

RESOLUTION NO. 3108

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
WASHINGTON COUNTY AND THE CITY OF WILSONVILLE**

**FOR DESIGN OF PUBLIC UTILITY IMPROVEMENTS ON BASALT
CREEK PARKWAY**

THIS INTERGOVERNMENTAL AGREEMENT is entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "COUNTY"; and the City of Wilsonville, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY."

RECITALS

1. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and
2. WHEREAS, the COUNTY is completing an extension of Basalt Creek Parkway, a County arterial Road between SW Grahams Ferry Road and SW Boones Ferry Road, referred to as the Basalt Creek Parkway Extension (hereinafter "COUNTY PROJECT"), currently in unincorporated Washington County; and
3. WHEREAS, as, the CITY desires to complete design of a new waterline along the Basalt Creek Parkway alignment between SW Grahams Ferry Road and SW Boones Ferry Road and within the scope of the COUNTY PROJECT; and
4. WHEREAS, the CITY desires the COUNTY incorporate the design of CITY waterline into the design of the COUNTY PROJECT and to pay of the same; and
5. WHEREAS, the CITY and COUNTY desire to cooperate in the design of the CITY's waterline; and
6. WHEREAS, under such authority, it is the mutual desire of the COUNTY and CITY to enter into this Intergovernmental Agreement to cooperate in design of the CITY'S waterline, and to allocate responsibilities as detailed below.

AGREEMENT

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, and in consideration of the terms, conditions and covenants as set forth below, the parties hereto agree as follows:

1. PROJECT DESCRIPTION

- 1.1 The COUNTY PROJECT will include the design of the road extension between SW Grahams Ferry Road and SW Boones Ferry Road with curbs, sidewalks, bike lanes, street lighting, drainage, landscaping, traffic control, water quality needs, and all necessary permitting.
- 1.2 The CITY's waterline project, to be completed in conjunction with the COUNTY PROJECT, will include the design of a new waterline between SW Grahams Ferry Road and SW Boones Ferry Road. The waterline will include the installation of fire hydrants, blow-offs, valve lids, and other water infrastructure work required for a new waterline. All of the CITY's proposed improvements are located along Basalt Creek Parkway, hereinafter referred to as "WATERLINE PROJECT".

2. COUNTY OBLIGATIONS

- 2.1 COUNTY hereby designates Renus Kelfkens as COUNTY Project Manager for the COUNTY PROJECT and the COUNTY representative responsible for coordination of the WATERLINE PROJECT with CITY pursuant to this Agreement.
- 2.2 COUNTY shall perform, or cause to be performed, all actions necessary for the design of the COUNTY PROJECT, including project management, design, property acquisition, including right-of-way as necessary, utility relocation as necessary, regulatory and land use permits and approvals, public information related to the roadway design.
- 2.3 Subject to CITY obligations set forth in Article 3, Terms 3.1 – 3.5, COUNTY shall perform, or cause to be performed, all actions necessary for the design of the WATERLINE PROJECT in conjunction with design of the COUNTY PROJECT.
- 2.4 COUNTY shall prepare design plans, technical specifications, standard details, and engineer's opinion of probable constructions for the WATERLINE PROJECT and make available to CITY for review and comment at key project milestones (60%, 90%, and final design). COUNTY will incorporate CITY WATERLINE PROJECT comments that do not unreasonably impact COUNTY PROJECT, including, but not limited to, cost, scope, schedule, or configuration.
- 2.5 COUNTY shall perform all actions regarding compensation as set forth in Article 4 – Compensation.
- 2.6 COUNTY shall not acquire any right-of-way or easements for WATERLINE PROJECT.

3. CITY OBLIGATIONS

- 3.1 CITY hereby designates City Engineer or designee as CITY Project Manager for the WATERLINE PROJECT and the CITY representative responsible for coordination of the WATERLINE PROJECT with COUNTY pursuant to this Agreement.
- 3.2 CITY shall review all design plans, technical specifications, standard details and engineer opinions for the WATERLINE PROJECT, and provide comments in writing, if any to COUNTY within four (4) weeks of COUNTY providing same to CITY.
- 3.3 CITY shall perform all actions regarding compensation as set forth in Article 4-Compensation.

4. JOINT OBLIGATIONS

- 4.1 To minimize delays or cost increases to the COUNTY PROJECT and WATERLINE PROJECT, the CITY and COUNTY agree to work together diligently to identify and jointly resolve any design or constructability issues with the COUNTY PROJECT and WATERLINE PROJECT 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 advancement of the design work commencing.

5. COMPENSATION

5.1 COUNTY PROJECT

- 5.1.1 COUNTY shall be responsible for all costs to design the COUNTY PROJECT as described in Section 2.2.

5.2 CITY PROJECT

- 5.2.1 Except as provided in Subsection 5.2.3, the CITY shall pay an estimated total of \$57,000 for the cost of the design of the WATERLINE PROJECT, as described in Section 1.2. Specific WATERLINE PROJECT costs are shown in Exhibit A and are estimated as follows:

| | |
|---------------------------|-----------------|
| i. Waterline Design Costs | <u>\$57,000</u> |
| TOTAL | \$57,000 |

- 5.2.2 CITY and COUNTY understand that the costs outlined herein are an estimate and used to determine project budget and estimated payment

amount used within this Agreement. Final cost will be based on the actual amount realized. In the event CITY requests changes that increase the cost of the design work for the WATERLINE PROJECT, COUNTY will advise CITY of the estimated cost increase and will require that CITY agree, in writing, to pay the additional costs before the changes are agreed to.

- 5.2.3 If during design, the CITY and COUNTY agree to changes that will eliminate or reduce the scope and extent of the WATERLINE PROJECT, the CITY will pay for COUNTY's actual cost for required re-design up to, but not to exceed \$10,000. The cost to remove the WATERLINE PROJECT from the COUNTY PROJECT includes but not limited to updating up to 15 plan sheets, revising estimate quantities, updating project specifications and Quality Control of the changes.
- 5.2.4 As provided in section 2.4, if the CITY requests changes to the design of the WATERLINE PROJECT that do not unreasonably affect the COUNTY PROJECT, but require redesign of a portion of the COUNTY PROJECT, COUNTY shall make the CITY aware of costs for the redesign of the COUNTY PROJECT. COUNTY will either work with the CITY to come to a solution where no redesign is required to address CITY comments, or CITY will agree in writing to pay for the redesign costs before COUNTY incorporates the CITY comments.
- 5.2.5 CITY shall pay to the COUNTY the sum of \$57,000, for the estimated cost of the design, in the following installments
 - 5.2.5.1 Within sixty (60) days of execution of this IGA, CITY shall pay to the COUNTY the sum of \$25,800.
 - 5.2.5.2 Within sixty (60) days of submitting the 90% plans, CITY shall pay to COUNTY the sum of \$25,800.
 - 5.2.5.3 Additional design costs, if any, within sixty (60) days of invoice of the COUNTY.
- 5.2.6 If actual costs for design of the WATERLINE PROJECT are anticipated to exceed the sum of \$57,000, COUNTY will notify CITY as soon as practicable. Prior to incurring any additional cost for the WATERLINE PROJECT not already agreed to by the CITY, CITY and COUNTY must agree to the additional cost in writing, which agreement will not be unreasonably withheld; provided, however, that if design costs exceed 15% of the amount stated in Subsection 5.2.1, the City may elect, in its sole and absolute discretion, to eliminate or reduce the scope of the design of the WATERLINE PROJECT. CITY shall pay for actual costs up to, but not to exceed \$10,000 to remove WATERLINE PROJECT from COUNTY PROJECT. The cost to remove the WATERLINE PROJECT from the COUNTY PROJECT includes but not limited to updated 10 to 15

plan sheets, revising estimate quantities, updating project specifications and Quality Control of the changes.

6. GENERAL PROVISIONS

6.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

6.2 COMPLIANCE WITH APPLICABLE LAW

The Parties shall comply with all federal, state and local laws and ordinances applicable to the work performed under the contract including, but not limited to the following, as applicable: Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659A.142 and all regulations and administrative rules established pursuant to those law, and all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

6.3 DEFAULT

Time is of essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

6.4 INDEMNIFICATION

This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above 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 or similar items arising from or caused by the action or inaction of the party under this Agreement.

6.5 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both parties.

6.6 DISPUTE RESOLUTION

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

6.7 REMEDIES

Subject to the provisions in paragraph 5.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

6.8 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default 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 to the party to be excused.

6.9 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

6.10 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

7. TERMS OF AGREEMENT

7.1 The term of this Agreement shall be from the date of execution until the completion of the COUNTY PROJECT, but not to exceed five (5) years.

7.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty (30) days after written notice to the other party, or at such time as the parties may otherwise agree. The parties shall, in good faith, agree to such reasonable provisions for winding up the COUNTY PROJECT and CITY PROJECT and paying for any additional costs as necessary.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

WASHINGTON COUNTY, OREGON

DEPUTY COUNTY ADMINISTRATOR

DATE: _____

RECORDING SECRETARY

CITY OF WILSONVILLE, OREGON

CITY MANAGER

DATE: _____

ATTEST:

CITY RECORDER

Exhibit A

Estimated Cost \$57,000 breakdown.

City of Wilsonville Waterline Project

Note: Costs to remove City of Wilsonville Waterline Project are not included in the breakdown and would be in addition to design costs.