

RESOLUTION NO. 8 FOR 2005

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SWEET HOME, AN OREGON MUNICIPAL CORPORATION, AND THE SANTIAM RIVER PARTNERS LLC.

WHEREAS, the Santiam River Partners LLC owns and intends to develop 311 contiguous acres of land in accordance with the City of Sweet Home approved Master Plan #PD-04-01; known as the Santiam River Club; and

WHEREAS, the City of Sweet Home has a number of needs related to the construction of a new water treatment plant including property, utility and access easements, and other plant development needs; and

WHEREAS, the Santiam River Club development has need for purchase and use of excess City raw water and use of treated wastewater for irrigation, landscaping, and water features within their development as stipulated in the development agreement; and

WHEREAS, purchase and use of City excess water will help the City in maintaining validity of historically established water rights for the projected future growth, development and related needs of the City; and

WHEREAS, Santiam River Club's use of treated wastewater effluent within their project will help the City comply with future wastewater treatment and discharge regulations, and help reduce the impact of discharge into the South Santiam River; and

WHEREAS, the City of Sweet Home recognizes the vital role of the Santiam River Club and related development of adjacent properties owned by Western States Land Reliance Trust, in fostering economic growth and prosperity for the City of Sweet Home and the region, with a projected increase in tax revenues and temporary and permanent jobs as identified in the July 2004 Economic Impact Study submitted as part of the approved Master Plan.

NOW, THEREFORE, BE IT RESOLVED that the Sweet Home City Council by this resolution approves the Development Agreement between the City of Sweet Home and Santiam River Partners LLC, and authorizes the Mayor and City Manager to execute said agreement on behalf of the City of Sweet Home.

This resolution shall be effective immediately upon its passage.

PASSED by the Council and approved by the Mayor this 12th day of April 2005.



Mayor

ATTEST:



City Manager – Ex Officio City Recorder

DEVELOPMENT AGREEMENT

PARTIES: **SANTIAM RIVER PARTNERS, LLC,**
or its successors, affiliates, or assigns,
(hereinafter referred to as "Santiam")

and

THE CITY OF SWEET HOME, OREGON, a
A Municipal Corporation
(hereinafter referred to as "City").

DATE: **APRIL 12, 2005**

RECITALS

A. Santiam owns and intends to develop approximately 311 contiguous acres of land, of which approximately 301 acres are within the city limits of the City. The City has granted Santiam final zoning approval and master plan approval under the "RC" zone, with "PD" and "NR" overlay zones, to develop a recreational, residential, and commercial community to be known as The Santiam River Club (the "Project"). The master plan, which was approved by the City on July 26, 2004, is officially identified as City of Sweet Home PD-04-01 (the "Master Plan").

B. The City has a number of needs relating to water, including: 1) a suitable location within the Project for timely phased City construction and City operation of a new water treatment plant to meet the City's present and future demands for potable water (the "Water Plant"); 2) ponds adjacent to the Water Plant adequate in size to meet Water Plant backwash requirements; 3) necessary utility easements from Santiam in favor of the City for all utilities related to the Water Plant; 4) an ongoing user of water, so that the City may maintain the validity of those historically unused water rights; 5) suitable land areas for the implementation of a comprehensive storm water drainage plan, to allow the City to be in compliance with State of Oregon and federal regulations; 6) a potential means of distributing the City's Treated Waste Water from the City's sewage treatment plant, so that the City can comply with potential future EPA standards for releasing treated waste water into the South Santiam River; and 7) completion and approval of a City of Sweet Home Water Conservation and Management Plan in compliance with regulations of the State of Oregon Water Resources Department, so that the City may increase its statutory water rights from approximately 4.5 million gallons per day ("gpd") to approximately 8.0 million gpd.

C. Santiam has several desires relating to water, including 1) to purchase all unused untreated City water for use in landscape irrigation and for use in recharging and creating streams, ponds, and drainages within the Project; 2) to receive and use backwash water from the Water Plant for Project streams and ponds provided such backwash is of a quality consistent with Santiam's ecological standards; 3) to use all of the City's Treated Waste Water, subject to certain conditions, for recharging and creating streams and ponds within the Project; 4) to receive large quantities of suitable

City storm drainage runoff into specially designed bio-swales and other natural areas, for the mutual benefit of the Parties and of the natural ecosystems within the City; and 5) to assist the City, without compensation to Santiam and without cost to Santiam, in expediting the receipt of state and federal approvals the City may need to commence and complete the tasks related to the siting and construction of the water treatment facility.

D. The City recognizes the vital role of the Project in fostering economic growth and prosperity for the City and the region. The City acknowledges the July, 2004 Economic Impact Study prepared by Hobson Real Estate Advisors, which estimates that the Project, together with development of adjacent land currently owned by the Western States Land Reliance Trust, will provide benefits to the City including:

1. creation of 1,363 construction jobs and a construction payroll of \$51 Million over ten years
2. creation of 246 permanent jobs with an annual payroll of \$15.1 Million by the ninth year;
3. potential increases in tax revenues to the City, averaging \$6.1 Million per year annually in year ten;
4. potential increases in School District #55 tax revenues, projected to reach more than \$4 Million annually by year ten; and
5. corresponding increases in the cost of City services and increased School District costs of only \$3.1 Million annually combined.

E. The City further recognizes the value to the City of Santiam's willingness to provide the following rights of way and opportunities:

1. permanent utility easements, without cost to the City, across Project land for all utilities related to the City water system ;
2. a suitable site for the Water Plant on terms favorable for the City;
3. creating alternatives for City compliance with future EPA standards with regard to release of effluent into the Santiam River;
4. creating alternatives for the City's implementation of the City's Storm Water Management Plan; and
5. assistance from Santiam in the filing of a Water Management and Conservation Plan, allowing the City to increase its allocation of raw water to eight million gallons per day.

NOW, THEREFORE, the Parties agree as follows:

1.0 PURPOSE OF AGREEMENT

The purpose of this Agreement is to document and memorialize the obligations of the Parties

concerning the matters addressed in the Recitals section of this Agreement.

2.0 GENERAL

The Parties acknowledge and agree that:

- 2.1 the Project is anticipated to require at least seven (7) years to develop, depending upon many factors;
- 2.2 the act of entering into this Development Agreement is essential to the Parties so that the provisions of this Agreement shall survive changes in leadership of the City and changes, if any, in ownership of Santiam; and
- 2.3 the Project is likely to require investment of substantial capital by third party investors who are unfamiliar with the relationship between the City and Santiam; and
- 2.4 this Agreement is essential to assure those investors that the agreements between the Parties have been made and that this Agreement is binding on the Parties.

3.0 DEVELOPMENT AGREEMENT TIED TO SANTIAM PORTION OF MASTER PLAN ELEMENTS APPROVAL

This Agreement pertains only to that portion of the Master Plan totaling approximately 311 acres which initially is owned by Santiam (“Santiam’s Portion of the Master Plan.”) If Santiam elects in the future to seek an amendment to Santiam’s Portion of the Master Plan, which amendment is designated as a “Major Change” as defined below, the Parties agree, if either Party requests in writing, to reconsider the terms of this Agreement which are directly related to the proposed Major Change in the Master Plan. For purposes of this Agreement only, the term “Major Change” shall be defined as any change in Santiam’s Portion of the Master Plan which: a) results in: i) a change in historic drainage basins; ii) the introduction of a land use not previously designated in the Master Plan; iii) exceeding the maximum density allowed in any development parcel; or iv) a significant change in use of natural resources, such as filling in existing wetlands to a degree which would require approval of state or federal agencies having jurisdictions over wetlands; and b) results in material impacts, as determined by the City, on property owners adjacent to Santiam’s Portion of the Master Plan. Use of new or existing points of access to Santiam’s Portion of the Master Plan in the vicinity of Clark Mill Road and 43rd to 47th Avenues shall not be considered a Major Change for the purposes of this Agreement, provided that any new access points to the Santiam Portion of the Master Plan will be approved by the City as part of the subdivision process. The City shall use this definition of Major Change in determining whether this Agreement may be subject to review per the terms of this Paragraph 3.0. No Major Change of the Santiam Portion of the Master Plan shall be deemed to have occurred until such Major Change is approved by the City. Provided that there are no adverse financial or operational consequences to either Party as a result of such changes, the Parties’ approval of such changes to this Agreement shall not be unreasonably withheld. If adverse consequences result from an approval of a Major Change, Santiam shall have the right to withdraw its application for a

Major Change in Santiam’s sole discretion.

4.0 CONSTRUCTION OF WATER TREATMENT FACILITY

The City’s water treatment facility (the “Water Plant”) will be located within the Project on not more than 5.3 acres of land known as Development Parcel Q as shown on the Master Plan Sheet D-5, and which is also a portion of tax parcel #13-1E-28D, Tax Lot #201 (the” Water Plant Parcel”). The Water Plant Parcel’s exact configuration shall take into account the access requirements of adjacent Santiam land per the provisions of Section 4.6 of this Agreement.

4.1 City Procurement of Funding.

The Parties acknowledge that the City’s agreement to accept title to, and Santiam’s willingness to convey to the City title to, the Water Plant Parcel is specifically contingent upon the City first obtaining financing from the State of Oregon or other sources under terms acceptable to the City in the City’s sole discretion for the City’s use in constructing the Water Plant. For City financing to be deemed available, it must be in an adequate amount and available in a timeframe suitable for orderly construction, completion, testing, and commencement of operation of the Water Plant in accordance with provisions of Paragraph 4.7 of this Agreement (the “Financing Contingency”).

4.2 Santiam Donation to City of Water Plant Parcel.

Santiam agrees to donate the Water Plant Parcel, or other Santiam property mutually agreeable to the Parties, to the City free and clear of all liens and encumbrances except real property taxes, which shall be prorated as of the date of conveyance, without charge to the city for such conveyance, subject to the City’s acceptance of all other provisions of this Agreement. The City shall be responsible for all environmental and other property investigations prior to the date of conveyance. Santiam shall share with the City all available information with regard to site conditions, environmental studies, etc. Conveyance shall be via a special warranty deed on an “as-is” basis, without any representations or warranties whatsoever except related to Santiam’s ownership of the Water Plant Parcel and Santiam’s authority to make such a conveyance. The special warranty deed shall include a reversion of title of the Water Plant Parcel to Santiam if the City either: a) fails to substantially complete construction of a water treatment plant on the Water Plant Parcel within five (5) years of the date of this agreement; or b) attempts at any time to use the land for any other purpose without the prior expressed written consent of Santiam in Santiam’s sole discretion, whether or not the Water Plant has been constructed. If the Water Plant Parcel is reconveyed to Santiam by means of a reversion clause in the deed, and the City has not yet completed construction of the Water Plant, the City shall be held responsible for all costs required

to return the Water Plant Parcel promptly to its original natural condition. City acceptance of the Water Plant Parcel shall be subject to City's approval of environmental analysis of the Water Plant Parcel. If environmental concerns exist within the Water Plant Parcel, the Parties agree to share costs for mitigation and/or for finding another suitable location for the Water Plant within the Project area.

4.3 City Inability to Construct Water Treatment Facility.

If the City for any reason is unable to construct the Water Plant on Santiam property, the Parties agree: a) that Santiam shall nevertheless provide easements for water lines, pumping stations and other City facilities per the terms of this Agreement related to the City's transport of raw water from Foster Lake to the eventual site of the new water treatment facility; and b) Santiam shall retain preferential access to City Excess Raw Water per the terms of this Agreement and the City shall provide such access to Santiam on or through Santiam's Project property.

4.4 Partition of the Water Plant Parcel.

The City agrees to cooperate with Santiam to legally partition the Water Plant Parcel from the Project so that it may be conveyed using fee simple title to the City.

4.5 Value of Water Plant Parcel and Easements.

The Parties agree that the stipulated value to the City of the Water Plant Parcel and related utility easements is \$150,000.00.

4.6 City Responsible for Completion of Water Plant.

The City shall be solely responsible for all aspects of completing the construction of the Water Plant and Santiam shall have no further obligation with regard to the construction or operation of the Water Plant.

4.7 City Timely Provision of Access to City Excess Raw Water.

The Parties acknowledge that the success of the Project depends to a large degree on Santiam obtaining timely access to City Excess Raw Water. The Parties further acknowledge that the timing of approvals needed to commence construction of the Water Plant and supply lines from Foster Lake to the Water Plant is uncertain. Therefore, the City agrees to provide Santiam with monthly written status reports as to the City's progress in obtaining such permits, and subsequently in construction of the Water Plant and related facilities.

4.8 Architectural and Land Use Controls.

The City agrees to accept the special warranty deed to the Water Plant Parcel subject to provisions of Santiam's Architectural Guidelines, Covenants, Conditions, and

Restrictions (“CC&R’s”) and the rights of Santiam to approve the exterior design of the Water Plant and the landscaping and site plan of the Water Plant Parcel. Santiam agrees that its Architectural Guidelines and Covenants, Conditions and Restrictions shall allow for and not otherwise restrict the Water Plant use on the Water Plant Parcel. The Parties acknowledge that neither the Architectural Guidelines nor the Covenants, Conditions and Restrictions shall have been adopted by Santiam nor recorded against the Water Plant Parcel prior to the City’s commencement of design of the Water Plant and development of the Water Plant Parcel. To assist the Parties in establishing guidelines for the design and development of the Water Plant Parcel, including without limitation the construction of buildings on the Water Plant Parcel, the Parties have attached as Exhibit A to this Agreement examples of the standards of design which Santiam will require for development of the Water Plant Parcel and construction of the Water Plant buildings. Prior to commencing construction of the Water Plant, the City shall obtain Santiam’s written approval of the following plans for the Water Plant project: a) site plan; b) landscape plan, including without limitation fencing and planting details; and c) building exterior architecture for all structures on the Water Plant Parcel, including without limitation colors and materials to be used. Santiam shall refer to Exhibit A as the point of reference for the purpose of acting upon the provisions of this paragraph. Such approvals by Santiam shall not be unreasonably withheld. The City shall agree to sign and be bound by the CC&R’s and Architectural Guidelines once they are available, provided that the CC&R’s and Architectural Guidelines are consistent with the terms of this Agreement as they pertain to the Water Plant Parcel.

- 4.9 Legal Access to the Water Plant Parcel and to Adjacent Development Area P.
The Parties acknowledge the need to cooperate in securing legal access to the Water Plant site and to Santiam’s Development Parcel P as shown on the Master Plan via a non-exclusive access and utility easement (“Water Plant Access and Utility Easement”). Santiam agrees to make available whatever access rights that are currently in Santiam’s possession in support of the Water Plant Access and Utility Easement. However, if requested in writing by Santiam, the City shall use all powers as a municipal corporation in order to secure pedestrian, vehicular and utility access to the Water Plant Parcel and to Parcel P. The parties shall share costs of access as follows: a) If Santiam uses a separate means of access to Parcel P, the City shall bear all costs of access to the Water Plant Parcel; or b) if the parties both use the City’s access to the Water Plant parcel as access to Parcel P, Santiam shall pay all costs of such access over and above those required by the City for access to the Water Plant Parcel. If Santiam shall reserve access along the same City Water Plant Parcel access alignment for pedestrian and vehicular access to Master Plan Development Parcel P, such Santiam pedestrian and vehicular access past the Water Plant Parcel and to Parcel

P shall be built by Santiam and maintained according to City standards.

- 4.10 Sharing of Access Costs to Water Plant Parcel and Development Parcel P.
The cost of such vehicular and pedestrian access shall be allocated between the Parties as follows: a) all such costs to the Water Plant Parcel for the equivalent of an industrial driveway shall be the sole responsibility of the City; b) if Santiam also uses the City's access to the Water Plant parcel as access to Parcel P, all additional costs of access to the Water Plant Parcel which the City may require to meet City standards for streets and pedestrian walkways shall be borne by Santiam, and all such costs from the entrance onto the Water Plant Parcel to and through Parcel P shall be the sole responsibility of Santiam. Santiam shall have the right to approve its portion of the costs of construction and maintenance of the pedestrian and vehicular access in advance, which approval shall not be unreasonably withheld. The Parties agree to cooperate in establishing mutual acceptable alignments for vehicular and pedestrian access to the Water Plant Parcel and to Parcel P. The City shall construct its access at a time of its choosing, and do so in a way which allows Santiam to construct its portion at some future date of Santiam's choosing without causing Santiam to rebuild any of the City's portion of the access.

5.0 SANTIAM USE OF UNTREATED "RAW" WATER

Santiam shall have preferential access to use City Excess Raw Water as described in this Agreement. For a period of four years, Santiam shall have the right to use all City Excess Raw Water, per the terms of Section 5.1 of this Agreement. Santiam's right to use City Excess Raw Water will be adjusted forty-eight (48) months after the City first provides Santiam with preferential access to City Excess Raw Water, and shall be adjusted again on forty-ninth (49th) anniversary of the date of this Agreement. Both such adjustments shall be made according to the provisions of Section 5.2 of this Agreement.

5.1 Priority Right to Purchase Raw Water

The City hereby grants to Santiam a first priority and right to use and purchase, on the following terms, all City raw water not needed by the City for "Municipal Use" as that term is defined below. Such City raw water not needed for Municipal Use and not otherwise restricted per Section 5.1.3 of this Agreement shall be defined in this agreement as the "City Excess Raw Water." Santiam's priority right to purchase all City Excess Raw Water shall be known as the "Santiam Raw Water Purchase Priority." The City shall not allocate, commit to deliver or deliver City Excess Raw Water to any user or destination other than Santiam except as provided for in Paragraphs 5.1.3 and 5.2 of this Agreement, without Santiam's prior written consent, in Santiam's sole discretion.

- 5.1.1 Santiam shall use the City Excess Raw Water for landscape irrigation throughout the Project and for recharging and creating streams, ponds, wetlands and drainages within the Project.
- 5.1.2 Subject to the provisions of Paragraphs 5.1.3 and 5.2 of this Agreement, the Santiam Raw Water Purchase Priority shall not be subject to recall, interruption, sale, or transfer, without Santiam's prior written consent, in Santiam's sole discretion.
- 5.1.3 In addition to the City's prior right to use raw water for all City Municipal Uses, the City Council may, from time to time, temporarily reserve a portion of the City Excess Raw Water for any of the following reasons: a) a drought emergency affecting the City or its residents; b) a fire emergency affecting the City or other areas of Linn County; c) a state or federal mandate to the City requiring reduction in water usage; or d) any natural disaster affecting the region, the City or its residents; provided, however, that the City impose such temporary restriction on Santiam's use of City Excess Raw Water for the minimum amount of time necessary, in the reasonable judgment of the Sweet Home City Council.
- 5.1.4 The term "Municipal Water Use" means the delivery and use of water through the water service system of the Sweet Home municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power. Such uses shall also exclude water that has not been treated at the City Water Plant.
- 5.1.5 If Santiam provides the City with written notice that Santiam does not intend to use 100% of the City Excess Raw Water for a particular calendar period (the "Unneeded Raw Water"), the City may sell the Unneeded Raw Water to any third Party, but only for that period specified in Santiam's written notice to the City.

5.2 Adjustment to Santiam Raw Water Purchase Priority.

The Parties agree that the Santiam Raw Water Purchase Priority shall be adjusted one time after four years (48 months) of Santiam use of City Excess Raw Water. The 48-month period shall start at the time the City first provides preferential access of City Excess Raw Water to Santiam in adequate quantities for Santiam's use in accordance with this Agreement.

- 5.2.1 During the first four years (48 months) of Santiam's use of City Excess Raw Water, Santiam agrees to retain at Santiam's expense a water management, water quality monitoring, and wetlands management consultant (the "Water

Consultant”) to observe Santiam’s usage of City Excess Raw Water and the resulting impacts on Santiam’s streams, ponds, waterways, wetlands, and landscaped areas. The City shall approve in advance Santiam’s selection of the Water Consultant, and shall also approve in advance any change of the Water Consultant by Santiam, but such City approvals shall not be unreasonably withheld.

- 5.2.2 Within ninety (90) days after the end of period described in 5.2.1 of this Agreement, Santiam shall cause the Water Consultant to issue a report (the “Raw Water Study”) to Santiam and the City describing Santiam’s City Excess Raw Water usage during the proceeding 48 months, and determining the minimum amount of City Excess Raw Water which Santiam will need each calendar month for the remainder of the term of this Agreement in order to maintain healthy streams, ponds, wetlands and landscaped areas year-around (the “Monthly Minimum Raw Water Usage”). In making such determinations, the Water Consultant shall also take into account: a) the availability, quality, and use of the City’s Waste Water as provided for in Section 6 of this Agreement, as well as the environmental impacts, if any, Santiam’s acceptance of City Waste Water into its wetlands and waterways.
- 5.2.3 The findings of the Raw Water Study shall be reviewed and approved by the Parties. Both Parties agree not to unreasonably withhold approval of the findings of the Raw Water Study.
- 5.2.4 Concurrent with the approval of the Raw Water Study, the definition of Santiam Raw Water Purchase Priority in this Agreement shall be changed from “all City Excess Raw Water” to “such amounts of City Excess Raw Water equal to the Monthly Minimum Raw Water Usage.” With this definition change, the City shall be free to allocate City Excess Raw Water in excess of the Monthly Minimum Raw Water Usage to other users without Santiam’s prior approval.
- 5.2.5 Santiam’s Raw Water Purchase Priority shall be adjusted one additional time after forty-nine years, using the same process as is described in Paragraphs 5.2.1 through 5.2.4 of this Agreement.
- 5.2.6 The Parties acknowledge and agree that Santiam’s Raw Water Purchase Priority can be either increased or decreased as a result of the provisions of Paragraph 5.2 of this Agreement, subject, however, to the provisions of Paragraph 5.2.4 of this Agreement.

5.3 Limitations on Use of City Raw Water.

The Parties acknowledge that provisions of Paragraph 5.1.3 of this Agreement could cause inadvertent damage to endangered species habitat within the Project. The Parties therefore agree that Santiam shall not use City Excess Raw Water to create spawning

habitat for endangered species unless and until: a) Santiam first obtains a Habitat Conservation Plan Permit together with an Incidental Take Permit pursuant to all applicable local, state and federal regulations (the “Incidental Take Permits”); and b) the City is named in such Incidental Take Permits as a co-permittee, thus allowing the City to withhold, temporarily or permanently, pursuant to the terms of this Agreement, City Excess Raw Water from Santiam without interference, penalty or cost from any state or federal governmental agency.

5.4 Purchase of Excess Raw Water and Future Price Adjustments.

5.4.1 Santiam’s periodic payments to the City for the City Excess Raw Water used shall be based upon actual usage measured by a separate water meter (the “Monthly Water Payment”). The Monthly Water Payment due to the City shall be billed to Santiam and payable by Santiam under then current comparable City billing practices applied to all other City water users.

5.4.2 Notwithstanding the foregoing, Santiam shall be under no obligation to purchase any or all of the City Excess Raw Water available.

5.4.3 Santiam recognizes that annually, per City ordinance, the Sweet Home City Council may adjust up or down the price that Santiam pays to the City for the City Excess Raw Water by applying the methodology, formulas and calculations described in Exhibit B attached to this Agreement. The City shall provide advanced notice of price changes to Santiam comparable to notice provided to other City water users.

5.5 City Right to Withhold City Excess Raw Water. Nothing in this Section 5 shall supersede the City’s right to withhold City Excess Raw Water for Municipal Uses or for uses pursuant to the provisions of Section 5.1.3 of this Agreement.

5.6 City Acquisition of Additional Water Rights. If the City determines that it needs additional water rights, Santiam agrees to assist the City in securing additional water rights and capacity as may be needed to insure the availability of adequate water for both City and Santiam use. This provision in no way diminishes the City’s obligations to Santiam under this Agreement.

5.7 Interruption of Service. The Parties acknowledge that the need for routine maintenance and/or unforeseen maintenance and repairs could interrupt the City’s delivery of City Excess Raw Water to Santiam. The City shall give Santiam reasonable notice for interruptions due to routine maintenance. In addition, the City shall attempt to schedule routine maintenance during times of the year when Santiam’s needs are at seasonal lows.

6.0 SANTIAM USE OF ALL CITY’S TREATED WASTE WATER

The Parties agree that, if Santiam bears all costs of construction and installation of a distribution system, Santiam shall be entitled for the term of this Agreement to receive without charge to Santiam 100% of the waste water treated to current DEQ NPDES “Level Two” permit requirements discharged from the City wastewater treatment facility (“City’s Treated Waste Water”), subject to the following provisions.

- 6.1 Santiam shall be under no obligation to receive City’s Treated Waste Water, or any other treated wastewater.
- 6.2 Santiam shall have the right at any time and for any length of time to reject receipt of City’s Treated Waste Water during which time such effluent is not of the quality specified in this Agreement.
- 6.3 The City shall bear none of the obligation or cost to install force mains or other distribution lines from the City wastewater treatment plant(s) to the Project, including purchase and installation of pumping systems (the “Waste Water Treatment Line”).
- 6.4 The City shall bear 100% of the cost of operation, maintenance, repair and replacement of the Waste Water Treatment Line, including without limitation the pumping systems and related equipment.
- 6.5 The City shall be responsible for providing, or otherwise acquiring to the extent financially practicable, as determined by the City, easement access for installation of the Waste Water Treatment Line along the alignment of the Albany and Eastern Railroad track from the City sewage treatment plant to an Oregon DEQ/EPA approved discharge point in a Project pond to be built by Santiam adjacent to and west of the Water Plant Site. The City’s obligation to acquire such easement access shall include all powers available to the City if needed, in order to obtain such easement access in a timely manner at reasonable and customary cost for such easements. The reasonable and customary cost of acquiring all needed Waste Water Treatment Line easements shall be borne by Santiam.
- 6.6 The City shall approve in advance in writing the design of the Waste Water Treatment Line, which shall be built to City standards and shall be accepted by the City upon completion according to the City approved plans. The City also agrees to not unreasonably withhold written approval of design changes, if any, which may be needed during the course of construction of the Waste Water Treatment Line.
- 6.7 Santiam shall use the City’s Treated Waste Water to supplement the flow of water through its streams and ponds prior to its entry into the Santiam River. Subject to applicable regulations, Santiam may also use diluted City Treated Waste Water for irrigation of landscaping and in other water features within the Project.
- 6.8 The Parties acknowledge that the need for routine maintenance and/or unforeseen maintenance and repairs could interrupt the City’s delivery of City Treated Waste Water to Santiam. The City shall give Santiam reasonable notice for interruptions due to routine maintenance. In addition, the City shall attempt to schedule routine maintenance during times of the year when Santiam’s needs are at seasonal lows.

- 6.9 The City agrees to use best management practices consistent with the requirements the Oregon Department of Environmental Quality and NPDES standards.

7.0 STORM DRAINAGE, GRANT PROCURMENT

The Parties agree to cooperate in the implementation of the City's storm water drainage plan (the "Storm Water Master Plan") so that storm drainage in the vicinity of the Project is directed by gravity flow to and through the wetlands in the Project, provided such storm drainage will not cause damage to the Project's overall eco-system or to any wetlands, streams, ponds or waterways within the Project. The City shall adhere to best management practices for handling of storm drainage in approving future development within City jurisdictions. The Parties also agree to cooperate on securing grants or other third Party funding of any incremental cost of channeling City storm drainage through the Project and handling such drainage in an environmentally sound manner within the Project.

8.0 PUBLIC ACCESS INTO PRIVATE AREAS OF THE PROJECT

The City acknowledges and reaffirms the provisions of the Master Plan relating to public access into private areas of the Project, which provisions specify, in summary, that: a) vehicular access shall be controlled and restricted by Santiam or its designees in the sole judgment of Santiam; and b) provided that there are no problems relating to vandalism, littering, theft, trespassing, other crimes, noise, unleashed domestic pets, or any disturbance of wildlife or humans, Santiam shall provide public pedestrian access into portions of the Project on trails constructed and maintained by Santiam or its designee.

9.0 EFFECTIVE DATE

The term of this Agreement shall commence and the Agreement shall be effective (the "Effective Date") the date and at the time a resolution approving and adopting this Agreement is approved by the City Council and upon execution by the Parties hereto.

10.0 TERM

The term of this Agreement shall expire 75 years from the date of execution of this Agreement, unless: a) extended by mutual agreement; or b) otherwise terminated in accordance with the provisions Paragraph 11.0 of this Agreement.

Agreement, unless: a) extended by mutual agreement; or b) otherwise terminated in accordance with the provisions Paragraph 11.0 of this Agreement.

11.0 TERMINATION

Either party may terminate this Agreement prior to the end of the Term if and only if Santiam does not commence development of the Project within three (3) years of the date of this Agreement. Santiam may terminate this Agreement if Santiam elects not to develop the Project, provided, however, that provisions relating to the conveyance of the Water Plant Parcel shall survive any termination by either City or Santiam.

12.0 GENERAL PROVISIONS

12.1 Amendments.

No provision of this Agreement may be amended, modified or waived unless such amendment, modification or waiver is agreed to in writing and signed by the parties.

12.2 Arbitration.

Any controversy or claim arising out of this Agreement shall be determined by binding arbitration in Portland, Oregon in accordance with the rules of the Arbitration Service of Portland, Inc. then in effect and judgment on the award may be entered in any court having jurisdiction. If the Arbitration Service of Portland, Inc. is not then in existence, the claim or controversy shall be determined in Portland, Oregon under the commercial arbitration rules of the American Arbitration Association. No provision of this Section 12.2 shall prevent a party from commencing an action in a court of competent jurisdiction to seek injunctive relief, provisional process, or appointment of a receiver; provided, however, that all other claims for relief shall be determined by arbitration as provided above.

12.3 Attorneys Fees.

In the event either party files suit to interpret or enforce its rights under this Agreement, then, in addition to all other costs, damages and awards, the prevailing party shall recover its actual attorneys fees (including paralegal fees and expert witness fees) as determined by the judge at trial or upon any appeal or petition.

12.4 Binding Effect.

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, administrators, successors,

and permitted assigns.

12.5 Complete Agreement.

This Agreement constitutes the complete and final agreement between the parties with respect to the matters covered by this Agreement, and this Agreement supersedes and replaces all prior written or oral agreements on the same matter.

12.6 Construction and Interpretation.

The use in this Agreement of the words "including," "such as," and words of similar import following any general statement, term, or matter shall not be construed to limit such statement, term, or matter in any manner, whether or not the language of non-limitation (such as "without limitation" or "but not limited to") is used in connection therewith, but rather, shall be deemed to refer to all other items or matters that could reasonably fall within the scope of the general statement, term, or matter. All provisions of this Agreement have been negotiated at arm's length, and this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision hereof.

12.7 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original of this Agreement and all of which shall be one agreement.

12.8 Default.

An Event of Default shall occur if: a) A party fails to perform an obligation of such party set forth in this Agreement, the other party gives written notice of such failure, and the failure of performance is not cured within ten (10) days of such notice. If the failure of performance is such that it cannot be cured within such ten (10) days, then no default shall occur if the party commences to cure such a failure within such ten (10) day period of time and, thereafter, completely cures the failure as soon as is reasonably possible; or b) A party files a voluntary petition in bankruptcy, is the subject of an involuntary petition in bankruptcy which is not dismissed within thirty (30) days, is insolvent, or has a receivership imposed on itself or any of its assets.

12.9 Defined Terms.

Words that are capitalized and not the first word of a sentence are defined terms and shall have the meaning given them where they are first used and capitalized.

12.10 Exhibits.

All exhibits attached to this Agreement are an integral part of this Agreement and are hereby incorporated by reference.

12.11 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

12.12 Headings.

The headings of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

12.13 Interest.

Any amounts not paid when due under this Agreement shall bear interest from the due date until the date of payment at the lower of (i) 9 percent per annum or (ii) the highest rate permitted by applicable law.

12.14 Notices.

All notices which are or may be given under the terms of this Agreement shall be in writing and sent to a party at its address first set forth above. A party may change its address for notices by a notice to the other party. Notices may be given by hand delivery or U.S. certified mail, return receipt requested. Notices given by hand delivery shall be effective upon delivery to a party's address. Notices given by fax shall be effective upon electronic confirmation of transmittal by the sending fax machine. Notices given by certified mail shall be effective on the third business day after placement in the U.S. mail with postage prepaid.

12.15 Relationship of Parties.

No provision of this Agreement shall be construed to create a partnership or joint venture relationship or any other relationship between the parties other than that of parties to this Agreement.

12.16 Remedies.

In the case of an Event of Default, the non-defaulting party shall be entitled to each and every legal and equitable right and remedy as though each of those were fully set forth in this Agreement, including but not limited to, the remedy of specific performance.

12.17 Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.18 Successors, Assigns.

In the event Santiam conveys all or a part of the Project, then this Agreement shall be binding upon the transferee of all or part of the Project.

12.19 Survival.

All representations, warranties, and covenants contained in this Agreement, the full performance of which is not required prior to or at the Closing, shall survive the Closing and be fully enforceable thereafter.

12.20 Time of Essence.

Time is of the essence of the obligations of the parties under this Agreement.

12.21 Waiver.

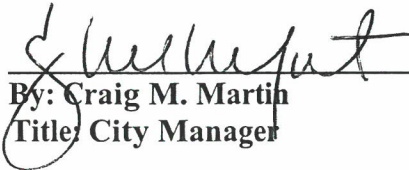
Failure of any party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. Any waiver of any provision of this Agreement shall be effective only if set forth in writing and signed by the party to be charged.

AGREED TO THIS 15th DAY OF April, 2005

THE CITY OF SWEET HOME, OREGON

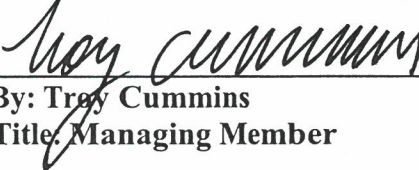


By: Craig S. Fentiman
Title: Mayor

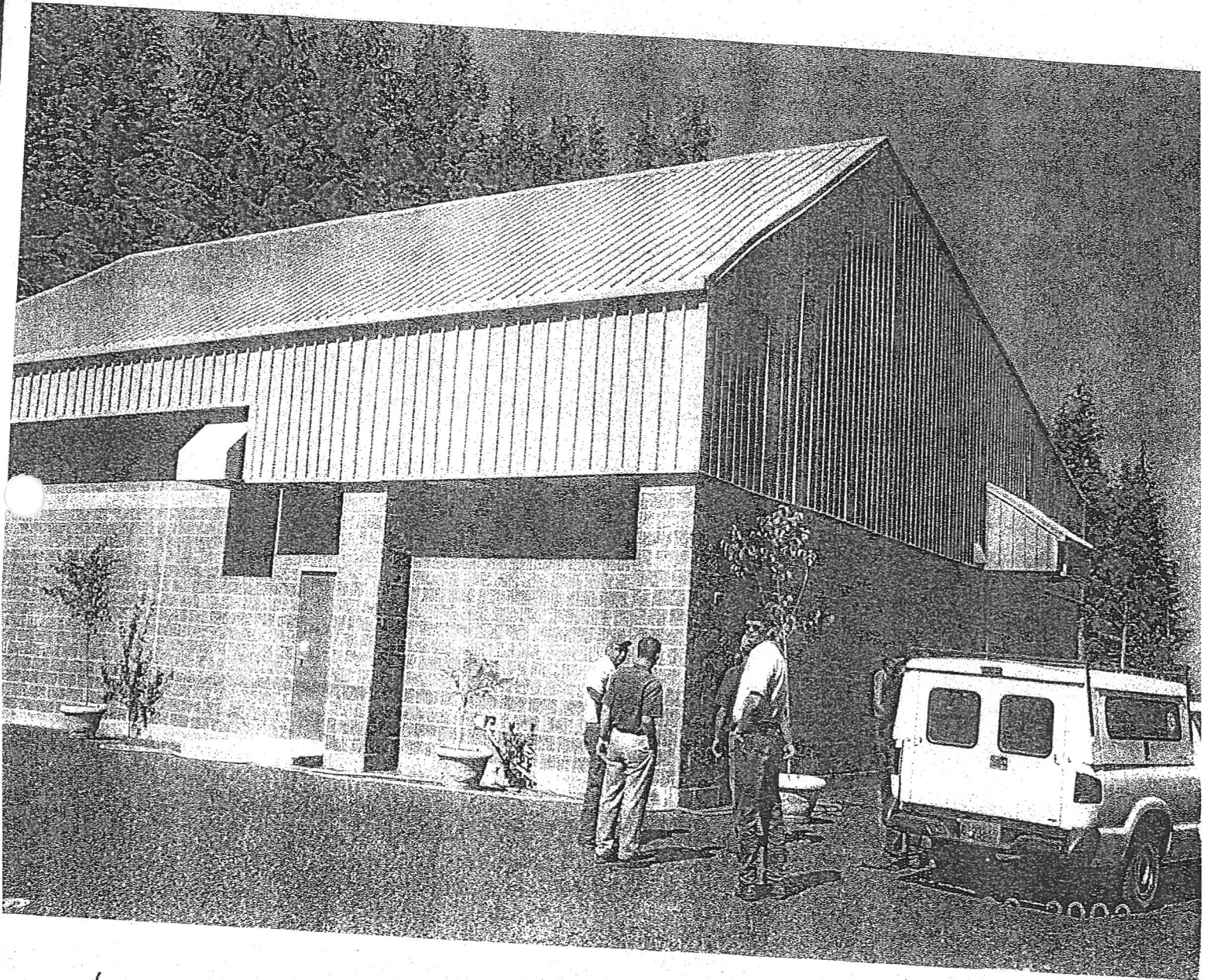


By: Craig M. Martin
Title: City Manager

SANTIAM RIVER PARTNERS, LLC



By: Troy Cummins
Title: Managing Member



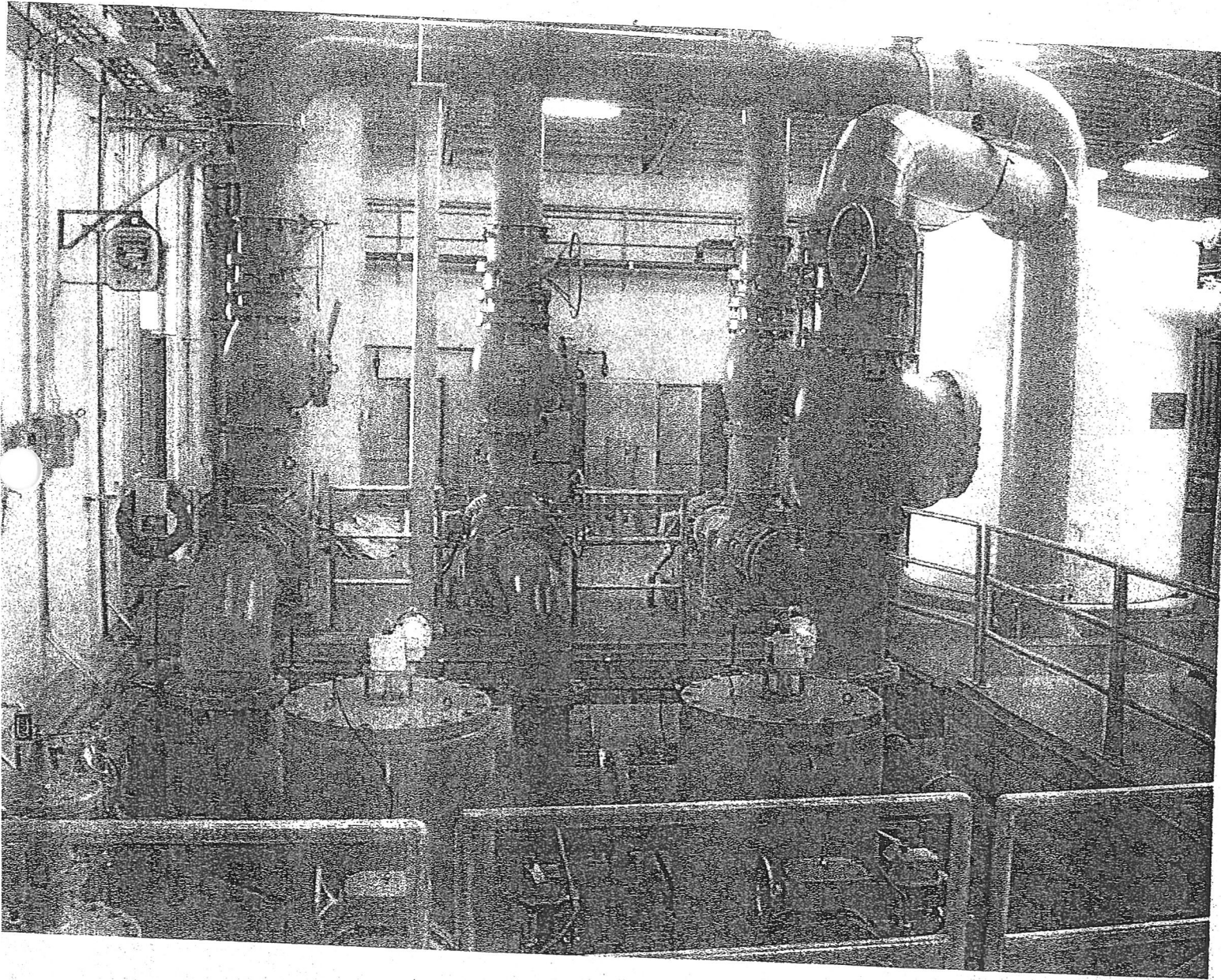
8/22/02

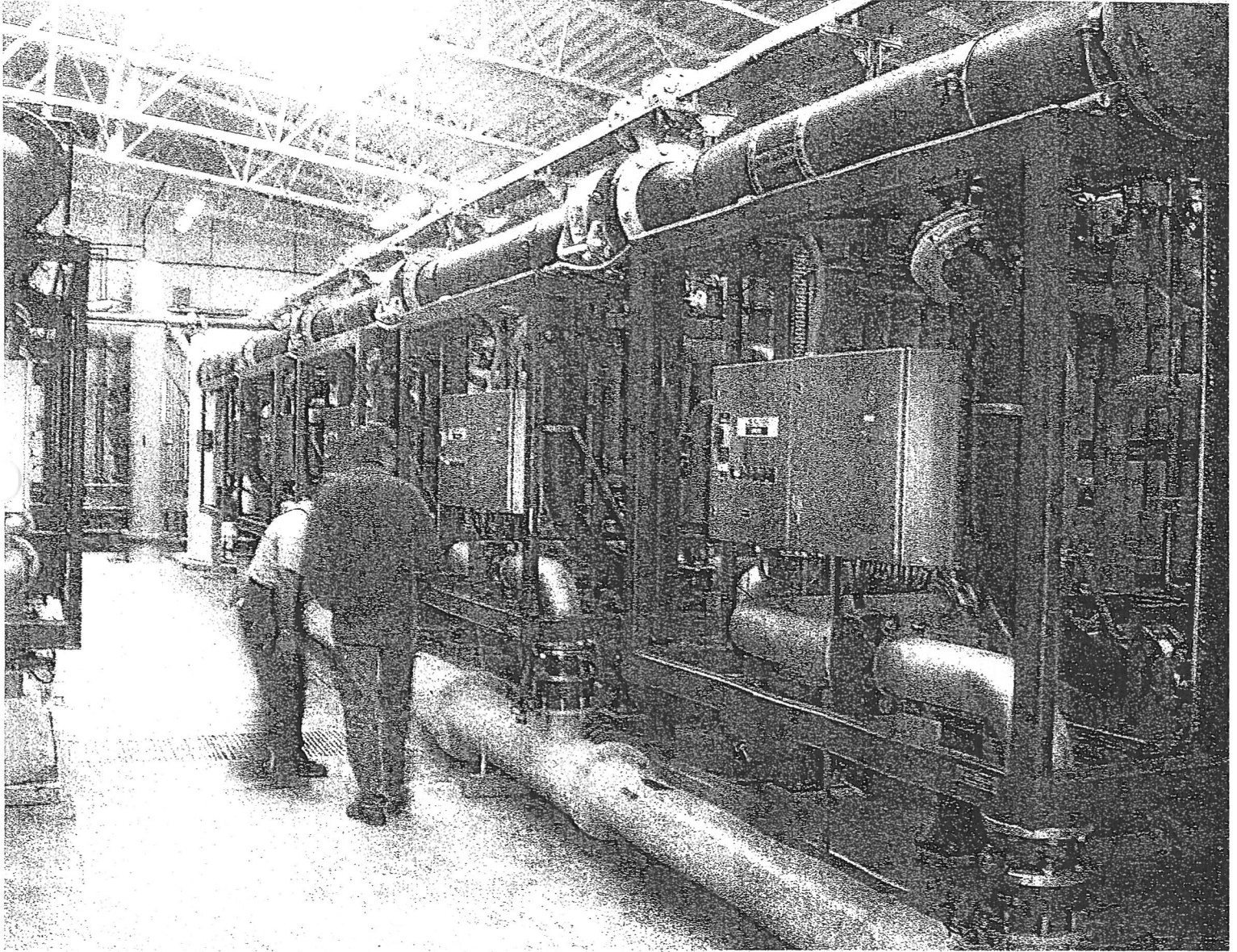
Lewis ; Clark Water District - Astoria

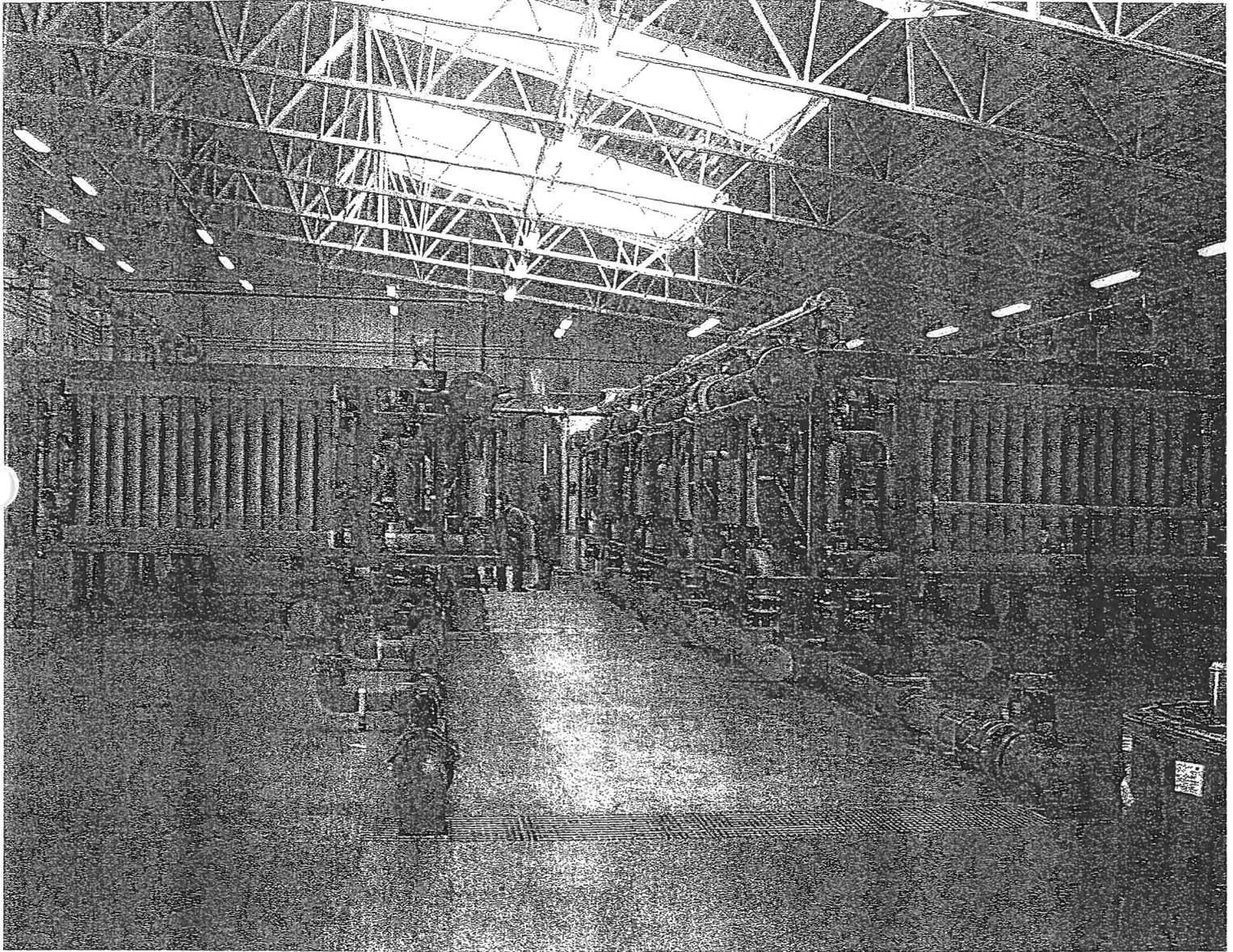


City of Warrenton

Exhibit "A"







WATER COSTS

Exhibit "B"

Construction Costs

Intake Structure	\$100,000
Transmission Line and Crossings	\$565,000
Valves and Appurtenances	\$10,000
	<u>\$675,000</u>

Time Period	30
Interest	7%
Cost per year	\$54,395.82

Depreciation (straight line)	Time Period	40
	Dep. per year	\$16,875.00

Return on Investment	Rate	4% (of plant value)
	ROI per year	\$27,000

Administration and Billing	\$245	(3/4"base \$17/month*12months+20%)
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Operation and Maintenance	\$25,000	(fish screen will likely need maint.)
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TOTAL COSTS	\$123,516
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WATER VOLUME

Total City Water Rights	8,000,000 per day	365 days per year
Total Pipe Capacity used by City	8,000,000 per day	365 days per year

*City Water Rights and Pipeline Capacity are both assumed to equal 8,000,000 gallons per day 365 days per year

TOTAL Volume	2,920,000,000 gal. per year
Cost per gallon	\$ 0.000042
Cost per 100 CF	\$ 0.032
Cost per AcFt	\$ 13.783
Cost per 1,000,000 gallons	\$ 42.300
Cost for bulk	\$ 15,439.45 yearly
	\$ 1,286.62 monthly
Cost for city for 365 days	\$ 108,076.17

Avg Day	1 MGD	Peaking Factor	2.5
Growth Rate	1.0% per yer		
Total Water Right	8 MGD		
Years to Limit	117 (At this # of years peak day = 8 mgd, avg day =8/2.5=3.2 mgd)		

Document is for illustration purposes only to show existing methodology.
 Actual costs and figures will be used pursuant to this methodology, current applicable City Ordinance, and Development Agreement.
 Rates shall be adjusted based on changes in operating costs pursuant to this methodology and current applicable City Ordinance.



August 18, 2003

Exhibit "B"

City of Sweet Home
Attn: Mike Adams, Public Works Director
1730 N. 9th Avenue
Sweet Home, OR 97386

Re: Raw Water Cost

Dear Mr. Adams,

LDC Design Group, Inc. has completed an analysis of the raw water cost, per your request of August 11. The potential sale of raw water will involve more than calculating the base cost of the water. We have noted potential options related to contract structure in addition to the cost.

The raw water cost can be determined using the same methodology as used in calculating water rates. The revenue required to support the cost of the raw water includes

- Debt service for the construction costs
- Depreciation
- Administration and billing
- Operation and Maintenance
- Return on Investment

LDC has used these components to in the attached spreadsheet to calculate a cost for the raw water. A number of assumptions have been made about the interest rates, terms and maintenance costs. An item-by-item description of the assumption and results follow.

The total construction costs for the intake, transmission line and valves, have been calculated per the City's estimate to be \$675,000. The debt service on the construction has assumed a 30-year loan at 7 percent. The yearly payment due is therefore \$54,395.

The depreciation has been determined using straight-line depreciation over 40 years. A forty-year time period is typical of water facilities. The cost per year is therefore \$16,875.

The administration and billing costs will be similar to the current customer charge. A single raw water account or contract may structure in many ways and the billing will need to correspond to the contract. The costs are assumed to be similar to any other metered account, and for this account, a 20% surcharge has been added to the monthly base charge of \$16 to account for the unique structure of this account. The amount is therefore \$230 per year.

The operation and maintenance costs are difficult to estimate. The indication that a fish screen will be required on the intake, means the operations and maintenance costs for the fish screen will need to be included in the raw water cost. The operation of a fish screen requires regular inspection, cleaning and maintenance. LDC has estimated \$25,000 per year to operate and maintain the fish screen and the associated intake infrastructure.

The final cost item is the rate of return. The City currently collects a rate of return as a flat fee. LDC has proposed a 4% rate of return. The return is allowable and recommended compensation for the risk the City takes in providing raw water to a customer. The 4% has been applied to the construction cost only and is \$27,000 per year.

3300 NW 211TH TERRACE
HILLSBORO OR 97124

PH 503. 858. 4242
FX 503. 645. 5500

WWW.LDCDESIGN.COM

CORPORATE OFFICE
HILLSBORO, OREGON

TILLAMOOK, OREGON

ANCOUVER, WASHINGTON

BELLEVUE, WASHINGTON

COEUR D'ALENE, IDAHO

SACRAMENTO, CALIFORNIA



The total revenue requirement is therefore \$123,500. The cost will need to be paid by all of the raw water users. The major raw water user will be the City's water treatment plant.

The usage estimate provided by the City indicated approximately one million gallons per day (1 MDG) to be sold and 6 MDG to be used by the City plant. The total volume of water used at this rate would be approximately 2.5 billion gallons of water.

The cost for the water is simply the revenue required divided per gallon or other unit of measure.

\$ 0.000048 per gallon

\$ 0.04 per 100 cubic feet

\$ 15.75 per Acre Foot

\$ 48.34 per million gallons

A bulk water purchase of 1 MGD would be \$1,470.25 per month, or \$17,643 per year.

The contract structure could take many forms. Two general ideas are presented below.

BASIC

The water could be charged on a metered per 100cf basis similar to a standard commercial or residential account. Due to the large volumes of water committed to this account, and the large size of the water bill this account would be a large portion of the City's water system income. If a wet year, ownership changes or other circumstances occurred and the user did not purchase 1MGD the City may have a difficult time meeting its budget obligations.

TAKE OR PAY

In a "Take or Pay" contract the user would be required to pay a large minimum monthly (or yearly) fee to have the right to access the water. This fee would apply whether or not any water was used. The fee should be designed to collect at least the depreciation and debt service costs. Using the numbers previously discussed the minimum amount required to generate the necessary income would be \$850. The remaining \$620 could then be charged as a usage fee, provided the account was active.

It is our understanding this is part of a larger negotiation between the City and a potential user. There are many options available and we would be glad to discuss with you further should you request additional assistance.

Sincerely,
LDC DESIGN GROUP, INC.

Dale R. Merrell
Director of Engineering

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FX 503. 645. 5500

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