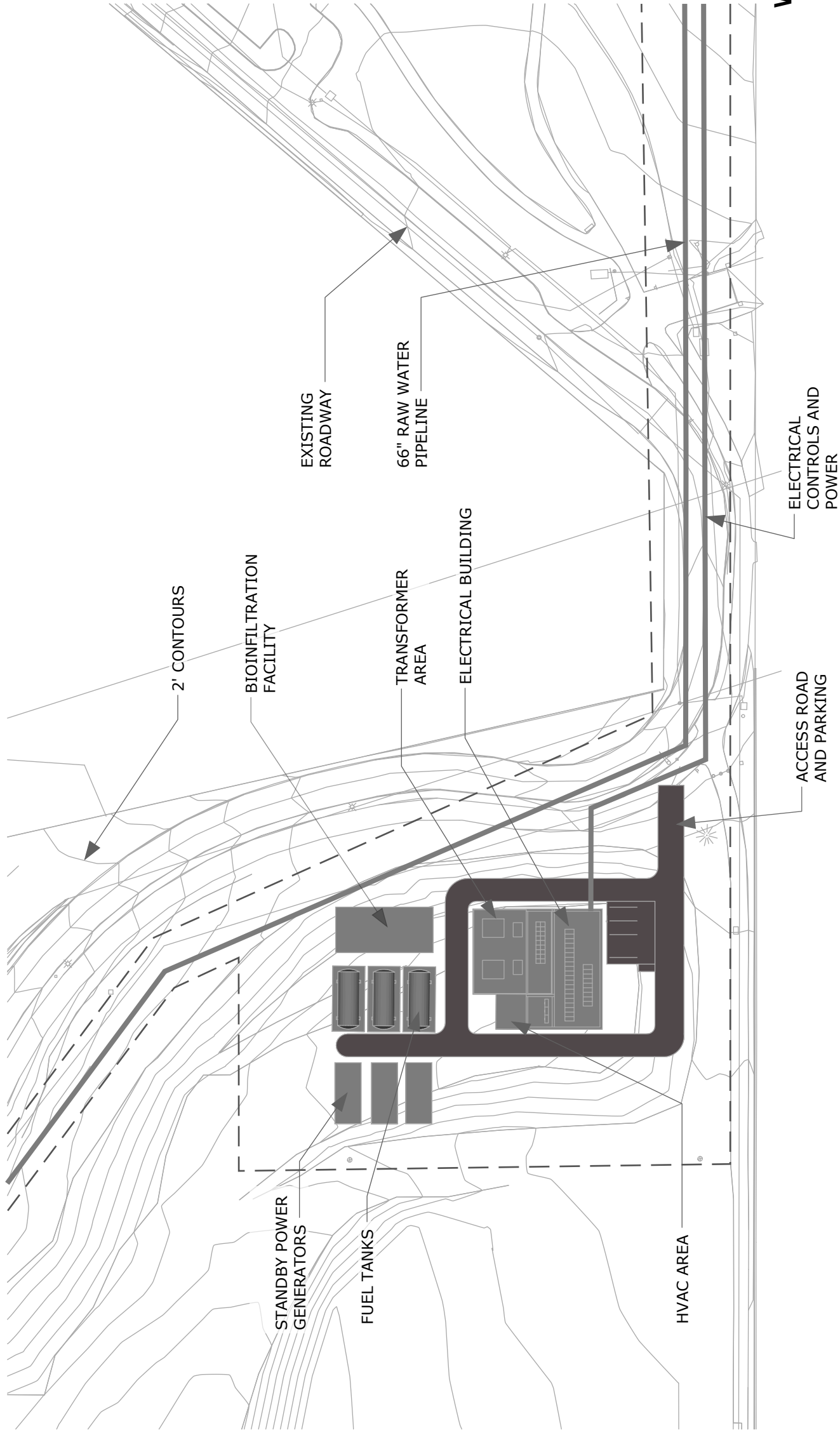
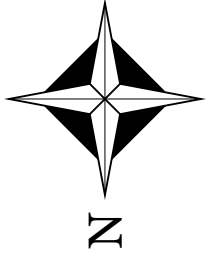
APPROVED AS TO FORM:

Clark Balfour, District Counsel

Barbara Jacobson, City Attorney



INITIAL CONCEPT SUBJECT TO CHANGE



- APPROXIMATE WORK AREA LIMIT
- EXISTING INFRASTRUCTURE
- NEW RWTP INFRASTRUCTURE
- NEW PAVING

**WRWTP UPPER SITE
PLAN FOR RAW
WATER
IMPROVEMENT**

FIGURE 3

WILLAMETTE WATER SUPPLY
PARTNERSHIP

FEBRUARY 2017

Scale:

80'

INITIAL CONCEPT SUBJECT TO CHANGE

**CITY OF WILSONVILLE AND
TUALATIN VALLEY WATER DISTRICT
WILLAMETTE WATER SUPPLY SYSTEM
INTAKE FACILITY AGREEMENT**

This Willamette Water Supply System (“WWSS”) Intake Facility Agreement (“Agreement”) is made and entered into on this ____ day of _____, 2017 (“Effective Date”) by and between the **City of Wilsonville**, a duly chartered home rule municipal government of the State of Oregon (“Wilsonville”), and **Tualatin Valley Water District**, a duly organized water supply district under Oregon Revised Statutes (ORS) Chapter 264 (“TVWD”). Wilsonville and TVWD are sometimes referred to individually as a “Party” or collectively as the “Parties.”

RECITALS:

WHEREAS, Wilsonville and TVWD are the original and current owners in the Wilsonville Willamette River Water Treatment Plant (“WRWTP”) land and facilities (“Facilities”), including current Willamette Intake Facilities (“WIF”) (noting TVWD has transferred a portion of its capacity rights, but not ownership of the land or Facilities, to Sherwood); and

WHEREAS, Wilsonville has been primarily responsible for managing, maintaining, and paying all associated costs for the Facilities since inception, except for a contribution from Sherwood (as a user and partial capacity successor in interest to TVWD) over the past few years; and

WHEREAS, TVWD wishes to sell a portion of its interest in the WIF to other municipal partners (“WIF Partners”) through a Willamette Intake Facilities Intergovernmental Agreement (“WIF IGA”) and, in conjunction therewith, desires to upgrade the WIF; and

WHEREAS, Wilsonville is satisfied with the function of the WIF, as it currently exists, but is willing to cooperate with TVWD so that TVWD can sell and upgrade the assets to the WIF Partners and, in conjunction therewith, is also willing to become a WIF Partner along with TVWD and the others;

NOW, THEREFORE, incorporating all of the above Recitals as if fully set forth below, the Parties agree as follows:

AGREEMENT:

1. Willamette Intake Facilities Description: The WIF include the following assets, owned by Wilsonville and TVWD in the following percentages:

- | | |
|---------------------------------------|-----------------------------------|
| • Existing Fish Screening - 70 MGD: | Wilsonville - 28.6%; TVWD - 71.4% |
| • Intake Pipe - 120 MGD: | Wilsonville - 16.7%; TVWD - 83.3% |
| • Caisson (aka Wet Well) - 120 MGD: | Wilsonville - 16.7%; TVWD - 83.3% |
| • Pump Station Building - 120 MGD: | Wilsonville - 16.7%; TVWD - 83.3% |
| • Electrical Wire & Conduit - 70 MGD: | Wilsonville - 16.7%; TVWD - 83.3% |

2. Capacity Increase: In order to sell shares of capacity ownership in the WIF to other WIF Partners, TVWD proposes to replace the existing fish screen with a new increased capacity screen that could handle and be permitted for 150 MGD. Therefore, for purposes of this

Agreement, all numbers are based on a 150 MGD capacity. In the event capacity is decreased, Wilsonville would pay (or be reimbursed if payment has already been made) its proportionate decreased share of the actual costs of that incremental decrease in capacity, in accordance with the terms and formulas set forth below.

- 3. Additional 5 MGD Share of the Existing Raw Water Pipeline:** Currently the raw water pipeline (“RWP”) to the WRWTP, with a current capacity of 70 MGD, is owned by Wilsonville, with a 28.6% share, and TVWD, with a 71.4% share. In consideration of TVWD transferring ownership of 5 MGD of their capacity in the existing WRWTP RWP to Wilsonville, Wilsonville, along with TVWD, will grant to TVWD, Hillsboro, and other municipal partners, including an assignee intergovernmental entity created by them, a Construction, Maintenance, and Access Easement within a defined surveyed area (“Easement Area”) for the purpose of constructing, operating, maintaining, repairing, replacing, and accessing the new WWSS RWP and WIF. The Easement will be located to the west of the WRWTP and then north through the Water Treatment Plant Park. Installation of required structures, equipment, and appurtenances to the RWP will be allowed within the Easement Area, on the upper WRWTP site, north of the access road, as shown on the drawing entitled Overall Site Plan for Raw Water Facilities, Figures 1-3, February 2017 (*please note, subject to change by agreement of the Parties*), attached hereto as **Exhibit A** and incorporated by reference herein. No structures, equipment, or appurtenances will be allowed to be located aboveground on the lower site, which is currently used as a park area, other than the stormwater facilities in the location shown on **Exhibit A**, or other minor equipment approved by Wilsonville that is flush with the ground so as to not create any hazard to the public using the park area, or as otherwise approved, in writing, by Wilsonville. The Easement Area, excluding the area for the underground RWP, is anticipated not to exceed two (2) acres, unless agreed to, in writing, by Wilsonville. The final size will be approved as part of the plan review. Final drawings depicting all structures, equipment, and appurtenances to be located within the Easement Area must be reviewed and approved by Wilsonville prior to finalization of the Easement. As used herein, reference to structures, equipment, and appurtenances does not include a power substation. If one is needed, Wilsonville and TVWD will negotiate concerning the terms and conditions of its location with PGE pursuant to a separate agreement. Seismic improvements for the new WWSS RWP will be included at no cost to Wilsonville, all as set forth in the First Amendment (dated _____, 2017) to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership, dated July 6, 2000.
- 4. Plant Management, Maintenance, and Repair:** Wilsonville has continuously managed and overseen the operations and maintenance of the WIF since the assets were placed into service in 2002. In the spirit of compromise and as additional consideration for this Agreement, Wilsonville agrees to forego collection of past costs and expenditures made by Wilsonville in operating and maintaining the WIF, and TVWD agrees that all future repair and replacement expenditures (including those set forth in Paragraph 5 below) will be shared by Wilsonville and TVWD in accordance with their percentage ownership, not use. Routine operational expenses required for daily use of the system will continue to be paid by the users, in accordance with their percentage of usage. TVWD may pass a portion of this obligation on to the other WIF Partners, at its option, but if not agreed to by the other WIF Partners, TVWD will remain liable for its share, as more particularly set forth below.

5. Future, Near-Term Intake Maintenance and Repair Costs: Once the WIF IGA is signed by the WIF Partners, the WIF will become co-owned and governed by the terms of that WIF IGA. In the meantime, all future near-term costs associated with the maintenance and repair of the existing WIF will be shared by Wilsonville and TVWD, in accordance with their percentage ownership. In general, future WIF maintenance costs will be budgeted and paid according to the terms of the WIF IGA. For Fiscal Year 17/18, it is anticipated it will be necessary to repair the intake pipe, modify the caisson sparge system, and repair grouted pipe joints, as needed. The estimated cost of these near-term repairs is approximately One Hundred Four Thousand Dollars (\$104,000). TVWD's share of near-term intake pipe repair costs based on ownership is $\$104,000 * 1.05 * 0.833 = \$90,963$ (this number is inclusive of Sherwood's 5 MGD). The foregoing number will be reduced by the amount of this number, if any, allocated to the removal of sediment from the pipeline, resulting from water use. This amount may be allocated by TVWD to the other WIF Partners pursuant to the terms of the WIF IGA, or will be paid by TVWD if the WIF Partners do not agree to pay or TVWD simply elects to pay. In any case, however, if the WIF IGA is not finalized prior to the need for this expenditure, TVWD agrees to pay its share, as set forth above, when such near-term repairs have been completed by Wilsonville. Wilsonville agrees to evaluate possible scheduling options for these near-term improvements and consider possible inclusion of the near-term improvements as part of other WIF improvement projects contemplated by the WIF Partners, with the goal of achieving cost savings for Wilsonville, TVWD, and the WIF Partners, as long as waiting for the IGA Agreement to be reached does not jeopardize operation or cause damage to the WIF.

6. Cost of New Screen and Permitting for New Screen: Wilsonville, along with TVWD, paid for the existing intake screen, which has a design capacity of 70 MGD. This screen has been in service for approximately fifteen (15) years and is projected to meet Wilsonville's capacity requirements for at least an additional sixty (60) years. Although Wilsonville has no reason to invest in a new screen at this point in time, in the spirit of cooperation and toward the goal of obtaining more capacity for all the WIF Partners, Wilsonville agrees to pay a portion of the proportional cost share of the permitting and actual new screen cost in exchange for an additional 5 MGD capacity. Wilsonville's final cost share for the additional 5 MGD capacity will be based on the **lesser** of the actual costs and capacity of the new screen, installation, and permitting or One Hundred Twenty-Five Thousand Dollars (\$125,000). In all cases, Wilsonville's cost cannot exceed and will be capped at \$125,000. No additional fees or charges may be added to this amount.

7. Miscellaneous Provisions:

7.1. Notices. Any notice required or permitted under this Agreement 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 Wilsonville: City of Wilsonville
 Attn: Finance Director
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

with copy to: Wilsonville City Attorney
29799 SW Town Center Loop East
Wilsonville, OR 97070

To TVWD: Tualatin Valley Water District
Attn: Chief Executive Officer
1850 SW 170th Avenue
Beaverton, OR 97003

with copy to: District Counsel
1850 SW 170th Avenue
Beaverton, OR 97003

The addresses to which notices are to be delivered may be changed by giving notice of the change in address in accordance with this Notice provision.

- 7.2. Modification. Any modification of the provisions of this Agreement shall not be enforceable or binding unless reduced to writing and signed by both Parties.
- 7.3. Integration. This Agreement contains the entire and integrated agreement between the Parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.
- 7.4. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.
- 7.5. No Assignment. Neither Party may assign this Agreement, nor the performance of any obligations hereunder, unless agreed to in advance and in writing by the other Party.
- 7.6. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. Venue for any dispute will be in Clackamas County Circuit Court.
- 7.7. 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 Agreement 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. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.
- 7.8. Nonwaiver. Failure by either Party at any time to require performance by the other Party of any of the provisions of this Agreement 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.

- 7.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the Parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.
- 7.10. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.
- 7.11. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 7.12. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. 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 Agreement gives Wilsonville “sole discretion” or Wilsonville is allowed to make a decision in its “sole judgment.”
- 7.13. 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 Agreement in order to provide and secure to the other Party the full and complete enjoyment of rights and privileges hereunder.
- 7.14. Interpretation. As a further condition of this Agreement, Wilsonville and TVWD acknowledge that this Agreement 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 this Agreement, 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.
- 7.15. Entire Agreement. This Agreement, all documents attached to this Agreement, and all laws and regulations incorporated by reference herein, represent the entire agreement between the Parties.
- 7.16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.
- 7.17. Authority. Each Party signing this Agreement hereby warrants actual authority to bind their respective Party.
- 7.18. Related Essential Agreements. This Agreement will be executed simultaneously with the Ground Lease and the First Amendment to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first above written.

CITY OF WILSONVILLE, by and through
its elected officials

APPROVED AS TO LEGAL FORM:

By: _____
Bryan Cosgrove, City Manager

By: _____
Barbara A. Jacobson, City Attorney

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2017,
by Bryan Cosgrove, as City Manager of the City of Wilsonville.

Notary Public – State of Oregon

TUALATIN VALLEY WATER DISTRICT,
by and through its elected officials

APPROVED AS TO LEGAL FORM:

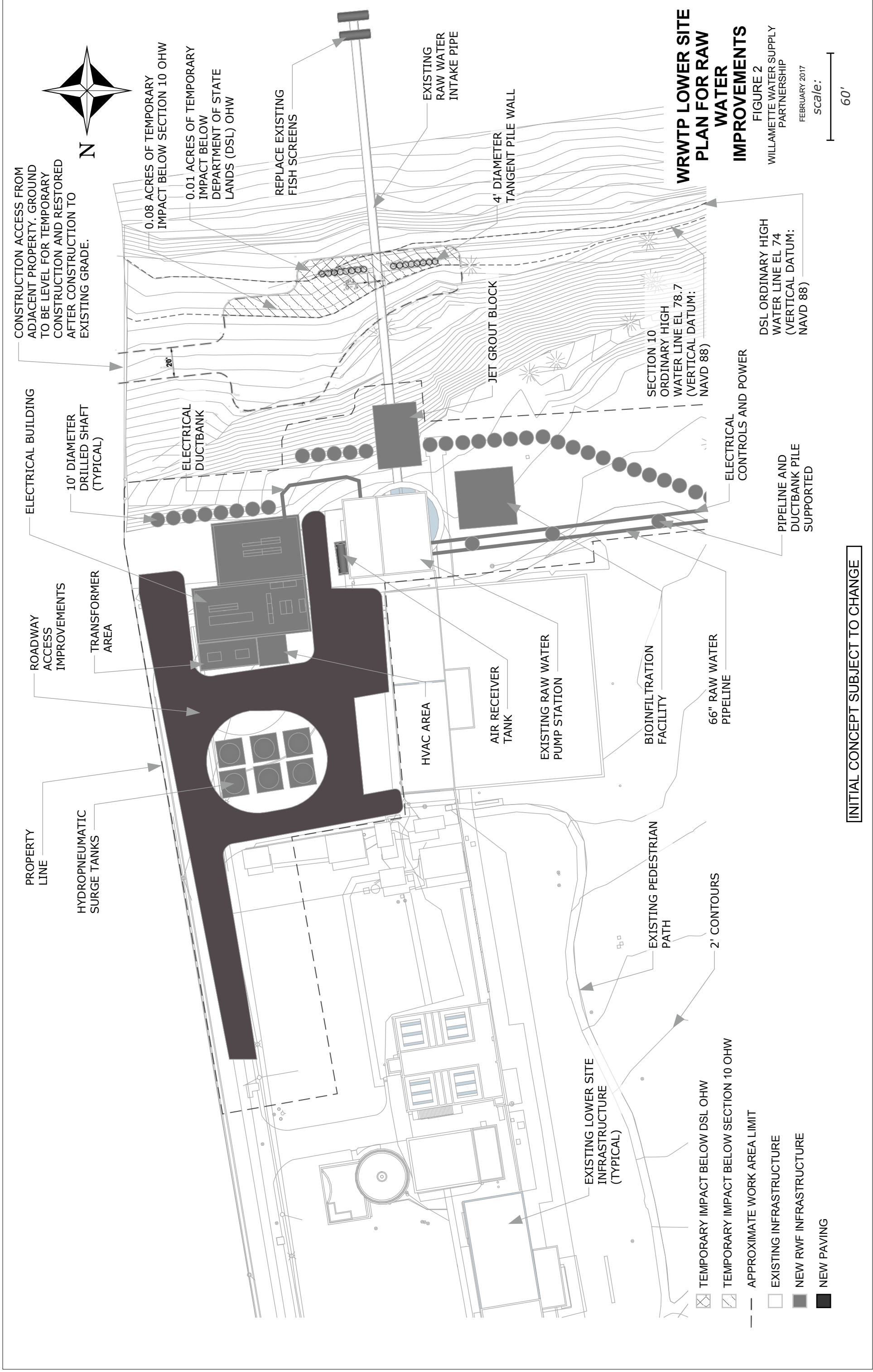
By: _____
Mark Knudson, P.E.,
Chief Executive Officer

By: _____
Clark Balfour, Counsel

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 2017,
by Mark Knudson, P.E., as Chief Executive Officer of the Tualatin Valley Water District.

Notary Public – State of Oregon



CONSTRUCTION ACCESS FROM ADJACENT PROPERTY. GROUND TO BE LEVEL FOR TEMPORARY CONSTRUCTION AND RESTORED AFTER CONSTRUCTION TO EXISTING GRADE.

ELECTRICAL BUILDING
10' DIAMETER DRILLED SHAFT (TYPICAL)

ROADWAY ACCESS IMPROVEMENTS
TRANSFORMER AREA

PROPERTY LINE
HYDROPNEUMATIC SURGE TANKS

0.08 ACRES OF TEMPORARY IMPACT BELOW SECTION 10 OHW

0.01 ACRES OF TEMPORARY IMPACT BELOW DEPARTMENT OF STATE LANDS (DSL) OHW

REPLACE EXISTING FISH SCREENS

EXISTING RAW WATER INTAKE PIPE

4' DIAMETER TANGENT PILE WALL

JET GROUT BLOCK

SECTION 10 ORDINARY HIGH WATER LINE EL 78.7 (VERTICAL DATUM: NAVD 88)

DSL ORDINARY HIGH WATER LINE EL 74 (VERTICAL DATUM: NAVD 88)

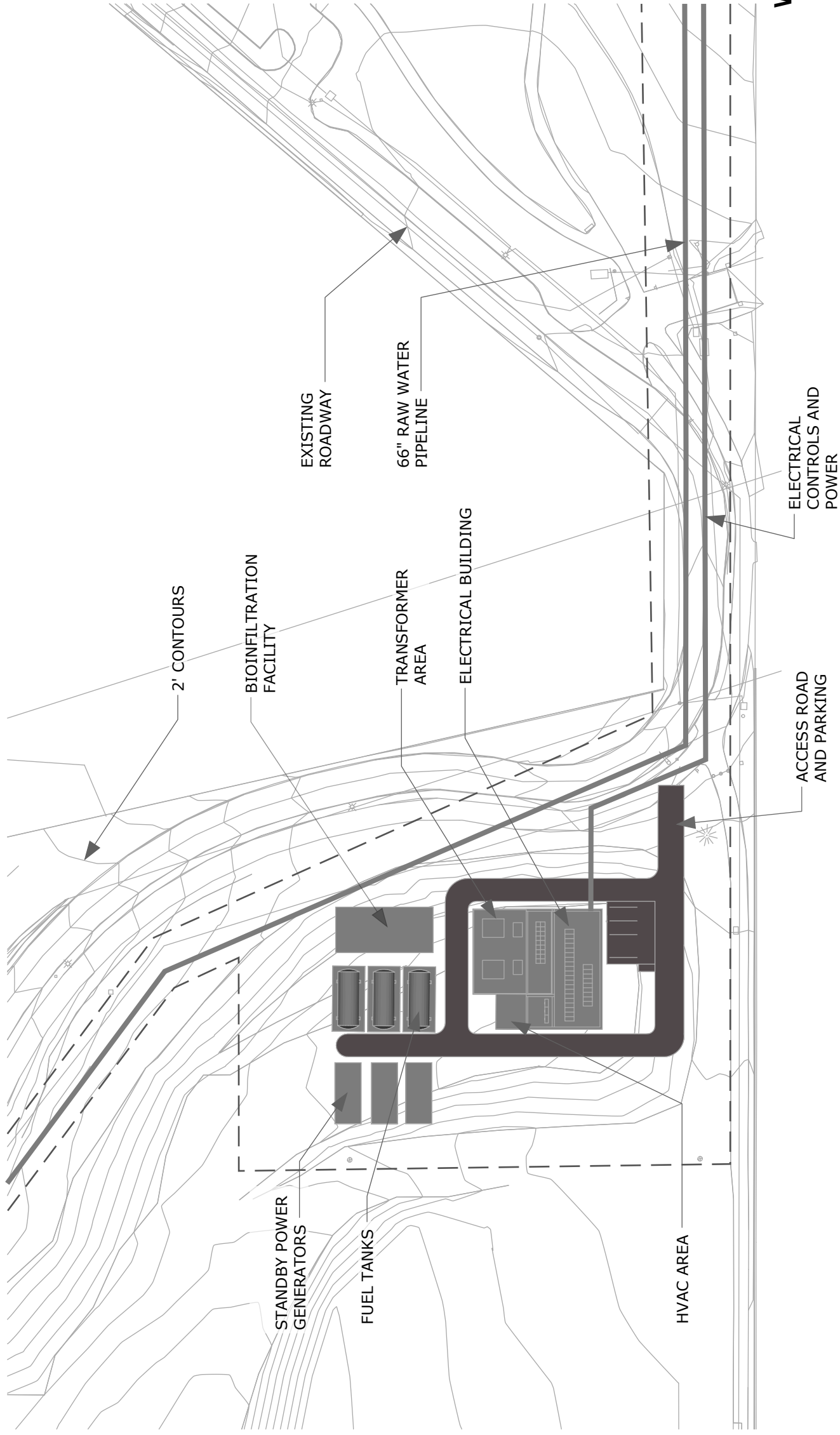
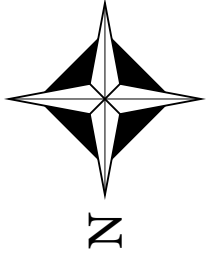
WRWTP LOWER SITE PLAN FOR RAW WATER IMPROVEMENTS

FIGURE 2
WILLAMETTE WATER SUPPLY PARTNERSHIP
FEBRUARY 2017

Scale: 60'

- TEMPORARY IMPACT BELOW DSL OHW
- TEMPORARY IMPACT BELOW SECTION 10 OHW
- APPROXIMATE WORK AREA LIMIT
- EXISTING INFRASTRUCTURE
- NEW RWF INFRASTRUCTURE
- NEW PAVING

INITIAL CONCEPT SUBJECT TO CHANGE

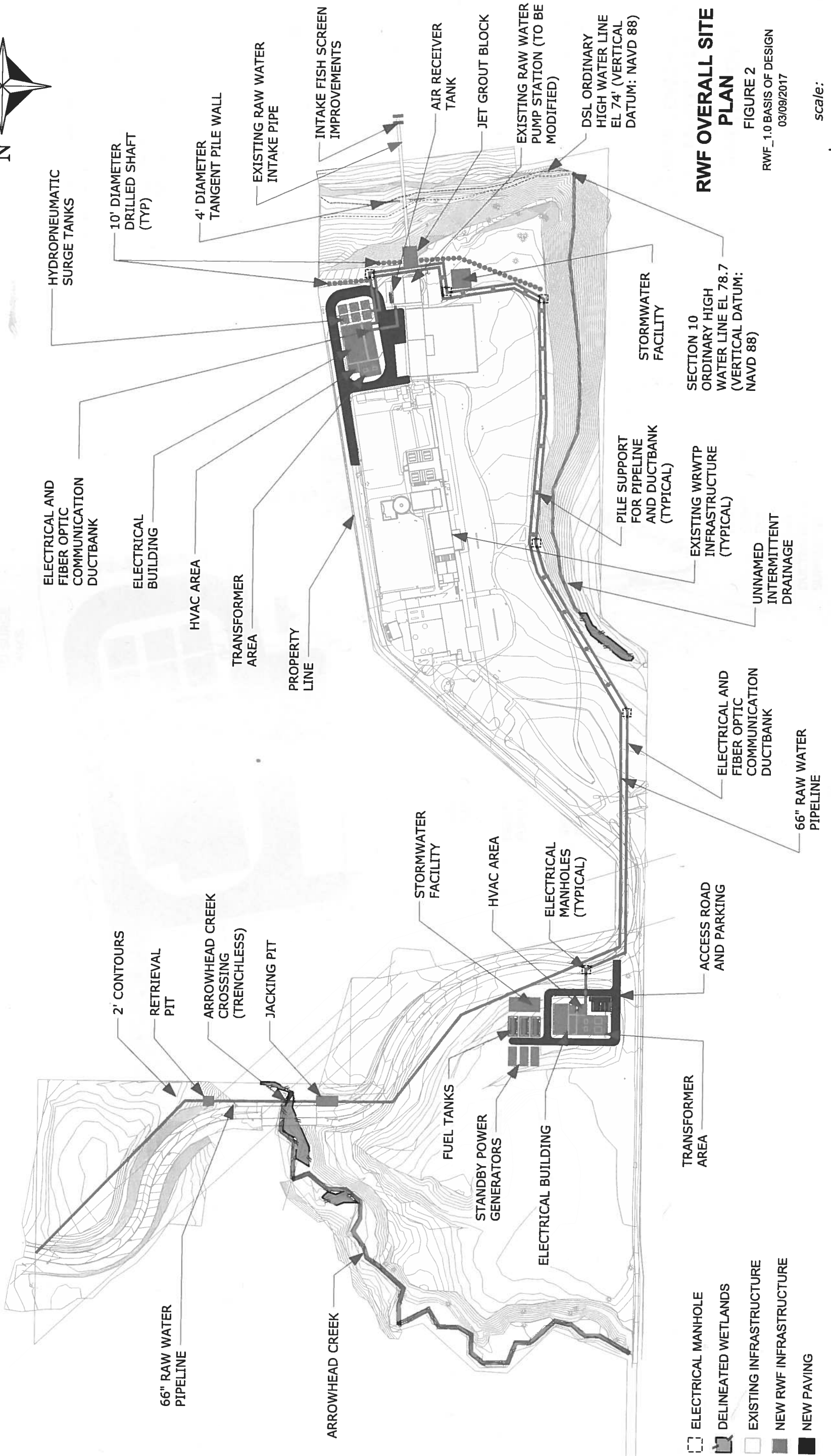
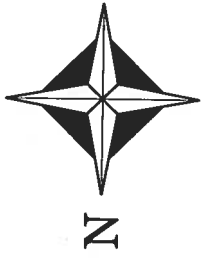


- APPROXIMATE WORK AREA LIMIT
- EXISTING INFRASTRUCTURE
- NEW RWF INFRASTRUCTURE
- NEW PAVING

**WRWTP UPPER SITE
PLAN FOR RAW
WATER
IMPROVEMENT**

FIGURE 3
WILLAMETTE WATER SUPPLY
PARTNERSHIP
FEBRUARY 2017
Scale: 80'

INITIAL CONCEPT SUBJECT TO CHANGE



- ELECTRICAL MANHOLE
- DELINEATED WETLANDS
- EXISTING INFRASTRUCTURE
- NEW RWF INFRASTRUCTURE
- NEW PAVING

RWF OVERALL SITE PLAN

FIGURE 2
RWF_1.0 BASIS OF DESIGN
03/09/2017

scale: 200'

INITIAL CONCEPT SUBJECT TO CHANGE