

RESOLUTION NO. 502

A RESOLUTION DECLARING THE INTENTION TO PROCEED WITH THE CONSTRUCTION OF TOWN CENTER LOOP/PARKWAY AVENUE STREET AND UTILITY IMPROVEMENTS LOCAL IMPROVEMENT DISTRICT NO. 5, HEREINAFTER REFERRED TO AS LID #5; APPROVING THE DETAILED PLANS AND SPECIFICATIONS AS PRESENTED BY C.R.S. SIRRINE ENGINEERS; AUTHORIZING STAFF TO ADVERTISE TO RECEIVE SEALED BIDS; AND APPROVING THE CONSTRUCTION DEPOSIT AGREEMENT.

WHEREAS, on April 15, 1985, the City Council, at its regularly scheduled meeting thereof, commencing at 7:30 o'clock p.m. Pacific Daylight Savings Time, in the Council Chambers at City Hall, 30000 SW Town Center Loop East, did review and approve Resolution No. 472 titled "A Resolution Adopting the Revised Preliminary Engineer's Report for LID No. 5, Dated February 28, 1985; Declaring Formation of Local Improvement District No. 5 as Modified in Said Report; and Directing the City's Engineer to Prepare Detailed Plans, Specifications and Cost Estimates for the Proposed Improvements"; and

WHEREAS, staff has received detailed plans and specifications for final construction and find them to be in compliance with the Wilsonville Code, Capital Improvement Plan, Public Works Standards and all applicable rules and regulations pertaining to Public Works Construction in the City of Wilsonville prior to

advertising for bids; and

WHEREAS, prior to the city advertising to receive sealed bids for LID #5, the Construction Deposit Agreement shall be signed by those property owners required to do as determined in Exhibit "A" Construction Deposit Agreement attached hereto and incorporated by reference as if fully set forth therein; and

WHEREAS, upon receipt of all signed Construction Deposit Agreements, the city shall advertise to receive sealed bids according to the requirements as set forth in Oregon Revised Statutes 279.025, "Requirements for Advertisement".

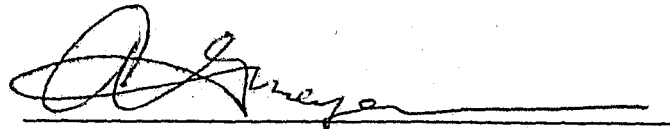
NOW, THEREFORE, IT IS HEREBY RESOLVED by the City of Wilsonville that:

1. Detailed plans and specifications for LID #5 are approved prior to bidding in compliance with the Wilsonville City Code, Capital Improvements Plan, Public Works Standards and all applicable rules and regulations pertaining to Public Works Construction in the City of Wilsonville.
2. Property owners required to sign the Construction Deposit Agreement as identified in Exhibit "A" shall do so prior to the city advertising to receive sealed bids.
3. Staff is authorized to advertise to receive sealed bids for LID #5 upon final receipt of

Construction Deposit Agreements as identified in Exhibit "A".

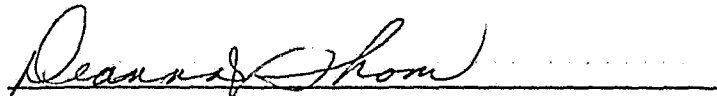
4. No award of contract shall occur until such time as the requirements in the Construction Deposit Agreement have been met.

ADOPTED by the Wilsonville City Council at its regular meeting thereof this 5th day of August, 1985, and filed with the Wilsonville City Recorder this same date.



A. G. MEYER, Mayor

ATTEST:



DEANNA J. THOM, City Recorder

CITY OF



Wilsonville

30000 S.W. Town Center Loop E
P.O. Box 220 / Wilsonville, Oregon 97070-0220
503 / 682-1011

CONSTRUCTION DEPOSIT AGREEMENT
LOCAL IMPROVEMENT DISTRICT NO. 5

THIS AGREEMENT is entered into by the City of Wilsonville ("the City") and undersigned petitioning property owners of LID #5 (owners);

WHEREAS, on April 15, 1985, the Wilsonville City Council declared by Resolution #472 its intention to authorize construction and improvements of streets, water systems, sewers, drainage facilities, sidewalks, street lights, traffic signs and control devices, landscaping, and other utility installations for Local Improvement District Number 5 ("LID #5") in the Town Center area of the City of Wilsonville;

WHEREAS, on July 15, 1985, the Wilsonville City Council approved the final preassessment roll for LID #5 after equalization of preassessments for each piece or parcel of land benefitted by the construction of LID #5 pursuant to the City's Resolution #498 as amended;

WHEREAS, the total cost for LID #5 has been preassessed at \$1,674,934.15;

WHEREAS, the properties owned or controlled by the undersigned property owners will be benefitted by LID #5 and were preassessed proportional costs in the total amount of \$385,174. for LID #5;

WHEREAS, the City plans to sell bonds during September, 1985, to finance construction of LID #5 improvements;

WHEREAS, the City's bond counsel has advised that bond sale proceeds will not be available until approximately October, 1985;

WHEREAS, it appears that construction on LID #5 will be delayed until a period of adverse weather and poor working conditions unless temporary funding can be obtained;

WHEREAS, the owners have expressed their concern to the City about commencing construction during a period of poor weather conditions and about the effect this delay will have on the development of their respective properties;

WHEREAS, it is in the interest of the owners that construction begin as soon as possible, and the owners have agreed to provide funding for all construction and preliminary work until such time as bond sale proceeds are available for disbursement;

WHEREAS, the City desires that construction on LID #5 commence before poor weather creates delays and problems, and agrees to reimburse the owners when funds are received from the bond sale and are available for disbursement.

NOW, THEREFORE, the City and the owners, and each of them, do hereby agree and promise as follows:

1. The City shall receive construction bids for LID #5 and shall accept the lowest qualifying bid on or before September 3, 1985. The project shall be divided into two phases, Phase I being Town Center Loop East and Parkway North 200 feet, and all applicable utilities. Phase II being Town Center Loop West. Phase I shall be the basis for this agreement.

2. This Agreement shall be signed by all parties on or before August 19, 1985, at the Wilsonville City Council Meeting, after approval by the City Council, or as soon thereafter as possible.

3. Within thirty days from the City's acceptance of the lowest qualifying construction bid for LID #5, the owners shall deposit with the City the amount specified for in the bid accepted by the City, which amount is \$250,000. If the City is required to pay any amount in excess of this amount for construction, and if the City is required to pay such excess amount before the bond sale proceeds become available for disbursement, the owners agree to deposit the excess amount with the City upon the City's demand. This excess amount shall also be subject to the terms of this Agreement.

4. The City shall make an award of the contract as soon as reasonably possible after receiving the above described deposit from the owners, but in no event later than thirty days after the City's acceptance of the lowest qualifying bid.

5. The City shall have full and total control over all funds deposited with the City, and the owners shall have no authority to make any decisions regarding the dispersal, control, or use of the funds; provided, however, that the City agrees to apply the amount of the

deposit to payment for work completed in accordance with the construction contract documents.

6. The City shall reimburse the owners for all funds it has deposited with the City within 60 days after the City receives funds from the bond sale. At such time as the City reimburses the owners, it shall, in addition, pay to the owners all interest the City has actually received on the funds during the time the funds were on deposit with the City. The City will attempt to receive the best interest rate possible, given the circumstances of this project and the short time contemplated for holding said funds.

7. The City will use its best efforts to sell bonds to finance construction of LID #5 in accordance with the presently proposed schedule. However, the City shall have no liability to the owners for damages caused by any bond sale failure or for any bond sale delay. In the event of a bond sale failure, the City shall have no obligation to refund to the owners all or any part of the amount of the deposit, except that the City shall refund the difference between the amount of the deposit plus interest earned thereon and the amount the City has paid or is obligated to pay for work performed before the bond sale failure. "Bond sale failure" means a partial or total failure to sell bonds to finance LID #5 caused by poor sales market, lack of interest in bond sales or any cause other than failure of the City to use best efforts to sell the bonds. "Bond sale delay" means any delay in the bond sale date beyond the expected date caused by any reason other than failure of the City to use best efforts to sell the bonds in accordance with the presently proposed schedule. If a bond sale failure shall occur, nothing in this paragraph shall prevent the City from exercising its right, if any, to recover from benefitted parties, including but not limited to owners, reasonable administrative costs which it has incurred up to the time of the bond sale failure.

8. In case suit or action is instituted to enforce this Agreement or any provision hereof, the losing party in said suit or action agrees to pay such sum as the trial court may adjudge reasonable as the prevailing party's attorneys' fees on such appeal.

9. Nothing in this Agreement shall be construed to require the City to take any action which is contrary to the law or to the statutory provisions for public contracts or bonds. The owners represent that their

representation or warranty as to the legality or binding effect of this Agreement.

10. This Agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto, but their respective successors in interest and assigns as well.

WILSONVILLE PROJECT, and Oregon Ltd. Partnership (Tax Lots 406, 407, & 409, Section 13).

BY: _____
Dennis Battles

BY: _____
Terry N. Tolls

BY: _____
Don Sheets

BY: _____
Hank Von Demfange

BY: _____
Doug Albertson

The foregoing instrument was acknowledged before me this ___ day of _____, 1985.

Notary Public for Oregon
My Commission Expires: _____

NORTHWEST COMMERCIAL INVESTMENT PARTNERSHIP, an Oregon Ltd. Partnership (Tax Lots 401, 404, & 408, Sect. 13).

BY: _____
Jerry Crispe
General Partner

The foregoing instrument was acknowledged before me this ___ day of _____, 1985.

Notary Public for Oregon
My Commission Expires: _____

Approved as to Form

CITY OF WILSONVILLE
30000 SW Town Center Loop E
PO Box 220
Wilsonville, OR 97070

BY: _____
City Attorney

BY: _____
A.G. Meyer
Mayor

The foregoing instrument was acknowledged before me this ____ day
of _____, 1985.

Notary Public for Oregon
My Commission Expires: _____