

## INTERGOVERNMENTAL AGREEMENT

### BETWEEN

### THE CITY OF WILSONVILLE AND THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION

### RAW WATER FACILITIES PROJECT (RWF\_1.0)

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into between the **City of Wilsonville**, a political subdivision of the State of Oregon, acting by and through its City Council ("Wilsonville"), and the **Willamette Water Supply System Commission**, an Oregon intergovernmental entity organized under ORS Chapter 190 (the "WWSS Commission"). Wilsonville and the WWSS Commission are referred to herein individually as a "Party" and jointly as the "Parties." **Tualatin Valley Water District**, a domestic water supply district organized under ORS Chapter 264, acting by and through its Board of Commissioners ("TVWD"), is a co-owner of the "WRWTP/Park Property," as defined below, and is therefore also a necessary party to this Agreement.

### RECITALS

- A. WHEREAS, ORS Chapter 190 authorizes units of local government to enter into intergovernmental agreements for the performance of any or all activities and functions that a party to such an agreement has the authority to perform; and
- B. WHEREAS, TVWD, the City of Hillsboro ("Hillsboro"), and the City of Beaverton ("Beaverton") entered into an intergovernmental agreement creating the WWSS Commission to set forth the terms for the joint ownership, financing, design, permitting, construction, operation, maintenance, repair, and replacement of the Willamette Water Supply System ("WWSS") in a prudent, economic, and efficient manner to provide high quality water to their respective municipal water supply systems; and
- C. WHEREAS, TVWD, Hillsboro, Beaverton, and the Cities of Wilsonville, Sherwood, and Tigard have entered into the Willamette Intake Facilities Intergovernmental Agreement, dated April 18, 2018 ("WIF Agreement"), creating an ORS Chapter 190 intergovernmental entity for the ownership, management, and operation of the Willamette Intake Facilities, as those facilities are defined in the WIF Agreement ("WIF"), and to provide for design and construction to upgrade and expand the Willamette Intake Facilities; and
- D. WHEREAS, TVWD, Hillsboro, and Wilsonville entered into a Ground Lease for the Raw Water Pipeline, dated March 21, 2018 ("Ground Lease"), and a Pipeline Easement, signed March 26, 2018 but not recorded ("Pipeline Easement"), that will allow the Willamette Intake Facilities to connect via pipeline over the real property owned by TVWD and Wilsonville to the WWSS raw water pipeline located in and along Wilsonville right-of-way. The Pipeline Easement will be recorded in the future with the as-built conditions; and
- E. WHEREAS, Wilsonville and TVWD entered into a Willamette Water Supply System Intake Facility Agreement and the First Amendment to Agreement Regarding Water Treatment Plant Design, Construction, Operation, and Property Ownership, both documents dated March 21, 2018, which provide, among other things, placement of the raw water pipeline, electric duct bank, and appurtenant structures; and

- F. WHEREAS, the WWSS Commission oversees the Willamette Water Supply Program (“WWSP”) and has designated the WWSP to exercise the responsibilities and obligations for the planning and design of WWSS projects; and
- G. WHEREAS, the WWSS Commission desires to construct improvements to a raw water intake and pump station and construct a large diameter water supply transmission line and related improvements (“Project Work”) and the Project Work will occupy portions of the Willamette River Water Treatment Plant (“WRWTP”) and adjacent Wilsonville public park property (“Park”), which property is currently owned by Wilsonville and TVWD (collectively, “WRWTP/Park Property”); and
- H. WHEREAS, as co-owners of the WRWTP/Park Property, Wilsonville and TVWD must agree to the use of the WRWTP/Park Property, as described herein; and
- I. WHEREAS, TVWD is also the managing agency of the WWSS Commission and has advocated to Wilsonville to allow for this use of the WRWTP/Park Property by the WWSS Commission; and
- J. WHEREAS, WWSP has entered into a contract with a construction contractor that includes the Project Work (“RWF\_1.0 Contract”) with a layout plan and scope of work that must be approved, in writing, by Wilsonville, due to its location on WRWTP/Park Property; and
- K. WHEREAS, in conjunction with the construction of the Project Work, the WWSS Commission wishes to move two of Wilsonville’s existing WRWTP raw water pumps, which Wilsonville is willing to allow as long as the WWSS Commission provides an inspection of the pumps and restores them back in place in good and efficient operating condition, as more particularly described below; and
- L. WHEREAS, it is the mutual desire of the Parties to enter into this Agreement to allow the Project Work on WRWTP/Park Property, in exchange for the consideration set forth below, including relocation of the existing WRWTP pumps described below, on behalf of Wilsonville;

## **AGREEMENT**

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth below and the recitals set forth above, which are incorporated into this Agreement as if fully set forth herein, the Parties agree as follows:

### **ARTICLE I - PROJECT GOALS**

- 1.1 The Parties are coordinating the design and construction of the Project Work on the WRWTP/Park Property.
- 1.2 The Project Work is intended to achieve the following overall goals (“Project Goals”):
  - 1.2.1 Wilsonville: To review and approve the Project Work to ensure it does not unreasonably disturb the WRWTP/Park Property, operation of the WRWTP, or other Wilsonville work in those areas.
  - 1.2.2 WWSS Commission: Through the WWSP, to design and construct portions of the water transmission facilities and pipeline constructed to further the objectives of the WWSS Commission in increasing water

supply, reliability, redundancy, and resiliency to its member service areas. The Project Work under this Agreement is part of that effort. For purposes of this Agreement, all rights and responsibilities of WWSP identified herein shall be deemed to be the rights and responsibilities of the WWSS Commission.

- 1.3 The Parties acknowledge that the Project Work cannot interfere in any way with the ability of the WRWTP to produce safe, reliable, and uninterrupted drinking water.

## **ARTICLE II - PROJECT DESCRIPTION**

- 2.1 The Project Work primarily consists of design and construction of raw water facilities and a large-diameter water transmission line and appurtenances according to design, plans, and technical specifications, as depicted in **Exhibit 1**, RWF Project Overall Site Plan and Other Ancillary Improvements.
- 2.2 Because two of the existing raw water pumps at WRWTP are being relocated as part of the Project Work, WWSP will provide an inspection of the existing pumps and refurbish as needed to fully restore pumps to good operational condition, at no cost to Wilsonville. WWSP will work with its consultant, pump suppliers, and others, as needed, to determine the feasibility of adding resiliency improvements for the existing pumps, such as a seismic clip for the pump column and anchorage for the pump and motor. It is assumed these improvements will be designed by the pump supplier. WWSP will design and construct new discharge butterfly valves and dismantling joints on the discharge of the two relocated existing WRWTP pumps for resiliency. WWSP will also compensate Wilsonville \$50,000 for two new pump inlet baskets (payment to be made within ninety (90) days of the date of this Agreement). Repairs and reinstallation will be fully warranted for two (2) years. The foregoing is collectively referred to hereinafter as the "Relocation Work."
- 2.3 One set of contract documents will be used for the Project Work, including the Relocation Work.
- 2.4 The use of Water Infrastructure Finance and Innovation Act ("WIFIA") funding is anticipated for the Project Work. WIFIA funding requires compliance with certain conditions, including, but not limited to, Davis-Bacon and related acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying. Project Work will be constructed under a single construction contract complying with the requirements of WIFIA funding. WWSP will be solely responsible for compliance with all of the foregoing. Because the Relocation Work is part of the Project Work, some WIFIA requirements may be coincidentally applied but compliance and costs associated therewith will be the sole responsibility of WWSP.

## **ARTICLE III - PROJECT CONSIDERATION**

- 3.1 In consideration for allowing the Project Work to include relocation of two existing WRWTP pumps, WWSP will make all of the above-described Relocation Work at no charge to Wilsonville.
- 3.2 Additional consideration provided by the WWSS Commission for this Agreement includes:

- Construction of a new H20 rated 12-foot wide paved pedestrian path in the Park;
- Construction of a path to the river and river view path;
- Construction of a new river overlook area;
- Installation of pedestrian trail lighting on Morey Lane along the upper site area;
- Installation of 4-inch fiber conduit, per Public Works standards, the length of the WRWTP/Park Property, with pull boxes parallel to the Project Work duct bank;
- Reconstruction of the Arrowhead Creek stormwater outfall from point of connection to the outfall, including downstream energy dissipation;
- Planting of landscape outside of the WWSS Commission fence on the upper site;
- Installation of an 8-inch domestic waterline that connects at Brockway Drive and the future 5<sup>th</sup> and Kinsman Road waterline; and
- Design and installation of a new key card kiosk at the WRWTP entry gate on the east side of the drive area that will provide access for both the WWSS Commission and Wilsonville.

3.3 As additional consideration for allowing WWSP to construct on WRWTP/Park Property, WWSP must also meet all of the Wilsonville Development Review Board (DRB) conditions of approval, as agreed to and set forth in the DRB conditions of approval.

#### **ARTICLE IV - WWSP OBLIGATIONS FOR DESIGN**

- 4.1 WWSP has designated Jenn Minton, P.E., as WWSP Project Manager for the Project Work and the WWSP representative responsible for coordination of the Project Work with Wilsonville pursuant to this Agreement. Mike Britch, P.E., will be the WWSP Principal Engineer for the Project Work.
- 4.2 WWSP will perform or cause to be performed all tasks needed to design and construct the Project Work, including preparation of plans/drawings, standard details, technical specifications, contractor's estimate, and other documents required for completion of the contract documents and design milestones described in **Exhibit 2**. WWSP will provide Wilsonville ten (10) business days to complete a design review of the Project Work at the following significant milestone: 90 percent design documents. WWSP will consider and incorporate Wilsonville review comments that do not significantly impact Project Work costs or schedule. If WWSP disagrees with the Wilsonville comments and Wilsonville still desires to have the comments addressed or included, the Parties will utilize the mediation process set forth in the Ground Lease.
- 4.3 WWSP will coordinate and will cause its consultants to coordinate with Wilsonville and its consultants, including attendance at all design team meetings, permit team

meetings, real estate meetings, public information/outreach meetings, and other scheduled meetings. The Wilsonville Project Representative and WWSP Project Manager will mutually determine the type, frequency, and timing of meetings to meet the needs of a well-coordinated project.

- 4.4 WWSP will share and coordinate updates on the Project Work schedule with the Wilsonville Project Representative.
- 4.5 WWSP will provide necessary design coordination to advance the design and construction of the Project Work to achieve the key milestones described in **Exhibit 2**.
- 4.6 WWSP will prepare the bid package for the Project Work, inclusive of the 'front-end' documents, including bidding information, bid forms, contract forms, standard general conditions, special provisions, technical specifications, design plans, and others as required for successful bidding and construction of the Project Work (collectively, "Contract Documents"). The Relocation Work will be included in the Project Work bid package.
- 4.7 WWSP will provide and pay for key card access at the new south personnel gate from the WRWTP Park and into the raw water pump station that will provide access for both the WWSS Commission and Wilsonville. The access point will have a hard key as a manual override as part of the design.
- 4.8 WWSP will prepare the draft Contract Documents and provide them to Wilsonville for review and comment. WWSP will incorporate or otherwise respond to Wilsonville's review comments in a manner acceptable to both Parties' Project Managers.
- 4.9 WWSP will administer the Project Work bidding and solicit bids in compliance with all public contracting laws and in compliance with the agreement for the RWF\_1.0 Contract.
- 4.10 WWSP will perform the design and design coordination for all Project Work.
- 4.11 WWSP will design, construct, and pay for all of the items listed in Article III - Project Consideration.
- 4.12 As required in Section 5 of the Pipeline Easement, WWSP will design the raw water pipeline and an ancillary pipe/duct to have a minimum of eight feet of cover. Notwithstanding the foregoing, Wilsonville agrees that if WWSP replaces certain existing Wilsonville pipelines with new pipe, encased in a steel casing extended a minimum one foot beyond the edge of trench, then in that specific area, as shown on **Exhibit 1**, the raw water pipeline may cross over the top of the newly encased Wilsonville pipeline(s) at a depth of less than eight feet but not less than five feet. Additionally, when WWSP completes its proposed design for related duct banks, it may request that it be allowed to place the duct banks at a lesser depth, and Wilsonville will consider that request upon review of the final plans.

## **ARTICLE V - WILSONVILLE OBLIGATIONS**

- 5.1 Wilsonville hereby designates Delora Kerber, P.E., as Wilsonville Project Representative responsible for coordination of the Project Work with WWSP and WRWTP pursuant to this Agreement. Patty Nelson is Wilsonville's Principal

Engineer, responsible for Design Documents and construction oversight of the Relocation Work.

- 5.2 Wilsonville will review and approve the design, drawings, and specifications WWSP provides for the Relocation Work.
- 5.3 By executing this Agreement, Wilsonville grants to WWSP and any WWSS Commission consultants and contractors a right-to-rely on the information provided by Wilsonville under this Agreement.
- 5.4 Wilsonville is planning an independent expansion of the existing WRWTP. The Wilsonville WRWTP Expansion Work is not part of the Project Work. See Section 9.9.

#### **ARTICLE VI - JOINT OBLIGATIONS FOR DESIGN**

- 6.1 To minimize Project delays or cost increases, the Parties agree to work together diligently to identify and jointly resolve any design or constructability issues with the Project Work at the earliest possible stage of the design process. When such issues arise, the Parties agree to work together to find mutually acceptable solutions in furtherance of the stated Project Goals.
- 6.2 The location of any pipeline, pipeline appurtenances, and other facilities related to the Project Work shall be mutually agreed to by both Parties during the design of the Project and before any construction can occur.
- 6.3 The Parties will provide each other reasonable amounts of information not otherwise required by this Agreement, and will coordinate and attend regular design coordination meetings, regular permit team meetings, public information and outreach team meetings, and other meetings as required for successful coordination and completion of the Project. The Parties' Project Managers will determine the anticipated frequency and timing of meetings depending on the needs of the Project.
- 6.4 The Parties will jointly perform a constructability review of the Contract Documents at 90 percent design completion of the Project Work and incorporate comments into final Contract Documents.
- 6.5 The Parties will work collaboratively in developing Project Work schedules, milestones, reviews, health and safety plans, Project performance metrics, and other activities as required for the successful coordination and completion of the Project Work.

#### **ARTICLE VII - WWSP OBLIGATIONS FOR CONSTRUCTION**

- 7.1 WWSP has designated Rod Warner as WWSP Construction Manager. The WWSP Construction Manager shall be the designated point of contact with the Wilsonville Project Representative and the Wilsonville Principal Engineer. Mike Britch, P.E., will be the WWSP Principal Engineer and the WWSP representative to handle dispute resolution for this Project.
- 7.2 WWSP will be responsible for the overall management and administration of the construction contract for the Project Work.

- 7.3 WWSP will be responsible for inspection, construction management, and administration for the Project Work.
- 7.4 WWSP will be responsible for the Relocation Work, to be included in the Project Work, at no cost to Wilsonville, as described in Section 2.2.
- 7.5 WWSP will include the Wilsonville Project Representative and Wilsonville Principal Engineer in regular construction coordination meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project.
- 7.6 WWSP will review shop drawings, contractor and subcontractor submittals, requests for information (RFI), and other requested clarifications related to construction of the Project Work.
- 7.7 WWSP is solely responsible for managing the Project Work construction schedule, including established milestones. WWSP will provide its construction contractor's baseline schedule and monthly schedule updates for Wilsonville review and comments. WWSP will consider and incorporate Wilsonville review comments that do not significantly impact Project Work costs or schedule. WWSP will closely coordinate with Wilsonville on Project Work that may impact the operation of the WRWTP.
- 7.8 WWSP will receive, catalog, and route to Wilsonville RFIs, requests for substitutions, submittals, and any other documents pertaining to the Relocation Work for review and comment within five (5) business days, using e-Builder as administered by WWSP for the Parties. WWSP will defer to Wilsonville for the disposition and/or response for all RFIs, substitutions, and submittals related solely to the Relocation Work. Access to all Project Work documents, including, but not limited to, submittals, RFIs, contract correspondence, quality control and assurance requirements, daily reports, and photos, will be available to the Parties through e-Builder.
- 7.9 WWSP will cause the construction contractor to name and endorse WWSP, the WWSS Commission, Wilsonville, and their elected or appointed officials, staff, employees, consultants, and agents, as additional insureds on all policies provided by the construction contractor under the contract. The endorsements to policies shall provide for not less than thirty (30) days' written notice of cancellation. WWSP will provide Wilsonville a copy of the certificates for its records. WWSP will cause the construction contractor to extend indemnity and hold harmless provisions given to WWSP to Wilsonville, its members, officers, boards, employees, consultants, and agents.
- 7.10 WWSP will have overall responsibility for Project administration and inspection of the Project Work and at all times be responsible to monitor and manage the construction contractor's work as provided in the construction Contract Documents. WWSP will regularly communicate with and direct the contractor performing the Relocation Work to be consistent with the decisions of the Wilsonville Principal Engineer. WWSP will have sole and total decision-making authority on Project Work, except for Project Work that impacts the operation of the WRWTP, including the operation of the existing pumps, in which case WWSP will coordinate with Wilsonville.

- 7.11 If Wilsonville's Project Representative, or her designated onsite inspector, or the Wilsonville Principal Engineer, observes a situation reasonably believed to involve safety issues that threaten life, bodily harm, environmental harm, or damage to the WRWTP, Wilsonville will notify the WWSP Construction Manager of the need to stop the Project Work based on those observations. The WWSP Construction Manager will immediately stop the Project Work at the request of Wilsonville. WWSP's Construction Manager has the authority to issue a stop work order at any time and will notify Wilsonville's Project Representative, Principal Engineer, or the designated onsite supervisor as soon thereafter as reasonably possible.
- 7.12 WWSP will be responsible to ensure that the Relocation Work is installed in accordance with the Contract Documents and will handle any disagreements, disputes, delays, or claims with the construction contractor related to or as a result of the Relocation Work, as provided by Section 12.6. Wilsonville agrees to cooperate with WWSP in handling any claims related to the Relocation Work. WWSP will fully warrant the installation and good working condition of the pumps for two (2) years from the date of a full installation inspection and written approval by the City.
- 7.13 WWSP will not authorize or consent to construction contractor's changes to key milestones, as shown in **Exhibit 2**, without written approval by Wilsonville, except in the case of a force majeure as defined in the Contract Documents.
- 7.14 After the Relocation Work has been accepted by Wilsonville and the relocated pumps have been fully operational for two (2) years, WWSP will assign any remaining rights under performance and payment bonds or warranties with respect to the two existing pumps to Wilsonville.
- 7.15 Upon the completion of the construction and completion of record drawings, WWSP will deliver one set of redline as-built drawings for the Project Work to Wilsonville. WWSP will be responsible for producing record drawings for the Project Work.
- 7.16 WWSP, its consultants, and its construction contractor shall coordinate with Wilsonville and its consultants, including jointly attending regular construction coordination meetings, regular permitting and environmental meetings, real estate meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project Work. The WWSP Construction Manager and Wilsonville Project Representative shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project.
- 7.17 WWSP's contractor will be responsible for providing controlled access to the WRWTP during construction. WWSP's contractor will limit access to the Park by the public for public safety reasons during the construction as needed. Time frames for limited access will be defined in the final approved version of the land use application or as otherwise modified.
- 7.18 WWSP will be responsible for maintenance of Park areas that are closed to the public during construction during the closure period. This requirement applies to lands that are not directly affected by the construction activities that will be replaced at the completion of construction. Maintenance requirements will be generally consistent with Wilsonville's Parks & Recreation Department historical practices.



- 7.19 WWSP will plan and execute outages as needed for the Project Work. Provisions will be made for operation of the plant, utilizing bypass pumping or other methods, if the duration of a planned outage exceeds the agreed upon timeframe established in a collaborative manner and documented in the Contract Documents.
- 7.20 WWSP will provide materials testing, independent of construction contractor testing requirements of the Contract Documents, and construction inspection for Project Work.
- 7.21 WWSP understands that Wilsonville's 5<sup>th</sup> to Kinsman Project may be occurring at the same time as some of the Project Work. A portion of the 5<sup>th</sup> and Kinsman Project will reconstruct portions of Arrowhead Creek Way and Industrial Way (collectively, "Arrowhead Way"), during which time the existing roadways will not be available for construction access for the Project Work. During those overlapping times, WWSP will be required to obtain and construct an alternative construction access for the Project Work. The City Engineer will provide WWSP with at least ninety (90) days' prior notice of the dates when the Arrowhead Way access will not be available for WWSP use.

#### **ARTICLE VIII - WILSONVILLE OBLIGATIONS FOR CONSTRUCTION PHASE**

- 8.1 Wilsonville hereby designates Delora Kerber, P.E., as the Wilsonville Representative responsible for coordination of the Project Work with WWSP and WRWTP pursuant to this Agreement and the Wilsonville Representative to handle dispute resolution for this Project. Patty Nelson is Wilsonville's Principal Engineer responsible for the coordination of the Relocation Work. In addition to the Representative and Principal Engineer, Wilsonville may have a full time construction oversight inspector on site (On-Site Inspector) and, if Wilsonville elects to do so, Wilsonville will supply the WWSP Construction Manager with contact information for the On-Site Inspector.
- 8.2 Wilsonville will cause its contract operator for the WRWTP to coordinate and cooperate with WWSP and its representatives and contractor to achieve timely and efficient delivery, commissioning, and startup of the Project Work as long as the construction work does not hinder the ability of the WRWTP to produce safe and reliable drinking water.
- 8.3 Wilsonville will coordinate with WWSP on any disagreements, disputes, delays, or claims with the construction contractor related to or as a result of the Relocation Work, as provided by Section 12.6.
- 8.4 Wilsonville will provide a raw water source for use by WWSP during construction for testing of the Project Work. Raw water for pump testing and other related system commissioning and startup activities for Project Work will be returned to the caisson or to the stormwater outfall to Arrowhead Creek. Any discharge to Arrowhead Creek must be in compliance with City of Wilsonville stormwater discharge requirements.
- 8.5 Wilsonville shall participate in WWSP monthly health and safety meetings.
- 8.6 Wilsonville will provide review of RFIs and other requested clarifications related to the Relocation Work. Wilsonville shall provide a response to WWSP as set forth in Section 7.8.

- 8.7 Wilsonville may require additional or corrective work to be completed for the Relocation Work if, in the sole judgment of Wilsonville, the work is not complete in accordance with the Contract Documents. If Wilsonville determines the Relocation Work is not in compliance with the Contract Documents, the Wilsonville Principal Manager shall inform WWSP at the earliest opportunity following discovery, and WWSP will require its construction contractor to perform corrective actions as necessary. The method of enforcement will be agreed upon and the cost of enforcement will be paid by WWSP.
- 8.8 Wilsonville will determine, in its reasonable discretion, when the Relocation Work has achieved substantial completion and final completion, as defined in the Contract Documents. The Wilsonville Project Representative and Principal Engineer shall jointly provide a construction punch list for the Relocation Work to WWSP upon substantial completion of the Relocation Work and participate with the WWSP Project Manager for inspection and final completion of the Relocation Work.
- 8.9 WWSP is responsible to properly install the relocated pumps, in accordance with the Contract Documents, and for the pumps to be in good working order and operational condition. Wilsonville must review and approve any change orders or work change directives relating to the Relocation Work prior to issuance to the construction contractor. Within five (5) business days of receiving the proposed change order or work change directive, Wilsonville will notify WWSP in writing of any concerns or disputes with a proposed change order or work change directive. WWSP may proceed to direct its construction contractor to perform work only if it deems an emergency or other circumstance requires immediate action to prevent adverse health and safety conditions. In such a case, Wilsonville reserves all rights to make a claim against WWSP for any damages suffered as a result thereof. WWSP may be liable to Wilsonville for any contract delays as a result thereof or for any other damages or claims by Wilsonville. Wilsonville will be entitled to seek relief directly from WWSP, and WWSP will be required to seek relief from the contractor if the damage was caused by the contractor's work.
- 8.10 Wilsonville will coordinate and meet with WWSP to resolve any disagreements, disputes, delays, or claims related to, or as a result of, the Relocation Work, as provided by Section 12.6.
- 8.11 Wilsonville and its consultants shall coordinate with WWSP, its construction contractor, and its consultants, including jointly attending regular construction coordination meetings, regular permitting and environmental meetings, real estate meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project Work. Wilsonville and the WWSP Construction Manager shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project Work.
- 8.12 Wilsonville will support a request to WIF to allow a WWSP contractor to install a water quality panel in the raw water pump station and associated instruments to monitor raw water quality. The type and size of the panel will be agreed upon by WWSP and Wilsonville.
- 8.13 Wilsonville will support a request to WIF to allow WWSP to tie into the existing electrical system to make provisions for added resiliency. The tie in will allow the WWSS to provide backup power to the WIF infrastructure, including air burst system, raw water pump station building lighting and heating, and raw water pump station

security, in case of WRWTP power loss. Backup power will not be provided to WRWTP infrastructure downstream of the system separation point, as defined in the WIF agreement. Backup power will be provided by using a transfer switch. In the event of an emergency, the WWSS Commission will notify Wilsonville that the transfer switch is being used to provide backup power as soon as practicable.

- 8.14 Wilsonville will allow a WWSP contractor, and support a request to WIF where applicable, to install security cameras and key card access readers for security purposes in locations including, but not limited to, the interior and exterior of the raw water pump station building, the bike path, and the upper site. WWSP will provide Wilsonville with card keys for the readers and access to the data/video from the security cameras.

## **ARTICLE IX - JOINT OBLIGATIONS FOR CONSTRUCTION**

- 9.1 The Parties shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project Work.
- 9.2 The Parties will coordinate and work collaboratively in developing Project Work milestones, constraints, work sequences, construction administration requirements, quality control and assurance requirements, and other activities as required for successful coordination and completion of the Project Work.
- 9.3 To minimize potential Project Work schedule delays, construction contractor cost increases, or other Project Work issues, the Parties agree to work together diligently to identify and jointly resolve any construction issues at the earliest possible stage, including those issues that involve the construction contractor. When such issues arise, the Parties agree to work together to find mutually acceptable solutions in furtherance of the Project Goals. WWSP will lead the resolution with the construction contractor as mutually agreed by the Parties.
- 9.4 The Parties agree the operation of the WRWTP will take precedence over any and all Project Work construction activities.
- 9.5 The Parties agree to include health and safety requirements in the Contract Documents that meet the objectives of both Parties.
- 9.6 The construction contractor is required to develop and maintain a Project Work baseline schedule on which the WWSP Construction Manager and Wilsonville Project Representative shall collaboratively review and comment. Each Party shall allow the other Party to comment on schedule revisions.
- 9.7 WWSP will generally take the lead on managing complaints, including, but not limited to, general public complaints and complaints related to environmental and/or land use permitting. Notwithstanding the foregoing, Wilsonville reserves the right to report environmental, land use, or permit violations. If WWSP is violating land use or permitting requirements by Wilsonville, Wilsonville reserves the right to issue a stop work order.
- 9.8 The Parties agree to the following guidelines for handling public/media interactions:
  - 9.8.1 Social media includes all means of communicating or posting information or content of any sort on the Internet, including to one's own or someone

else's web log or blog, journal or diary, personal website, social networking or affinity website, web bulletin board, chat room, whether or not associated or affiliated with WWSP or Wilsonville, or any other form of electronic communication to the public.

- 9.8.2 Wilsonville and WWSP each agree to allow the other to review its social media content related to Project Work before posting it.
- 9.9 The Parties acknowledge Wilsonville's WRWTP Plant Expansion Project will be occurring at the same time as the Project Work and agree to coordinate their construction schedules to avoid disruption or delay of either Party's work. The Parties also acknowledge that the WRWTP Plant Expansion Project must take priority. Therefore, in the event of any critical construction conflict or delay that Wilsonville determines, in good faith, cannot be reasonably resolved to avoid such conflict or delay, the WWSP Project Work will be required to stand down as necessary to allow the WRWTP Project to timely proceed or to produce safe, reliable, and uninterrupted drinking water at all times.
- 9.10 The Parties agree to coordinate on outreach efforts such as signage, groundbreaking, and ribbon cutting.

#### **ARTICLE X - COMPENSATION FOR CONSTRUCTION**

- 10.1 All costs related to Wilsonville's inspection, oversight, and supervision of Project Work shall be paid for by WWSP at actual cost plus eight percent (8%), consistent with the Ground Lease, and will be paid by WWSP within thirty (30) days after receipt of an invoice for the same from Wilsonville.

#### **ARTICLE XI - JOINT FUTURE OBLIGATIONS AFTER CONSTRUCTION**

- 11.1 Following final completion of the Project Work, it shall be the WWSS Commission's responsibility to maintain stormwater facilities from WWSP's point of connection to, and including, the outfall at Arrowhead Creek. WWSP will also maintain key card access readers at the raw water pump station gate and south WRWTP personnel gate. The WWSS Commission will discharge raw water through the outfall to support ongoing maintenance activities. Actual discharge will be in compliance with the City of Wilsonville's discharge requirements.
- 11.2 The WWSS Commission will obtain an irrigation meter from Wilsonville to pay for water usage and will maintain the new irrigation system inside the fence at the upper site and continue to use the connections to Wilsonville's potable water supply following construction for longer-term operation of the irrigation system. Temporary irrigation, of limited duration of two years, as required for plant mitigation outside of the fence at the upper site, will also be metered, paid for, and maintained by WWSP.
- 11.3 The WWSS Commission will maintain all landscaping it installs (or that is replaced by either the WWSS Commission or Wilsonville) outside of the WWSS Commission fence, as shown on the Project Work plans.
- 11.4 Following final completion, it shall be Wilsonville's responsibility to maintain the Park pedestrian path, path to the river, river view path, river overlook area, pedestrian trail lights, entry gate key card kiosk, 8-inch redundant domestic water line, and the 4-inch fiber conduit.

## ARTICLE XII - GENERAL PROVISIONS

- 12.1 *Laws of Oregon.* The Parties agree to abide by all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be governed by the laws of the State of Oregon. Jurisdiction will be in Clackamas County Circuit Court. The construction contract shall contain all required public contract provisions of ORS Chapter 279A and 279C.
- 12.2 *Default.* Either Party will be deemed to be in default if it fails to comply with any term, condition, or covenant in this Agreement. The Parties agree time is of the essence in the performance of this Agreement. The non-defaulting Party will provide the defaulting Party with written notice of default and allow thirty (30) days within which to cure or diligently commence to cure the defect within a reasonable time. If a defaulting Party fails to cure or fails to diligently commence to cure the default, the non-defaulting Party may elect to terminate this Agreement. In the event this Agreement is terminated, the Parties will pay for costs incurred for satisfactorily completed and authorized work up to the time of termination. Each Party will be liable for all costs and damages arising from its individual default. If a default causes a delay to the non-defaulting Party's construction schedule that results in actual additional costs, including but not limited to delay damages, the defaulting Party will be responsible for all cost increases and related damages, plus the non-defaulting Party's construction schedule will take priority for the purposes of avoiding or minimizing additional delay and allowing the non-defaulting Party to retain the original schedule, and the defaulting Party's construction may need to be delayed.
- 12.3 *Indemnification.* This Agreement is for the benefit of the Parties only and there are no third-party beneficiaries. Subject to the limitations related to government agencies under the Oregon Constitution, each Party agrees to indemnify and hold the other harmless, including their respective officers, employees, agents, and representatives, from and against all claims, demands, causes of action, and suits of any kind or nature for personal injury, death, or damage to persons or property on account of any acts or omissions arising out of this Agreement. Indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each Party shall be solely responsible for any contract claims, delay damages, permit compliance, permit violations, or similar items arising from or caused by the action or inaction of the Party.
- 12.4 *Documents Are Public Records.* All records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with the Project Work shall be subject to the applicable provisions of the Oregon public records law.
- 12.5 *Modification of Agreement.* No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing, signed by both Parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given.
- 12.6 *Dispute Resolution.*
- 12.6.1 Mediation. Should any dispute arise between the Parties, the Parties agree to meet informally to negotiate the problem, upon notice from one Party to the other specifying the dispute that needs to be resolved. If such informal negotiation fails, the Parties will mediate the dispute using a

professional mediator, and the Parties will split the cost of the mediator. A Party desiring mediation shall provide the other Party with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The Parties will cooperate in good faith to select the mediator within seven (7) days of either Party requesting mediation, and may adopt any procedural format that seems appropriate for the particular dispute. Mediation should be scheduled within fourteen (14) days of selection of the mediator, or as soon as possible, based on availability.

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

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

12.6.3 Injunctive Relief and Specific Performance. Notwithstanding Subsection 12.6.1 or 12.6.2, even if the Parties agree to mediation or arbitration, either Party may still request immediate equitable remedies of either specific performance or injunctive relief to occur while mediation or arbitration is pending or ongoing. The Parties will otherwise agree to abate the court case pending resolution.

12.7 *Remedies.* Subject to the provisions of Article X - Compensation for Construction, and the dispute resolution process set forth in Section 12.6, any Party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Clackamas County Circuit Court. The Parties, by signature of their authorized representative below, consent to the personal jurisdiction of those courts.

12.8 *Severability.* If any term(s) or provision(s) of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court to be invalid or unenforceable, the remainder of this Agreement and the application of those terms and provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

12.9 *Nondiscrimination.* No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, or marital status. Any violation of this provision shall be considered a material defect and shall be grounds for cancellation, termination, or suspension, in whole or in part, by Wilsonville or WWSP.

- 12.10 *Excused Performance.* In addition to the specific provisions of this Agreement, no default shall be deemed to have occurred where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance that are not within the reasonable control of the Party to be excused.
- 12.11 *Integration.* This Agreement contains the entire agreement between the Parties with respect to the subject matter herein. Notwithstanding the foregoing, this Agreement is not intended to supersede any provision of the WIF Agreement, the Ground Lease, or the Pipeline Easement.
- 12.12 *Assignment/Additional Parties.* This Agreement may be assigned by either Party subject to the consent of the non-assigning Party, which consent shall not be unreasonably withheld.
- 12.13 *Access to Books, Records, and Accounting.* WWSP will maintain books, records, and reports of the Project Work showing all income, receipts, expenses, and costs. These records shall be maintained for a period of three (3) years following Final Completion. All such books, records, and reports may be examined and copies made by Wilsonville at reasonable times upon reasonable notice.

**ARTICLE XIII - TERM OF AGREEMENT**

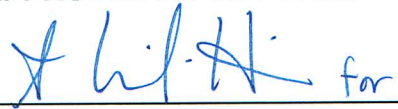
- 13.1 The term of this Agreement shall be from the date of execution through the end of the Project Work warranty period, two (2) years following final acceptance of the Project Work, unless mutually agreed to by both Parties, in writing. Notwithstanding the above, the ongoing maintenance responsibilities described in Article XI – Joint Future Obligations After Construction remain enforceable obligations under this Agreement (including the default, remedy, venue, and attorneys’ fees provisions) after the term expires.
- 13.2 This Agreement may be amended or extended for periods of up to one (1) year at a time by mutual written consent of the Parties, subject to the provisions of this Agreement.

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

**CITY OF WILSONVILLE, OREGON**

**APPROVED AS TO FORM:**

By:  \_\_\_\_\_  
 Bryan Cosgrove

 for \_\_\_\_\_  
 Barbara A. Jacobson, City Attorney

As Its: City Manager  
 Dated: 10/29/19

**TUALATIN VALLEY WATER DISTRICT**

By: 

Name: Tom Hickmann

As Its: Chief Executive Officer

Dated: 10/28/19

**APPROVED AS TO FORM:**



Clark Balfour, Legal Counsel TVWD

**WILLAMETTE WATER SUPPLY SYSTEM  
COMMISSION, OREGON**

By: 

Name: DAVID KRASKA

As Its: GENERAL MANAGER

Dated: 10-28-2019

**APPROVED AS TO FORM:**



Clark Balfour, Legal Counsel WWSS

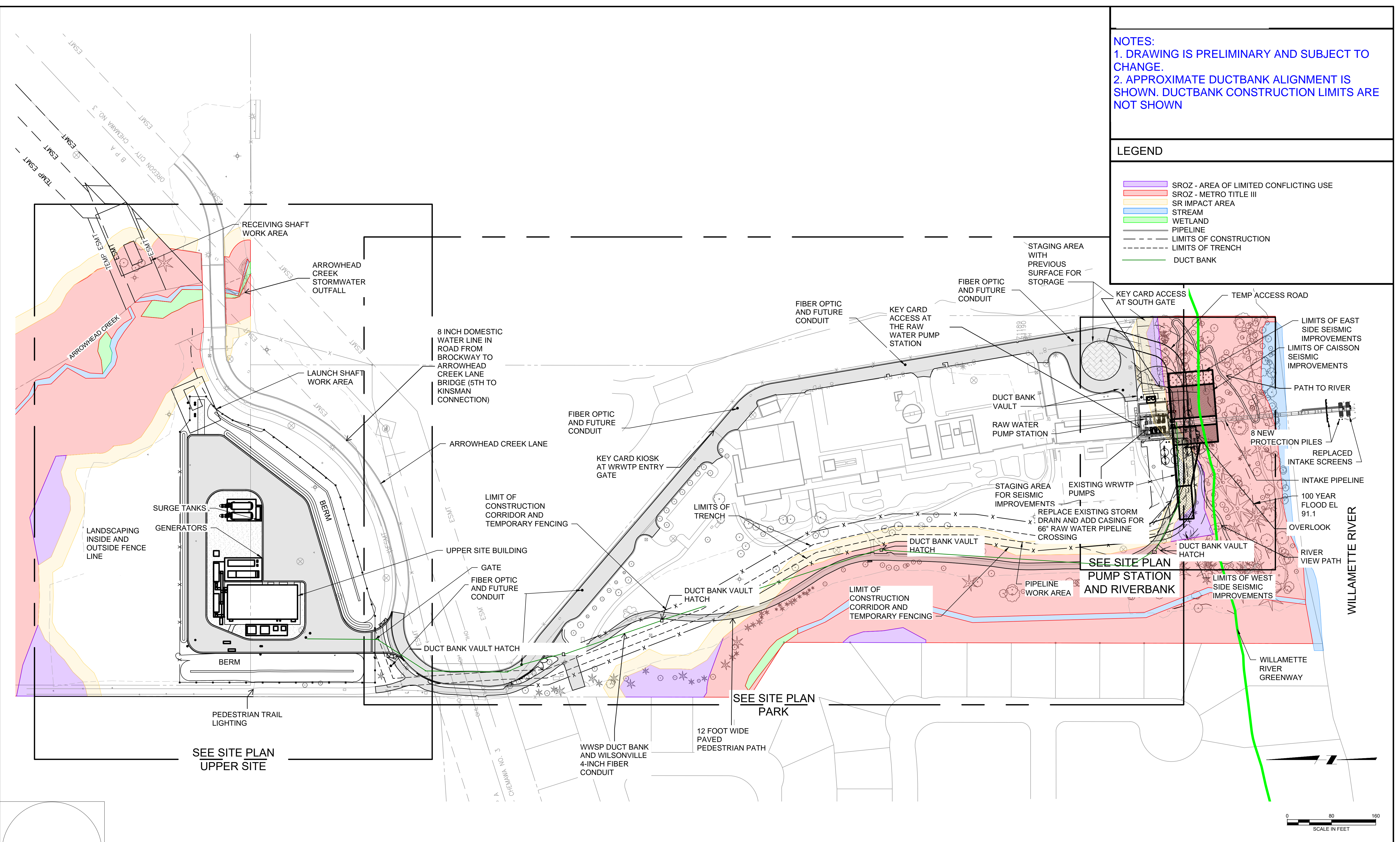


DWG FILE: C:\pwworking\bwv\_america\wwsp\sheet\sets\general\GEG\RRWF\_1.0\_GEG-03.dwg  
 PLOT DATE: Thursday, July 11, 2019 1:10:15 PM  
 BY: COGLIANESE, CHRISTOPHER J.

**NOTES:**  
 1. DRAWING IS PRELIMINARY AND SUBJECT TO CHANGE.  
 2. APPROXIMATE DUCTBANK ALIGNMENT IS SHOWN. DUCTBANK CONSTRUCTION LIMITS ARE NOT SHOWN

**LEGEND**

- SROZ - AREA OF LIMITED CONFLICTING USE
- SROZ - METRO TITLE III
- SR IMPACT AREA
- STREAM
- WETLAND
- PIPELINE
- LIMITS OF CONSTRUCTION
- LIMITS OF TRENCH
- DUCT BANK



DSGN	M. CARLSON								
DR	C.J. COGLIANESE								
CHK	R. BROWN								
APVD	J. MCMULLEN	NO.	DATE	REVISION	BY	APVD			

**VERIFY SCALE**  
 BAR IS ONE INCH ON ORIGINAL DRAWING.  
 IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY.

**BLACK & VEATCH**

**SAFELY DELIVERED**

**Willamette Water Supply**  
*Our Reliable Water*  
 WILLAMETTE WATER SUPPLY PROGRAM  
 RWF\_1.0

PRELIMINARY, SUBJECT TO CHANGE  
 (NOT FOR CONSTRUCTION)

**EXHIBIT 1 - RWF PROJECT**  
**OVERALL SITE PLAN AND OTHER**  
**ANCIILLARY IMPROVEMENTS**

Exhibit 2: Schedule Design and Construction Milestones

Date Updated: September 20, 2019

Project		100% Draft Final Design	100% Final Design	Construction Start	Construction End
<b>RWF Work</b>					
Phase 1		11/27/2019	2/5/2020	6/5/2020	2/24/2022
Phase 2 <sup>(1)</sup>		11/27/2019	2/5/2020	9/16/2022	12/3/2024

**(1) Construction end represents achievement of final completion**