

RESOLUTION NO. 2131

A RESOLUTION OF THE WILSONVILLE CITY COUNCIL ACTING AS THE LOCAL CONTRACT REVIEW BOARD ADOPTING FINDINGS IN SUPPORT OF EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENT, AUTHORIZING USE OF ALTERNATIVE METHOD OF CONTRACTING OF DESIGN-BUILD-OPERATE FOR WASTEWATER TREATMENT PLANT UPGRADE, AND AUTHORIZING REQUEST FOR PROPOSAL FOR OWNER'S REPRESENTATIVE TO DEVELOP REQUEST FOR PROPOSAL FOR DESIGN-BUILD-OPERATE CONTRACT AND TO PROVIDE OWNER'S REPRESENTATIVE SERVICES FOR DESIGN-BUILD-OPERATE CONTRACT DELIVERABLES

WHEREAS, adopted on August 30, 2004, by Wilsonville Ordinance No. 571, the Wastewater Treatment Plant (WWTP) Facility Plan determined that the current capacity (daily peak flow) of the plant was 4 MGD and that by 2011 the plant would need to have capacity (daily peak flow) of 7 MGD in order to serve the City's rate of growth and that several improvements were needed to obtain operational efficiencies, modernize equipment, meet anticipated regulatory performance requirements, change over systems to a drying of solids process in recognition of the lack of qualified land for application of the liquid bio-solids generated by the plant, and to meet growth demands; and

WHEREAS, given the 2011 date, time is of the essence to select an Owner's Representative to facilitate the solicitation and award of a contract best suited to meet project goals, and position the contractor to start the two years of construction in 2010 in order to have substantial completion in 2011; and

WHEREAS, staff was charged with reviewing and recommending to the City Council, the Local Contract Review Board under the authority of Wilsonville Code 2.310, the best contracting method for successfully meeting the following goals:

- Completing a \$50 million capital expansion on time and within budget
- Uninterrupted plant operation
- Increase the plant's efficiency
- Achieve lifecycle cost reductions, e.g. high quality, low maintenance equipment
- Modernize equipment and controls
- Meet and exceed regulatory requirements
- Clearly understand the liabilities and risks during, design, construction, and operation and protect the City to fullest extent

- Through design and construction integrate long term operations and maintenance cost control; and

WHEREAS, staff had successfully managed a previous design-build (DB) contract of the City's Water Treatment Plant in the range of \$50 million on time and within budget and had contracted with a private operator to consult on operations after a portion of the design was completed and to operate the plant; and while the plant is being successfully operated, staff is of the opinion that there was opportunity to improve upon this process if the operator could have been even more involved in an earlier stage and if the challenges of having different entities with different interests and approaches could be eliminated; and

WHEREAS, staff in its research has determined that there is an alternative contracting method, DBO, which staff is of the opinion will be able to meet the statutory criteria for exemption from the competitive bidding requirement and to meet the Council's construction and operational goals both in the short term and in the long term and recommends, in accordance with the findings set forth below, that the City Council acting as the Local Contract Review Board authorize the use of an alternative contracting method of design-build-operate (DBO) for the design, construction and operation of the City's WWTP Upgrade Project; and

WHEREAS, in recommending the above alternative contracting method, staff understands that there are currently six filled positions by City bargaining unit staff whose positions would be replaced by the DBO, but it is staff's further understanding from its research that it is very common for provisions of a DBO contract to provide for jobs to be provided to those employees whose positions are being replaced and to provide for them jobs with a package of salary and benefits that is comparable to or better than current City employment and for provisions protecting affected employees from involuntary transfers; therefore, staff recommends that any request for proposal for a DBO provide that finalists provide an opportunity to meet with the affected employees regarding their employment opportunities and conditions and that a final contract include provisions to hire affected employees at salary and benefit packages comparable to or better than their current salary and benefit package together with provision protecting the employees from involuntary transfers, or termination without cause; and

WHEREAS, on May 5, 2008, staff provided to the City Council/Local Contract Review Board at a public work session, staff's initial report to the City Manager and City Council dated April 2008, wherein it introduced the concept of DBO, outlined a brief history/background of the

WWTP and Upgrade Project, the overall scope of the project, the current operational staffing, goals and objectives for the project, contract options for project deliverables, contract options strengths and weaknesses, risk allocation among the options, generalized cost benefit analysis, a section on privatization vs. public/private partnership, the process steps to date of the report including facilitated meetings with union representatives and the affected employees, union concerns, union comments, a projected timeline, and based on the findings and analysis therein, the management staff specific recommendation of DBO as the optimum contract option; and

WHEREAS, after the initial public work session of May 5, 2008, wherein the Council/Board received the aforementioned April 2008 report, heard from staff and union representatives and affected employees, and directed staff to do further research on a series of questions that the Council/Board provided, the Council/Board conducted a series of public work sessions on May 19, 2008, June 2, 2008, and June 16, 2008, wherein staff responded to the questions and union officers, members, and affected employees addressed the Council/Board on these matters; and

WHEREAS, the record of the May 5, 2008, May 19, 2008, June 2, 2008, and June 16, 2008, work sessions has been compiled by the City Recorder, including the April 2008 staff report, documents submitted, and minutes of the public work sessions, is marked Exhibit A, attached hereto, and incorporated by reference as if fully set forth herein in support of the findings and conclusions set forth in this Resolution.

WHEREAS, Oregon Revised Statutes (ORS) Chapter 279C, Model Public Contracting Rules and the Wilsonville Code 2.310 et seq. govern the procurement of construction services for public improvements, and specifically ORS 279C.330-279C.355 and OAR 137-049-0630 provide for exemptions from the competitive bidding requirement of the typical design-bid-build (DBB) contracting method to allow for alternative forms of contracting and WC 2.312(1) provides for exemptions from competitive bidding: "Any contract the exemption of which is provided by the State of Oregon Public Contracting Code or Model Rules [Oregon Attorney General Model Rules for Public Contracting]"; and

WHEREAS, ORS 279C.335 (4)(a) provides in granting exemptions, a local contract review board shall: "When appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition."; and

WHEREAS, ORS 279C.335 (4)(b) provides in granting exemptions, a local contract review board shall require and approve or disapprove of written findings by the contracting agency that support the direction and award of a particular public improvement contract and contracting method without public bidding, by finding the following: 1) it is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and 2) the awarding of public improvement projects will likely result in substantial cost savings to the contracting agency; and

WHEREAS, ORS 279C.335 (5) provides for a public hearing for comments on the proposed findings for exemption be held before final adoption of the findings, that notice of the public hearing be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing, the notice shall state the hearing is for the purpose of taking comments on the draft findings for exemption from the competitive bidding requirement and at the time of the notice copies of the draft findings shall be made available to the public, and at the public hearing an opportunity shall be provided for any interested party to appear and present comment; and

WHEREAS, on August 4, 2008, a public work session of the City Council/Local Contract Review Board was conducted with staff to review the procedural process and compliance with statutory criteria for hearing of exemptions and adoption or disproving proposed findings, a copy of the record of this session is marked Exhibit B, attached hereto and is incorporated by reference as if fully set forth herein; and

WHEREAS, in keeping with the description of the role of the Owner Representative as provided in the aforementioned April 2008 staff report and to further ensure that an alternative contracting method of DBO for a complex project of this nature is properly solicited and awarded through a competitive RFP process within the time constraints set forth above and that there is the expertise necessary to assist staff in the oversight and management of the DBO contract deliverables, staff recommends the City Council/Local Contract Review Board authorize staff to solicit a Request for Proposal for an Owner's Representative Personal Services Contract to be awarded by the Local Contract Review Board; and

WHEREAS, on August 1, 2008, a minimum of 14 days prior to the hearing, due notice was published in the Daily Journal of Commerce, a trade newspaper of statewide circulation for

a public hearing on August 18, 2008, to receive comments by interested parties regarding adoption or disapproval of draft findings for exemption of the alternative contracting method of DBO, and at the same time the draft findings were made available to any interested party as incorporated into the form of this Resolution proposed for adoption at the August 18, 2008, hearing; and

WHEREAS, the August 18, 2008 public hearing having been duly conducted, the opportunity being made available for interested parties to comment on the proposed findings for exemption, and comments and documents having been received, the City Council/Local Contract Review Board having reviewed the record and being fully advised in the premises;

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

1. Pursuant to WC 2.310, the City Council is acting under its authority as Local Contract Review Board in making the findings and conclusions herein.

2. The above recitals are incorporated herein as findings in support of the Board's decision herein.

3. The Board further adopts as findings the April 2008 staff report in this matter, and the information provided by staff at the work sessions as set forth in Exhibit A establishing that the use of the alternative method of design-build-operate (DBO) through an RFP process for the WWTP Upgrade Project estimated at \$50 million takes into account market realities and modern practices and is consistent with the public policy of encouraging competition in compliance with ORS 279C.335 (4)(a).

4. The Board initially had some concern that the numbers of DBO contractors had narrowed over the years, but in answer to the Board's specific questions, the Board finds that project scope in the range of \$50 million, project location, other opportunities at the time of solicitation, and cost to propose or bid limited the expectable range of bidders or proposers to 3 to 5, from a greater pool of firms and teams who are potential proposers; therefore it is unlikely that the form of contracting method would diminish competition for this project. Additionally, an RFP process does not limit the potential number of proposers and it is open to all interested and capable DBO contractors. The procurement will be formally advertised with public notice and disclosure of the planned DBO method. The RFP selection process shall use a multi member selection committee experienced in the process with an experienced and qualified Owner's

Representative to assist. The committee will evaluate responses and conduct interviews, the selection criteria will be designed to meet the project goals and objectives and to identify the best qualified DBO contractor. Scoring points will be assigned to the selection criteria and the highest scoring proposer will be selected to receive the award. The terms and conditions and price will be the result of "arms-length" negotiation and subcontractors subject to competitive selection. The use of a guaranteed maximum price will be employed. Opportunity to protest an award will be provided. Therefore, the Board further finds by more than a preponderance of the evidence supported by the record taken as a whole that exempting the WWTP Upgrade Project from competitive bidding in order to use an alternative contracting method is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts and is in compliance with ORS 279C.335 (4) (b).

5. Based on more than a preponderance of the evidence in the record taken as a whole, the Board further finds and concludes that exempting the WWTP and using the alternative method of contracting of DBO will result in substantial cost savings to the City in compliance with ORS 279C.355. As set forth in the April 2008 staff report and the information set forth in the record, the modern day evolvement of design-build-operate is based on saving major costs to the City on several fronts: to take advantage of value engineering and life cycle cost savings in equipment and design function in construction as well as in maintenance and long term, sustainable operations, to shift the risk to the operator to meet performance requirements as the designer, builder, and operator on the one hand and on the other to avoid costly disputes traditionally found among designer, contractor, and operator in the design-bid-build circumstances or between a design-builder and a separate operator for design flaws, construction flaws and operational flaws and the finger pointing as to which party is responsible for causing same. There are additional cost savings from the operator being of a size to design-build-operate at the \$50 million dollar level and above in that they have greater buying power in buying equipment standard to their operations wherein an independent operator may be operating different equipment at different plants designed and constructed by others. The selected DBO firm will have the desired experience and background of designing and building modern functional, upgraded plants with increased capacity while coordinating continuing plant operations, thereby avoiding potential costly problems between a traditional designer, builder, and operator while trying to keep the plant operational. Likewise, the advantages found in the

time and cost savings of design-build over design-bid-build are present, which the City found in its prior use of design-build. Guaranteed maximum price can also be employed. However, besides the issues associated with a separate operator, a major difference is that design-build of the Water Treatment Plant was on a green field without any existing operations, while the Wastewater Treatment Plant Upgrade will need to be conducted with an ongoing operation, placing an emphasis on operational expertise and coordination.

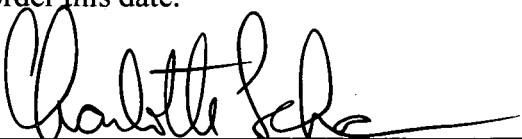
6. The Board further finds that the public hearing on the exemption of the WWTP Upgrade Project and the use of the alternative form of contracting of DBO was duly noticed, scheduled, and conducted for comments by interested parties as well as the proposed findings being duly and timely available to interested parties in compliance with ORS 279C.335 (5).

7. Staff is directed to solicit Requests for an Owner's Representative Personal Services contract forthwith as outlined in the recitals as incorporated above with the expected term of the contract to be approximately 6-7 years with an estimated cost over that time period of \$5 million. The negotiated contract shall be presented to the City Council acting as Local Contract Review Board for award of the contract.

8. The Board further finds that interpreting ORS 279C.335(4)(a), (4)(b) and (5) together the same set of criteria come into play for selecting an alternative contracting method as well as the particular contract to be awarded. Therefore, the Board recognizes prior to final award of the particular DBO contract for the WWTP Upgrade Project the applicable statutory criteria must again be met;

9. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of August, 2008, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, MAYOR

ATTEST:



Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan Yes
Councilor Kirk Yes
Councilor Knapp Yes
Councilor Ripple Yes
Councilor Núñez Yes

Attachments:

Exhibit A Record of the May 5, 2008, May 19, 2008, June 2, 2008, and June 16, 2008, work sessions, and the April 2008 Staff Report
Exhibit B Record of the August 4, 2008 Council Work Session; and Work Session Notes from August 4, 2008

8/19/08

PLEASE NOTE:

The attachments for this resolution are in the office of the City Recorder due to their size.

Sandra King



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Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

**MEMO FROM
THE CITY MANAGER'S OFFICE**

TO: Honorable Mayor Lehan and Council
FROM: Arlene Loble
RE: Wastewater Treatment Plant DBO Decision
DATE: July 15, 2008

Enclosed is a summary of all of the information you have received to date including responses to council's questions on the pros and cons of the design/build/operate alternative for the construction and operation of the Wastewater Treatment plant.

The question I have for you is:

- **Is there any additional information that you need that you have not received in order to make an informed decision as to the DBO procurement?**

This will be the primary topic of discussion scheduled for your August 4th City Council work session.

Enclosure



WWTP EXECUTIVE SYNOPSIS

BACKGROUND:

Four Council work sessions have been conducted over the past two months which included City staff presentations with Union representatives in attendance. The dates of these work sessions were May 5, May 19, June 2, and June 16, 2008. City staff believes they have adequately addressed Council questions to date and, unless additional information is desired, would like City Council support to move forward with the following recommended itinerary:

Date	Item	Council Action
July 21, 2008	WWTP Executive Synopsis	Review
August 1, 2008	Public Notice for Proposed Resolution for Alternative Delivery Contracting Method (DBO)	None
August 4, 2008	Council Work Session: Discuss Procedure for Adoption of Proposed DBO Contracting Resolution & Councilor Final Q&A with Staff	Approve Direction
August 18, 2008	Council Meeting: DBO Contracting Resolution	Authorize
August 19, 2008	Solicit WWTP Owner's Representative RFP	None
Oct/Nov 2008	WWTP Owner's Representative Contract	Award

DISCUSSION:

The minutes and staff reports of the four (4) Council work sessions are attached for reference. In summary form, below is a synopsis of the issues covered via these staff presentations:

A. Design Build Operate (DBO) Procurement Method

The DBO procurement alternate delivery contracting method was compared by staff to other more traditional options such as Design Build and Design Bid Build. Meetings were held between City Staff and recognized industry experts familiar with advantages/disadvantages of each contracting type considered as an alternative. For the specific \$50M capital investment, a 75% capacity expansion for peak flow and 20+ year life expectancy desired by the approved 2005 Wastewater Facilities Plan, DBO is an optimum procurement choice given these advantages:

- Operator-driven design with innovation potential
- Long term performance guarantees

- Speed of design/construction/commissioning combined delivery
- Single point of accountability for warranty and life-cycle cost benefits (superior risk allocation)

B. Risk Allocation

As the single point of accountability--accepting risk for design, construction, and operator as well as equipment/process guarantees under an outcome-based performance contract, a DBO procurement allows appropriate risk allocation to a contract utility operator. In addition, the City shall retain ownership of the facility and capital improvement in order to minimize potential for user rate and SDC fluctuations under this fixed-price operations contract. This public-private partnership (PPP) leverages the strengths of each sector.

C. Employee Concerns

City staff is committed to the best possible outcome for each of the employees affected by the contract operations achieving a comparable salary and benefits package for employees transferring to a private operations firm. City staff evaluated "lease-back" of City employees to private firms during the course of a DBO contract and PERS prohibits such a plan. Lease-back is also a strong disadvantage to private firms bidding on this project if they were to integrate a workforce of both private and lease-back personnel.

At the earliest opportunity, an industry forum will be held with firms solicited in the DBO contracting process to draft contract language leading to defined wages and benefits and prohibition of involuntary transfer upon entering the DBO contract with a private firm.

There was a question at the work sessions about the concerns if employees go to work for the private company, what would happen to their PERS and pension. Five out of six of our current WWTP employees are in Tier 1 PERS. All of those employees in Tier 1 would retain their accounts, and they could access these funds upon retirement, or choose to leave it in up until the age of 70+. That account would gain 8% annually and it stays in PERS; it doesn't change even if the employees go to the private entity. That money stays there until they retire and reach the age of 70. The only money that the city currently contributes to Tier 1 employees is to a plan called an IAP, which is similar to a 401K in the private sector. It would be very similar to what employees would comparably get with any other private company.

D. Rate Stability and Life-Cycle Operations & Maintenance (O&M) Cost

City staff investigated ten other counties or municipalities around the country that have between 5 and 15 years of experience operating under a DBO wastewater contract. These locations were selected from an industry standard database based on their comparable size-scope of wastewater plant construction. Uniformly, these 10 public entities were satisfied with the private firm's performance in rate control, life-cycle maintenance benefits and personnel stability, even under corporate ownership shifts.

Advice and lessons-learned from these entities were: to accurately forecast sanitary regulatory demands, to document existing plant facility conditions and to hire legal expertise with extensive DBO contract preparation. Additionally, it was recommended to have a third-party quality control firm periodically "certify" O&M compliance during the life of the long-term

contract.

E. Competition and Oversight

Staff learned via a market review that between 3 and 5 firms will likely participate in the solicitation for a successful DBO contract although the pool is larger. This level of competition compares on par with a large \$50+ Design Build utility contract, and given additional considerations of size, location, and other work is likely to also be comparable to actual number of bidders for 100% design and then bid contract.

Oversight of the DBO contract will be provided by a combination of City Staff (Public Works and Engineering) along with an Owner's Representative consulting firm. It is imperative that the selected Owner's Representative team bring to the table a combination of wastewater design, construction and operations experience. The Owner's Representative contract is expected to be a 6 to 7 year contract overseeing all phases of the plant expansion through at least the first two years of warranty period following commissioning and could be in the range of \$4-5 million for this time period.

F. Timing

It is urgent that the City staff begin work with an Owner's Representative in order to complete preliminary engineering work, facilitating creation of a DBO contract RFP and award in 2009. Further, the wastewater treatment plant is due for a Department of Environmental Quality 5-year permit update in 2009 and this application will be prepared concurrently.

Concerning construction timing, the plant capacity is required to be online in 2011; therefore, it is imperative an Owners Representative work early 2009 to prepare a draft RFP for the DBO bidders.

G. Procedural Criteria

The proposed resolution sets forth the procedural requirements for notice, hearing, and findings. The City Attorney will be present to go over these with you. They are very specific and it is possible that any substantive changes to the findings the Council may deem necessary to direct may cause a new notice and rescheduling of final adoption in order to meet the statutory requirements. Nevertheless, staff believes a full understanding and preliminary approval of the process by the City Council takes priority over any short term delay for rescheduling.

RECOMMENDATION:

- ➔ City Council support the itinerary mentioned in this staff report beginning with the approval of the Alternatives Contracting Method resolution and Owner's Representative solicitation.
- ➔ City Council provide to staff final questions and concerns in order for them to be addressed at the August 4, 2008 work session.

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May 5, 2008
Council Meeting

**MEMO FROM
THE CITY MANAGER'S OFFICE**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ARLENE LOBLE, CITY MANAGER *le*
RE: Work Session
DATE: April 30, 2008

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**Subject: Waste Water Treatment Plant Upgrade Contract Options and Staff
Recommendations**

The Waste Water Treatment Plant upgrade is a \$50+ million capital improvements project that is critical to the future of Wilsonville. When future operating costs are taken into consideration, this will be the most expensive single project ever undertaken by the City of Wilsonville. Because the Water Treatment Plant project involved so many significant regional players, it is today and will continue to be the most high profile project ever undertaken by the City. I do not need to point out that the success of that project has exceeded all expectations. Notwithstanding the controversy over whether or not the Willamette River should be used for municipal purposes, Wilsonville is the envy of all cities in the region because our water future is secure, financially stable and well managed under a private/public partnership with Viola (AKA US Filter).

In hindsight, re-looking the design-build process used for the Water Treatment Plant, the one thing that both City staff and Viola would do differently is to bring the operator on board as early in the process as possible. As we look to the future, and recognize lessons learned, staff asks the City Council to approve a Design-Build Operate contracting methodology for the construction and operation of the Sewer Treatment Plant.

The obvious difference between the water and waste water plants is that Wilsonville had no water treatment facility prior to building the Willamette Plant, whereas the City has operated a Sewer Treatment Plant since the early 1970's. Today the City has six operators who run the existing Sewer Treatment Plant who would be impacted by the decision to turn over operations of the plant to a private firm. Recognizing the significant impact that this could have on existing employees, City management staff has worked in cooperation with the employee's Union (SEIU) and a facilitator, mutually agreed to by the Union and management, to carefully examine the ramifications of this decision.

It is my belief that if we can only get the process to the point where we can sit down and meet with the potential design-build operator together with our Sewer Treatment Plant staff (there are only six employees involved) we would be able to concentrate on each of their concerns individually and come to some mutually agreed transition plan that would not negatively impact any of the employees and in fact, I believe in some instances could actually prove advantageous.

Unfortunately, because of the preconditions of the Union contract (which Wilsonville management and the Union have followed meticulously) we are not in a position to even hold discussions with potential design-build operators (we know there are several who have expressed interest) but we have to foreclose any discussion until Council has made a decision as to the contracting method. After the selection of the potential design-build operator we would be able to answer the Union's questions and concerns. In the meantime they have been made privy to the full report that is enclosed with your packet and the Union has been provided the opportunity to submit their own unedited information and respond in any form they like to the staff recommendations. I am sure Union representatives will be in attendance at the Council work session and would appreciate the opportunity to address the Council as to their concerns. That is certainly a reasonable expectation and we would encourage the Mayor and Council to entertain their comments.

Because of the importance of this issue and in order to leave adequate time for Council discussion and questions, two hours of your work session we have scheduled for this topic only. Staff is seeking Council's direction so that we can proceed with the construction of the project using the DBO methodology which would provide one point of responsibility for design, construction and operation. The Sewer Treatment Plant will have many complexities that were absent in the construction of the Water Treatment Plant. We must keep the Sewer Treatment Plant operating within strict DEQ guidelines throughout the 2 year long construction phase. Once the plant is rebuilt there will be a combination of old and new elements, the operation of which will be the continuing responsibility of the design-build operator. Having the operator involved from the very first will ensure that the construction will accommodate the ongoing operations of the existing plant while at the same time emphasizing the long term efficient operation and maintenance of the combined old and new facility.

Following a public hearing (that must be advertised 14 days in advance), the next action required of the City Council would be approval of a resolution acting in your capacity as the Contract Review Board, approving the DBO alternative contracting methodology. Findings will be prepared by staff that meet the statutory requirement providing in the granting exemptions that, the "local Contract Review Board shall, when appropriate, direct the use of alternative contracting methods that take into account market realities and modern practices that are consistent with public policies of encouraging competition." There also needs to be an opportunity for the interested party to appear and present comments at the public hearing.

Following adoption of the resolution selecting the contracting methodology, staff will prepare a Request for Proposals for an owner's representative to represent the City during negotiations with the design-build operator, assist in developing the scope of the contract, identifying risk responsibilities, and verifying that the facilities plan for the Sewer Treatment Plant includes the most up to date cost effective technology.

The owner's representative would assist City staff in developing criteria to which the design-build operator would need to respond with respect to the future role of the six City workers who now operate the plant. I wish there were a way, to step up the process so that we could do this sooner than later and address the concerns of our dedicated staff rather than making them continue to wait for answers.

This is a rather long winded introduction to the power point staff presentation that will be made at work session. I can assure that the power point will not be a repeat of the contract options and staff recommendations that are enclosed with your packet, so it is important that you read this document with your attention towards those questions and concerns that you find have not been adequately dealt with in the written staff report.

I am looking forward to this important discussion.

Good Evening Mayor and City Councilors. As you know I am Steve Munsterman, 27-year employee of the City and its public works department, and the immediate past president of our union local. I enjoyed the first 8 months of my 2 year term as president helping to work towards a more cooperative relationship.

Then 16 months ago the City advised that the Wastewater Treatment Plant employees and the union that it would be contracting out the operation of the plant. That ended the fun.

Since that time both the City's management and the union have been involved in decisions about this proposal.

Although this has been helpful in learning each others positions, there has been no movement in any direction by either party. The City proposes to contract out the Wastewater Treatment Plant operation and the union opposes it. Apparently this decision must be made at the Council level therefore that is why we are here before you tonight.

We ask that you seriously consider and study both the City's recommendation and our responses to the proposal. Seek the answers and ask the questions necessary to make the best decision for the citizen and ratepayer and also consider your employees and their livelihoods in this decision.

The Wastewater Treatment Plant has been operated successfully for over 30 years by your employees and they only wish to continue with that endeavor as city employees.

We, the union, were unable to determine the true benefits received from this proposal. All we were able to conclude from the design/build/operate option is that it may be better!; it may cost less!; it may have less risk! What will the outcomes be? Although the City has consulted with numerous experts in their respective fields; their recommendations lack substance. We would ask the City Council to be able to identify the true defined benefits from this proposal prior to making a decision.

The union has no objection to any project element other than contracting out the operating positions. This project will be the largest in the City's history at 50 million dollars, and while having the possibility of being a positive big win for the City it also holds the possibility of being a dismal failure. It seems a huge risk to attempt to take on a non-tried and true process for this level of project.

In closing I would like to thank the management staff for their professionalism throughout this endeavor and for providing the opportunity to debate, discuss, and object to their proposal and thank you for your time and interest in your employees.

*Rec'd 5/5/08
Ack.
CC work session*

To the members of the Wilsonville City Council

As a member of the wastewater treatment plant staff, I would like to make this statement to you regarding the proposed privatization:

- I feel that the privatization of the wastewater plant is not a good financial move for the taxpayers of the City of Wilsonville. The costs of operation for equipment, maintenance and supplies would be passed on to the city. The personnel costs would not only include the treatment plant, but the layers of management of a large multinational company plus the profit for that company.
- The decision to privatize is driven by the city's lack of staff with wastewater treatment experience. The treatment plant has been without full time supervision for 5 years and the current public works director had no wastewater experience prior to Wilsonville and management in general has little knowledge of wastewater. It would appear that management is trying to avoid responsibility and liability regarding the upcoming plant upgrade by passing this to a DBO company. The city admits that it has not been able to hire management people with wastewater experience. This is a failure on their part; those people are out there and they come from the same pool of professionals that the private company would draw from.
- Legal responsibility of the NPDES (National Pollutant Discharge Elimination System) permit will remain with the city; this cannot be passed to a private company.
- If privatization were the best option for a city like Wilsonville, why haven't the cities of Portland, Salem, Corvallis, Albany, Eugene and the majorities of governmental agencies in Oregon done this? Why hasn't management explored partnering with a regional organization such as Clackamas County or Clean Water Services?

Ron Larsen
Laboratory Technician
City of Wilsonville

*Reid 5/5/08
cc work session*

Comments to Mayor Lehan and City Council
May 5, 2008

My name is Cindy Kehoe. I was hired in September of 2007. I am the first new hire at the Wastewater Treatment Plant in 10 years. Compared to the more than 80 years combined experience of my five co-workers, I am truly the new kid on the block. It is a testament to the quality of the City of Wilsonville as an employer and to the workplace itself that turnover is so rare here.

Although my tenure is short, I have come to know the guys at the plant well in the past eight months. You will not find a more professional, talented, hardworking crew anywhere. This group has seen Wilsonville's treatment facility through numerous upgrades, both large and small. They have done so with competence, dedication and loyalty.

You have among this small group of six individuals, three who hold the highest State certification our profession offers, that of Operator Level IV. This distinction is unheard of at a treatment plant our size, and something you should be proud of.

Prior to joining the City I worked in the private sector for 25 years, for corporations both large and small. As I thought about what I wanted to say to you today, the contrast between my prior working life experience and that of the last eight months kept coming to me as the core of what is at stake today.

I feel as though here at the City, I have found my true professional home. I have never felt so much a part of a team, nor been so proud to serve next to them. Every day when I come to work, I look forward to learning and just being a part of this wonderful group of people. Working for the City feels like family to me. No Corporate job, even under the best of circumstances, ever came close to what it feels like to work here.

There may "only" be six of us, but six lives will be profoundly affected by your decision. I thank you for taking all the time you need to deliberate before deciding on this matter.

I think that privatization of the operation of the wastewater treatment plant is an unnecessary move and potentially a costly mistake for the City to make. I urge you to keep the talented people who have served you with pride and honor these many years. Keep the operators of the Wastewater Treatment Facility in the City of Wilsonville family.

Thank you for your time.

Cindy Beckett Kehoe
Operator I
Wastewater Treatment Plant
City of Wilsonville

*Rec'd 5/5/08 sek.
cc work session*

Wastewater Treatment Plant Upgrade
Contract Options and Staff Recommendation

April 2008

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1. The Project Introduction

The planned capital expansion at the Wastewater Treatment Plant (WWTP) is a \$50 million work effort which includes the need to expand capacity, implement more efficient equipment and technology, and limit operations and maintenance cost growth through greater emphasis on automation and lifecycle analysis. Project detail is provided in Appendix A to this report, which demonstrates in general that the scope of this upgrade is a 75% increase in plant capacity. Further, the project will include class 'A' sludge production which is a higher quality unregulated fertilizer than that produced today.

The WWTP Facilities Plan, which drives the need for this project, was adopted by the City Council in November 2005. Shortly thereafter, the Council approved Resolution 1987, effective May 1, 2006, which increased SDCs the full amount recommended in the 2006 Wilsonville Wastewater Rate Study to accommodate this WWTP expansion.

Similarly, wastewater user fees were increased by 55% via Resolution 1987 to cover predicted O&M requirements and non-capacity increasing elements of construction. Staff believes the planned additional 37% rate increase will need to occur in FY09/10 as expected in the Rate Study to move forward with the necessary construction schedule. This rate increase accommodates planned increases in O&M costs related to the capacity expansion and production of Class 'A' sludge.

2. Management Recommendation

Management's recommendation is that Design-Build-Operate (DBO) is the optimum contract approach for delivery of this project. (It should be noted that modifications to City procurement code expressly identifying this form of contract award may need to be enacted prior to Spring 2009.)

The major benefits of DBO include:

- One point of responsibility for design, construction and operations.
- Opportunity for competitive, innovative proposals.
- Guaranteed schedule, price and performance outcomes.
- Transfer of risks from the City to the DBO firm.
- Long-term life-cycle operation/maintenance benefits.

Management further recommends any eventual DBO contract require individual assessment of each WWTP employee's position and status as regards to their ongoing employment either as an employee of the City or the contract operator. It is management's intent that each current WWTP employee gain the best possible outcome given their individual circumstances. See "Protecting the Workforce," page D-9 of Appendix D. There is a significant effort that will take place between City management and the employees' union to implement the labor portion of the recommended DBO contract.

It is important to note the Willamette River Water Treatment Plant (WRWTP) project was successfully accomplished on time and within budget using a Design-Build separate Operator contract. Since the separate operator contract was integrated concurrently with design-build functions, the product outcome on this project was similar to a DBO procurement.

This recommendation for DBO project delivery is not based on any perceived shortfall in the quality or professionalism of the existing plant staff's performance. Instead, City management desires to integrate a firm whose design professionals have a vested interest and long-term commitment to the capital and operational results, as well as tap into the firm's extensive nationwide treatment plant operations experience in order to maximize innovation potential. Under the recommended DBO approach, the selected firm will take responsibility for maintaining operations within permitted limitations during construction as well as operation of the new facilities upon completion of all capital work. These are critical considerations, given the operating continuity needed during the multi-year design and construction phases.

Under DBO, the ownership of the plant including responsibility for permitted discharge limitations, capital outlays, rate setting and their associated timing rests purely within City control. It is important to recognize that the recommended DBO procurement is not pure privatization. Instead, it is a public-private partnership which seeks to meld City expertise, ownership, rate and capital improvement accountability with private engineering, innovation, construction, and operation/maintenance experience to provide high quality service at the best possible price to the public. Essentially, the City gains a 20-year performance and maintenance guarantee largely for a fixed fee after completion of design/construction. Scheduled maintenance and improvements are paid by the City and the annual operation contract is fixed with scheduled increases. Transferring this WWTP performance risk typically results in not only restraining operating expenses, but eliminating sizable unplanned equipment repair/replacement events during the life of the contractor's obligation.

Misunderstanding of how public-private partnerships work and their benefits/impacts to governmental agencies has given rise to common myths and misinformation. For a third party view on public-private partnerships, a white paper titled "Critical Choices: The Debate Over Public-Private Partnerships and What it Means for America's Future" is included as Appendix B to this report.

2.1 Project Timeline

Action	Dates
May 2008	City Council decision on the procurement method and contract type.
June 2008	Solicit for the Owner's Representative
October 2008	Select Owner's Representative
April 2009	Draft DBO RFP published
May 2009	Industry Forum #1 (with potential DBO firms)
June 2009	Final Draft RFP
July 2009	Industry Forum #2
Aug 2009	DBO RFP responses due from firms

Sept/Oct 2009

Staff recommends DBO firm for Council award of Contract

Nov-Feb 2010

Operations & Maintenance transition by DBO firm

Nov 2009 -
Nov 2010

Design Phase

May 2010

Construction of WWTP expansion begins

2.2 Role of the Owner's Representative

Immediately upon Council approval of the procurement method and a decision to go forward on the WWTP Expansion Project, City staff will solicit through a Request for Qualifications process an owner's representative team. The owner's representative team will have a robust task to assemble a high quality Request for Proposal (RFP) in less than one year. As part of this work effort, the owner's representative will perform a validation/assessment of the existing WWTP Facilities Plan to determine if any modifications to the anticipated layout and phasing of the construction needs to occur, confirm estimated construction costs, assess savings in DBO contracting/financing costs, and work with DEQ on permitting. Further, City staff will direct a review of the maximum future capacity available at the current Treatment Plant site as reflected in the 2004 Wastewater Facility Plan Update. This will determine if land purchases will need to take place over the long-term (2020 and beyond) to increase the lifecycle of the WWTP via more comprehensive layout modifications not possible in the immediate capital expansion.

As a part of the owner representative's work, the RFP will include detailed information regarding the existing treatment plant capacity both hydraulically and biologically, its operation/maintenance costs, an asset evaluation of existing facilities, permit adherence (both current and future), as well as outcome from liaison activity with state and private environmental/industry professionals and adjacent property owners. Once the draft RFP is assembled, the owner's representative will host two industry forums to review City expectations and outcomes with potential DBO firms to fine-tune the RFP in terms of probable labor agreements, technical/process improvements to be incorporated, required cost/benefit analyses, review current/potential discharge limitations and odors, and evaluate sequencing of work. Finally, the owner's representative is intended to serve as the City's independent monitor during design, construction, and commissioning of the expanded WWTP.

3. Project Delivery Options

There are several approaches to achieving the successful delivery of any project. Each delivery method has its merits in specific situations and should be evaluated to determine if it is the best option for a particular project. Selection of the best contracting option is dependent on having clearly defined project goals and objective guarantees. Common criteria used to evaluate the advantage or disadvantage of each of the project delivery methods are lifecycle costs, schedule, quality, permitting, and risk allocation. Other criteria such as uninterrupted operation during construction and long-term accountability and odor control are distinctive to this project.

For the Wastewater Treatment Plant Upgrade project, four delivery methods were considered: Design-Bid-Build (DBB), Design-Build (DB), Design-Build Separate Operate (DB Separate O), and Design-Build-Operate (DBO).

The goals and objectives of this project as identified in Appendix A were used to evaluate the advantages and disadvantages of each project delivery option. Below is a summary of that assessment.

(1) Design-Bid-Build (DBB)

Design-Bid-Build has been a conventional and commonly used approach for contracting out major capital project work which is most typical of government procurement because it assumes bidding will produce the lowest cost project. There are a minimum of three parties involved in this option: the designer, who is selected on qualifications; the contractor, who is the responsive/responsible bidder with the lowest price; and the owner, who is also the operator of the facility. There are three distinct steps in the process that are accomplished sequentially. The designer is selected; then the project is bid out; and then a contractor is selected to construct it. The City is involved in this process as both project manager and operator of the facility.

DBB *advantages* are that the contracting and permitting procedures are well established and the City has significant experience with this contracting method. As owner, there can be more control over the project and more flexibility to make changes (often at significant additional costs) as project circumstances change. Since this is a common contracting method, more engineers and contractors would be able to perform this work. As a result, this method usually produces increased competition.

DBB *disadvantages* are that the work happens sequentially, requiring more time from project inception to completion, and the contractor is selected based solely on the lowest price which may result in compromising project quality. The main focus is on price and not product. The owner retains the bulk of the project risks and liability during/after completion. For instance, if the City is not satisfied with the final project upgrade or there are problems with the treatment process or equipment operation, it is often difficult to assign responsibility. The designer and the contractor are different companies and will often point the finger at one another in such a dispute. This can lead to an increase in claims and lawsuits during or after construction. Further, other than those methods/equipment specified by the owner, there is little incentive to reduce operation and maintenance (O&M) costs since there is no long-term independent commitment to the facility, and the City accepts all O&M risks.

(2) Design-Build (DB) / Design-Build Separate Operate (DB Separate O) / Design-Build-Operate (DBO)

A comparison was done among the three design-build group options. Each of these methods assigns the design and construction responsibilities to one 'lead' company, which can consist of several professional firms, who is selected based on several factors including an evaluation of their price, details of a proposed approach, and both technical and financial qualifications as well as past experience.

The *advantages* of any of the DB processes are the single source of responsibility for design and construction. This means the same company does both the design and construction of the project, which eliminates the finger pointing for blame and assigns the responsibility for compliance with project goals to one entity. Other advantages include the ability to reduce project delivery time and the potential to reduce project costs by allowing for parallel work efforts as well as innovative

design and construction solutions, instead of strict adherence to specified design plans as in a DBB process.

The *disadvantages* of any of the DB processes are the extensive front-end work required to produce an 'initial design' to ensure a smooth competitive procurement including industry discussion forums to ensure innovative input. Other shortcomings include less owner control and flexibility to make changes once the contract has been executed.

To best address this project's goals and objectives, it was determined by the management team that some form of DB project delivery method should be used by the City given the success of the Willamette River Water Treatment Plant, the short timeline to create additional capacity, the need to maintain an operating plant during construction, and the high capital costs involved.

The next step was then a comparison between the three design-build group options – Design-Build (DB) with City operation of the plant; Design-Build with a Separate Operation (DB separate O) with the operation of the plant performed by separate contract; and Design-Build-Operate (DBO) where the same contractor provides all phases of the work.

Each of these delivery options was reviewed and evaluated. Since the DB separate O method is essentially the same as a DB method with a separate operations-only contract it was rejected for further consideration due to the following reasons: current staff is skilled at the operation of the existing plant, thus having a stand alone operations contract would not be value added. A DB separate O delivery method would not reduce the risk to the City for construction and long-term operations and maintenance costs, but it does offer a performance guarantee. It could not ensure uninterrupted operation of the plant and it could actually add confusion to the lines of responsibility during and after project completion. While the Water Treatment Plant project produced a highly effective facility via a DB separate O method, it required high amounts of staff time to "integrate" all parties involved. It also did not require continuous operation of an existing facility as upgrades were constructed.

After the management team had narrowed the project delivery options to DB and DBO, staff continued to gather information about which would be the best process for Wilsonville.

In the Design Build (DB) project delivery option, as with the more conventional DBB, the design, construction and operation of the facility is divided between the DB firm and the City. The DB firm would design and construct while the City operates the plant during and after construction, as with the 1996 upgrade. This delivery method is driven by the designer element of the team using input from the operating group. It requires significant communication and coordination between the DB firm and the City during construction to ensure continuous smooth operation of the facility. With this method, the DB firm's responsibility for the outcome of the project is typically limited to the one or two year construction warranty period. After the warranty period is complete, it is the City's full responsibility for the performance of the plant regardless of the cause.

As management staff began discussing these options internally, it became clear that DBO was a strong option for this project. Greater operator input throughout the project process ensures that high quality, low maintenance equipment; efficient processes; and performance guarantees are seamlessly integrated into the project. This coordination contributes to lower lifecycle costs and reduced risk to the City for equipment or process breakdowns beyond the DB one-year construction warranty. In addition, DBO project delivery greatly enhances the ability to continue safe,

uninterrupted operation of the plant since the DBO firm will be responsible for all phases of work and operation of the plant.

Since DBO was being considered at an internal level, management felt it was important to notify the WWTP employees that this option was being discussed. See Appendix C regarding current WWTP staffing and dialog with the Union.

4. The Benefits of Risk Allocation with DBO

The Design-Build-Operate contracting method provides the opportunity to shift the risk for design, construction and operation of the WWTP over the plant’s useful life to the design-build operator. The operator, as the responsible party for the design and construction of the plant upgrades, carries the additional responsibility to meet operational standards over the life of the contract. This includes maintaining the plant and its operations. Thus, the City only incurs the cost of any plant or operational failure as the ultimate umbrella insurer if the operator is unable to do so.

As stated, the DBO contracting option is an effort to balance allocated risk and accountability by shifting responsibility for performance guarantees to the design-build operator. The following graph depicts examples of risk/responsibility allocation to the public and private sectors in relationship to the various procurement options. A single entity responsible for the design, construction, and operation/maintenance of a facility following completion of capital work has a vested interest in the design and selection of equipment, and this synergy expands to a lifecycle maintenance commitment which ultimately reduces costs.

Design-Bid-Build (DBB)	Private Contract Fee Services	Design Build (DB)	Design-Build-Operate (DBO)	Long-Term Lease Agreements	Design Build Finance Operate (DBFO)	Build Own Operate (BOO)	Other Innovative PPPs
←				→			
PUBLIC Responsibility				PRIVATE Responsibility			

Additionally, it is important to note that the City can draw upon the expertise of this single DBO entity who are on the forefront of technology improvements, operational efficiencies, and recent industry lessons-learned (both good and bad). This expertise can be leveraged immediately during transfer of operations and maintenance, and will be useful throughout the lifecycle of the facility.

For an industry expert take on alternative contracting options, see Appendix D, the “Essential Structural Elements of New Forms of Competition and Collaboration in Water and Wastewater Service Delivery”. As indicated in the above diagram, the more private responsibility is shifted outside public control, to include private financing of capital projects, there exists a greater risk to a public agency in managing rate-impacts and capital expense timing. This is where the purest forms of privatization occur at the right end of the chart’s spectrum.

5. DBO Successes: Reasons and Examples

City staff is looking for a long-term relationship with a company that has strong nationwide performance results. The procurement encompasses \$50M of capital expenses and approximately \$30M of operational revenue over 20 years -- producing a highly attractive competitive contract for DBO purposes.

Wastewater fees are based on several factors not the least of which is the capital costs to upgrade. Fees will go up because of that factor alone. *However, the design-bid-build then operate as separate, sequential functions takes more time, and that time generally results in greater costs than design-build-operate due to the reduced construction time.* Thus, it stands to reason that fees will not increase as much as they otherwise would under traditional construction contracting and operation methods. Because we do not have a design-build-operate contract in front of us, it is difficult to quantify if any rate impacts at this early stage of the process will deviate from the recent Sewer Rate Study.

Likewise, we know that operational costs increase with time, therefore fees will also increase. However, a DBO is subject to performance guarantees to meet regulatory standards and a national or international company that specializes in wastewater operations is more likely to know the best practices and equipment to meet those standards at the best prices. Their purchasing power should enhance their ability to obtain good price points on major equipment purchases. Without the owner representative's work completed, the RFP in place, and a review of the responses, a more definitive cost-benefit analysis is not readily available. Nevertheless, it is logical to infer based on economies of scale that rate increases should not be as great using the DBO contracting method as they otherwise might be.

There is always the debate about whether a company's profit motives will increase or decrease cost. On the one hand, profit is not a factor in a City operated plant and therefore would not be an element in fees. However, the contra argument is there is little incentive to operate efficiently and therefore any potential "profit" costs are eaten up by government inefficiency. There are those who argue that private company efficiencies are simply ways to avoid performing to regulatory standards and therefore shortchange quality of operations by not meeting guarantees. The contra argument here is that if a company cuts corners, and therefore standards, it faces competition that provides a better operational service and will lose the business to its competitor. It is difficult to determine the balance, but we do know that the number of companies that are in the design-build-operating mode has narrowed and that the remaining companies have proven successful against all competition in a heavily regulated industry.

Keeping up with technology in equipment, software, and operations is a cost for anyone. The management oversight in this area also takes a high level of expertise. While it can be obtained, it is more difficult for a city the size of Wilsonville to pay and attract the necessary talent and skill, and to provide job advancement, than for a national company that specializes in wastewater operations across the country. The City's unsuccessful experience with its own Environmental Services Manager recruitment is a real-time example (see Appendix C). Again this is an area that is difficult to analyze in terms of time and costs, but makes intuitive sense particularly over a typical 20-year operational time span.

By maintaining ultimate control as the owner, rate setting is under the City's purview. If rate increases are not kept within reasonable and anticipated limits due to either poor or over-costly operations, the City can contract with another company or bring operational control back in-house. DBO contract performance measures and regular evaluations ensure the City's standards are maintained. Thus, it is concluded that design-build-operate provides the opportunity to shift risk and design-build an efficient plant upgrade to operate and meet regulatory performance standards as a means to contain the amount of rate increases, while maintaining the ability to ultimately determine if continuing in this regard is in the best interest of the community.

5.1 Case Studies

City staff queried several communities with DBO contracts at smaller WWTPs (Naugatuck, CT; Plymouth, MA; and Holyoke, MA) sized between 4 and 17.5 MGD as well as Stockton, CA at 42 mgd. Each of the four communities decided to use the DBO process to comply with mandates due to State/Federal Regulatory violations at their treatment facilities. In addition, uninterrupted operations during the construction of the treatment plant capital upgrades were a major concern for the cities. In these case studies, all of the cities transferred the collection system O&M as well as the treatment plant to the contracted operation. They stated that this reduced the risk of a collection system failure being transferred to the treatment plant. Also, this allows the contracted operator to be more familiar with citizens' concerns and community issues, i.e., pump station overflows, sewer odor issues and overall monthly rates (sewer bill).

Each of the cities hired a firm to assist them with the entire DBO process, similar to an Owner's Representative. These firms (or team of firms) provided a liaison between the City and the DBO contractor, as well as project oversight, economic evaluations, legal counsel, engineering peer review and design development.

Funding for the capital work and annual operations budget of the DBO contract was evaluated by the cities and their owner's representative team. Each of the cities produced a cost comparison document that demonstrated DBO was the best option for their community. It is anticipated that Wilsonville's cost and schedule will have a similar outcome as these examples; this cost comparison is part of the proposed owner's representative's work effort.

Each location stated that the timeline to move the DBO process forward took them much longer than they expected; approximately two to four years. However, they all were successful in finalizing a contract and have been using contract operations up to 6 years. Three of the larger contract operations firms were represented (OMI, United Water and Veolia) and City officials expressed satisfaction with the quality of the DBO experience at all four locations.

Labor issues were extremely varied at each of the locations. Information from management on labor negotiations showed that in *every* case, the transferred employees received similar or better salary and benefit packages than they had originally with the City. They also required that the contract stipulate that these employees can not be involuntarily transferred to a different location. The City officials stated they followed-up with operations staff in the years following the transfer, and that staff were satisfied with their new employer.

Stockton, CA, had an interesting twist. The City began using contracted operations in 2004. Although the City officials are satisfied with the contracted operations, there is a group of citizen activists that sued the City for not allowing the citizens to vote on the change. The citizen group won the lawsuit and operations will revert back to City employees in 2008. A major point within the citizen's lawsuit was the failure of the City to oversee proper environmental permitting in support of capital projects. Stockton was able to complete their \$60M capital project using the DBO contractor before the lawsuit was finalized.

Overall, every contact felt that the DBO process was the correct vehicle for their community and that it provided an overwhelming benefit to the public. Each municipality identified the DBO benefits and issues to be those represented in this report.

5.2 DBO Disadvantages and Union Concerns

Labor concern and citizen concern over privatization have been common at many locations in the United States. In addition, privatizing utility systems has failed in several locales due to a variety of reasons. These reasons include:

- The infrastructure's bad condition not documented in the contract (Atlanta, Milwaukee)
- Public corruption/collusion (New Orleans, East Cleveland, Bridgeport CT, Rockland MA, and Lynn MA)
- Environmental Permit violations and lawsuits concurrent with effort to contract (Atlanta, Stockton CA).
- Making privatization decisions simply as a comparison of public labor costs to private labor cost proposals without considering other factors.

Disadvantages to creating a DBO contract include the need to spend upfront effort adequately documenting existing facility conditions and capital expense planning; setting operations and maintenance expectations and budget constraints; creating strong dialogue among the DBO business community and permitting community to create a solid vision for performance expectations and innovative options (including energy/sustainability incentives). Moreover, it is a requirement to ensure the existing workforce successfully transitions to a new firm with the strongest benefits. City of Wilsonville staff intends to address these lessons-learned over the next year in creating the DBO contract via a proven Owner's Representative team.

Specific City of Wilsonville Union concerns, reflected in Appendix C, and noted on the Union's review of an earlier draft of this report were: (1) the Union not provided results of the technical expert forum held by management, (2) concerns that privatized firms substantially cut staff to maximize profit, (3) little assurance of O&M cost control via a privatized firm, (4) environmental violations, (5) unexpected rate increases, and (6) poor customer service. In March 2008 the Union was provided a second copy of this management report. The Union emphasized their concerns with a second written response which is also included in this appendix. Management has summarized the Union's top six concerns and included them as the final appendix at the back of this report.

City management has addressed these concerns as follows:

- (1) Technical Expert Information – publications and information addressing positive aspects of DBO were provided to the Union as appendices to a draft of this report in the fall of 2007. Part of this information is also contained as Appendices B and D.
- (2) Staff levels: The City's sewer rate study adopted by Resolution 1987 provides for an increase in WWTP staff concurrent with plant expansion.
- (3) And (5) O&M Cost Control and Rates: This has been a benefit at many privatized locations as noted in Appendix C, pages 45-47 which is a letter by Hawkins Delafield Woods LLP in response to the Union concerns. Hawkins was one of the experts helping management decide which procurement strategy was optimum for the WWTP project. Further, the union cites Atlanta as an example of a failed privatization strategy. It is important to note that during a private firm's operation of the water system, 12% annual rate increases occurred. When this private contract converted back to public operations and Atlanta determined that over \$3B of infrastructure improvements were necessary to resolve environmental lawsuits

dating back to before private operations were in place, 45% annual rate increases were necessary.

- (4) and (6) Environmental Violations and Customer service: Environmental violations occasionally occur at plants operated by public employees as cited in the letter from Hawkins in Appendix C. Our Wilsonville WWTP, despite its superior performance by City employees, is not without several violations in the past 10 years. As the DBO industry has matured and smarter contracting tools/examples have developed in the public sector, cities which previously resisted "privatizing" (Santa Paula CA, Lexington KY, Indianapolis IN, Milwaukee WI) have now embraced and improved and expanded operations via private firms under public-private partnerships.

It is also important to note that Vancouver WA, for example, recently renewed its O&M contract for water/wastewater with Veolia (formerly U.S. Filter) by consent agenda due to this City's high level of satisfaction. This utility contract operation via a private firm began in 1978.

6. Conclusion

While examples of private firms operating utilities unsuccessfully do exist, many factors undermined their success or circumstances were difficult in which to create fixed pricing -- such as federal environmental decrees or major capital expense planning not completed, creating severe changes in contract conditions.

The circumstances for Wilsonville pursuing a DBO contract are optimum. Capital expense projections and rate evaluations are recently complete providing a solid platform for schedule, price and performance guarantees. Any sizeable expansion of the WWTP drives a concurrent need to re-evaluate the mix of staff needed in the future. Further, Wilsonville has had difficulty maintaining staff within Engineering and Public Works with direct wastewater leadership and expertise. Moreover, new equipment, processes, and plant output will require specific operations/maintenance requirements and training that is different than current operations at the WWTP.

**CITY OF WILSONVILLE
CITY COUNCIL WORK SESSION NOTES
MAY 5, 2008**

The Wilsonville City Council conducted a work session the Wilsonville City Hall beginning at 5 p.m. on Monday, May 5, 2008.

The following City Council members were present:

Mayor Lehan
Council President Kirk
Councilor Ripple
Councilor Núñez - excused
Councilor Knapp

Staff present included:

Arlene Loble, City Manager
Mike Kohlhoff, City Attorney
Jeanna Troha, Assistant City Manager
Michael Bowers, Community Development
Director
Sandi Young, Planning Director
Paul Lee, Assistant City Attorney
Mike Stone, City Engineer
Sandra King, City Recorder
Starla Schur, Executive Secretary
Delora Kerber, Public Works Director
Garry Wallis, Finance Director
Paul Lee, Assistant City Attorney
Jadene Stensland, Deputy City Engineer
Dan Knoll, PIO
Chris Neamtzu, Long Range Planner

Mike Ottenad, Public Affairs Director

Union Members Present:

Bryce Frazell
Chuck Edwards
Chuck Jacobie
Susan Farnsworth
Susan Johnson
Dan Snyder
George Croft
And others

Consultants:

Brad Phelps, RW Beck
Kyle Rhorer, RW Beck
Daria Wightman, Brown and Caldwell

Mayor Lehan called the work session to order at 5:14 p.m.

Planning Commission Openings

Mayor Lehan announced there were two seats open on the Planning Commission due to the resignation of Craig Faiman and Sue Guyton.

Waste Water Treatment Plant Options

Ms. Loble said members of staff and the Union would like the opportunity to talk to Council after the PowerPoint presentation of Michael Bowers, Community Development Director and Delora Kerber, Public Works Director. Ms. Loble hoped to provide enough information for Council to make a decision on which way to go for construction, design and operation of the WWTP.

The following portion is a transcript of the discussion that took place after the presentation.

Ms. Loble	George you want to introduce everybody?
Mr. Croft	I'll let them introduce themselves.
Mr. Snyder	Dan Snyder, I work at the wastewater plant since 1986.
Ms. Johnson	Susan Johnson I work in engineering, been here for 21 years.
Ms. Blankenheim	Heather Blankenheim I'm the organizer with the union.
Mr. Croft	George Croft public works 20 plus years.
Ms. Johnson	President too
Ms. Keiho	And I'm Cindy Keiho and I was hired at the WWTP as an operator just last September.
Mr. Croft	I've got a statement to read from a person who couldn't be here tonight, but first one question popped into my heard. They're talking about a 15 million dollar expansion and this risk and responsibility keeps popping up. We're looking 20 years 90 million so we almost double this 20-year projection, and was there any kind of study to connect to Clear Water if we are looking at risk and responsibility? Has that looked into just to do away with all risk that you could pipe it into Clear Water or the USA of Tigard or Tualatin?
Ms Kerber	Oh, you mean clean water services?
Mr. Croft	Clean Water whatever they call it now.
Mr. Bowers	I didn't see that in the facilities plan maybe Mike Stone or Jadene
Mr. Stone	We looked at that years ago.
Ms. Loble	Pumping it uphill
Mr. Stone	Yeah, pumping it uphill and Gary do you remember?
Mr. Wallis	I remember that the other not only was there a pipe to get it to the closest location of going up hill but it was also of having to buy into their capacity which we, I think Eldon did the initial legwork was going to be about as much as it was to built it here. So we would have had to pay their systems development charges because we would be consuming so much of their capacity.
Mr. Stone	I don't remember what the dollar amount was
Mr. Croft	Alright. I've got a memo here from Steve Munsterman, who works for the city here and couldn't be here tonight because of an illness. But I'll read it for him. <i>(The letter from Mr. Munsterman has been made apart of the record and is not reproduced here.)</i>
Ms. Keiho	Ms. Keiho read a prepared statement which has been made a part of the record and is not reproduced here.
Ms. Johnson	Ms. Johnson read a letter from Ron Larson, lab tech. The letter has been made a part of the record and is not reproduced here. If you'd like copies of that or Cindy's letter we can provide you with that. But as you can see there's some anger and hostility about this since this came down in January of last year it's been like a slap in the face to our treatment plant employees and they did take it very personally even though management has said it is not a personal issue. It hits personal for these workers at the plant. From day one it has been DBO, the city has

	<p>been planning on using DBO, design build operate, they've been planning on it . And even though we've had workshops and we've talked about the good, the bad, we've known from the beginning that this was the option that they wanted. And we do have a very real fear of this spreading to other departments, other parts of the city and that's part of why we are here today, it to let you council know that this is really important to us and to the workers.</p>
Mr. Snyder	<p>I'd like to talk about Ron. He is gone so far and beyond that nobody's recognized it. The water department used to run all their samples through a private lab in Tigard to get tested for water quality. Ron took it upon himself to get a new lab certified so he could do the samples at our lab, saving travel time and save a bundle of money on having the tests performed. He was never acknowledged for it, never recognized. But he likes to keep busy and he likes to overachieve. And he also recently went through the NEE lab accreditation for the wastewater testing. And you have no idea the amount of work he's put that program.</p> <p>Yeah, we take it hard. If I truly believed it would save the city money to go DBO I'd be the first agree with it because I've lived here and own a home in old town since 1993 and I'm a cheap son of a gun. I'm all about saving money I don't like wasting a nickel and I see too much of it around.</p> <p>We went through the expansion in 96-98 at that time CH2M Hill who was the DB when to management said those guys don't give a rip, they don't know what they're doing you really should get a private contractor. We were forced by the public works director to develop a start up plan, prove to the city that we could in fact run the plant or we were going to be facing privatization at that time. When all was said and done, we started the plant up and the person from CH2M Hill who gave us a copy of his start up plan took ours as an example when he went around to startups on other plants. That was his new base. So we've been down this road before. And at that time they recommended ten employees to run the plant once it was upgraded. But we never heard a word about that, we actually lost an employee a year after its startup. So it's been a grind stone but we're dedicated.</p>
Ms. Johnson	And you've been running shorthanded
Mr. Snyder	Since '99. Plus in the original packet there were four examples of townships that went private and also took over the collection system to insure the integrity of the waste coming into the plant. And if in fact we go DBO I'm sure this firm would want to take over the collection system which would affect other people than just six because we have a collection system crew and the vector truck.
Ms. Johnson	Currently our city departments work together and coordinate on a variety of different emergency situations or upgrade situations and how do we work together Dan?

Mr. Snyder	Pretty darn good.
Ms. Johnson	Well, to give an example like the rest area recently just a little bit ago, went to cheaper toilet paper and caused a big problem.
Mr. Snyder	They hadn't done any maintenance on their line in 20 plus I've been here, and low and behold some of the pipe fractured and plugged their sewer line. And who do they call to fix it but Public Works.
Ms. Johnson	Okay. Of course the retirement, Dan's been in PERS a long time. If he were to be privatized or work for a private company there would be no more contributions to PERS. He would not gain from that compounding and he would also lose seniority.
Ms. Blankenheim	And that is the state law that he would not be able to transfer that public employee retirement in our opinion. It's only possible to be a part of PERS if you are a public employee. So he couldn't do what they did in Milwaukee where that got transferred.
Ms. Johnson	As Cindy said we have some of the most highly trained people on our staff. Logically they are the best ones to get us through a transition with a new plant. And hiring an operator would be just somebody to get in the way of that and I can see how that makes the processes harder than it needs to be. Whereas if you had the front line people that are there. Private companies are out for profit and they are not out for a little profit, they're out for a lot of profit. And if it's Veolia, their headquarters are in France so the profits will be going out of Wilsonville, out of Oregon and out the United States and they'll be going to France.
Ms. Blankenheim	As was pointed out the article <u>Critical Choices the Debate Over Public-Private Partnerships and What it Means for America's Future</u> put out by the National Council for Public-Private Partnerships. of which the people, you pay to be a member of that council and the groups that pay to be a member of that council are Hawkins, Delafield & Wood, [garbled] and as we went through the list of who could possibly take over this contract, every single one of them are also people who pay to be a part of this group. So, it is obvious that they would say public-private partnerships are the way to go. I have a couple of articles that people would be interested in that are put out by consumer protection advocacy groups, that talk about water privatization too. I brought enough copies for all of the council there's one extra copy. The are just two articles they are not long. It's where some of the information we put into our response came from There's additional information in it that I would hope would be of interest.
Ms. Johnson	I do have one more curious thing. I looked at the budget from last year and the budget from this year and the environmental services manager is in both, but its been moved quite a bit along with some other positions in this years budget. I'm not sure what's going on there I'm curious about why its in there, why it was done and why we would need one if we are going to contract out.
Mr. Croft	This whole concept is really bad for morale in a lot of departments.

	There's a fear it will be spreading to other things and I know Veolia has an ad in the public works magazine in April branching out even more and going into energy facility management passenger transportation now. There's a fear eventually of this spreading to other departments of the city. It's a real concern.
Ms. Johnson	In closing, the plant staff would invite any city councilors that would like to come down and take a tour of the plant and see how complex it is and how competent they are. That's all I have.
Mr. Snyder	The scope of work on the little power point I that would be radically different if the DBO looks at it because some of that they were talking about putting in high efficient equipment, low maintenance and they had some 1950s technology left in there.
Mayor Lehan	This looks like good information. Any other questions?
Councilor Ripple	I don't know if this is an appropriate question or not have you considered a lease-back scenario and do you have any feelings on that you can tell us at this point? Or not yet?
Ms. Johnson	We don't know a lot about it either.
Mr. Snyder	If it were legally feasible yeah.
Ms. Johnson	It may be an attractive option.
Ms. Blankenheim	The concerns, and I think we laid them out of staff are obviously benefits, wages, health insurance. For some folks who have been with their doctors for a long as they've been with the city and to even if you get equivalent medical coverage it might mean switching providers. PERS is obviously a concern because most of the folks have been in PERS a long time. They also work under a union contract right now which gives them certain protections which is an incredible benefit. And there are situations where lease-back are done and that would be the most ideal. If there were some way they can keep those protections and those benefits or continue
Councilor Ripple	Would you have any objections to staff having those discussions with the potential DBO firms as to whether that's even an option for them?
Ms. Blankenheim	In the contract is we have to come it doesn't prevent them from having those conversations with the companies, but the contract just requires within a certain amount of time of the request for proposals being put out that they have to sit down and bargain the impacts of that contract on the employees that will be losing their job. That is basically what the language of the contract is, is that anytime there will be job loss they have to bargain so there's nothing in effect than if you have some timelines.
Ms. Loble	Okay, Heather, just to be clear because there may be differing interpretations, but I like yours.
Ms. Blankenheim	There's nothing in the contract you can have discussions. I mean what happens when we bargain is different and we
Ms. Loble	That would not preclude us, in your opinion, from talking to these firms about what benefits they would be able to offer or conditions or whatever in advance of that bargaining

Ms. Blankenheim	I think that's the only way you can because I think you cant offer us things that you cant. I mean the bargaining is final and so whatever gets bargained at the table that has to be provided so if you bargain something you cant provide.
Ms. Loble	No. I understand what you're saying and I like your interpretation and I think we'll go with that and sit down and have some conversations with these firms because we have been hesitant to do that because we wanted to honor all of the commitments we've made under the terms of the union contract and finally its made us feel our hands were tied to get back to you. I share your frustration in not knowing what the alternatives might be. So thank you for that, I think this might be a good way to proceed. Obviously we have to bargain in good faith before anything is decided, but the fact that we can go to these firms and find out more information would be marvelous.
Councilor Ripple	The question I want answered before I am prepared to make any decision is will they bid if it is a lease back where they employees remain city employees, that's what I mean by lease back they don't loose any of their , they are a city employee and they are leased back by the company for the duration of the contract, would they bid on it first of all,
Ms. Loble	And is it legal?
Council Ripple	Well its legal its been done in other places according to this document
Ms. Loble	It was the PERS she was bringing up.
Councilor Ripple	If they stay city employees its legal. It's not legal if they are not city employees is what
Ms. Blankenheim	If they stay city employees they can stay in PERS
Ms. Loble	That was the only proviso I was putting on it. If its agreed to and if its legal to do so.
Councilor Ripple	So would they bid and have they done it before, and if so has it been done successfully. Because the big question is going to be if we put that in there and no body wants to bid on it, that's not going to work.
Ms. Loble	I'm sure we can find that out.
Mr. Croft	That PERS is a very big issue. Especially with employees with some longevity it's a little late in life to start a new retirement.
Councilor Ripple	I understand completely.
Mr. Kohlhoff	There are ways to contract those kinds of issues.
Councilor Knapp	The bigger question in my mind on the table not to belittle anything, what is our expectation of government in terms of competency's? Is it local governments job to see that things get done with the ultimate implication being local government contracts everything out, has no core competency's internally except for the ability to contract. Or do we expect to have competency's in conducting certain operations. Do we expect to run our own buses, build our own water pipeline system and maintain them, build our own sewer system and maintain them, what is our perception of what competencies we ought to be able to maintain as a local unit of government and that's kind of a philosophical question as much as anything else.

	<p>If you look at historical things that have happened across the world things have drifted towards government as a body whose basic competency is contracting, not doing things. Is that good bad or indifferent, you're going to get a hundred different answers from people. It goes to the core of this discussion in my mind as to what we expect local government to do.</p>
Mayor Lehan	<p>You have two different issues in there, what you expect local government to do, and what you expect the private to do. Because we have been contracting for a long time with for sheriff's services from another government entity and in a manner of speaking for our fire service. Those are not things that we directly do, but another government does</p>
Councilor Knapp	<p>And the fact that we contract for those makes some kind of a statement about what we believe on the other question our local competencies should be.</p>
Mayor Lehan	<p>The question in Washington County everybody is with Clean Water Services, nobody runs their own, it's a full government deal, I know it has a board.</p>
Ms. Loble	<p>Its like the Tualatin Valley Water District.</p>
Councilor Ripple	<p>That's the other piece why I like the lease back option. Is because the big risk, aside from the fact that we really don't know whether how much more it will cost us, its going to cost us more to transfer that risk, we know that. I'm not convinced any big company is going to take it for 2% profit. I think we need to maintain our core competency with our existing staff in the event that this whole thing goes up and fails and we need to take back the operations; if we don't have our staff we cant do that, so the lease back option protects the employees, protects their benefits and it protects us in the event the whole thing fails and we need to take back operations.</p>
Mayor Lehan	<p>What sort of decision do we need to make? I think the council is concerned about protecting employees. We're all concerned about saving the taxpayers money or doing things in the most efficient way and we're all concerned about having a smooth transition through this complex development process. Its really hard to know what the best way to go is because by everyone's admission we don't have a lot of pieces of the information. We're making a decision but we don't have the costs or know what is really being offered.</p>
Ms. Loble	<p>With the water treatment plant a lot of this was fast tracked because of the emergency you faced. And at that time the Council set a series of goals in priority order of what you wanted. You wanted the very best quality with the latest technology. You wanted it timely and fast, that was very important, you wanted it to be expandable, you wanted it to be an attractive model that you could demonstrate to the whole world how well we did this, and then your last principle was price, be it guaranteed price or price of the project. Those other things were more important in front of it. This might be a good way for you to think a little bit about</p>

	<p>over the period of the next couple of weeks, what your priorities would be in terms of doing it.</p> <p>A priority that wasn't on that list but is on this list is making certain the city employees are not negatively impacted as a result of this decision. As to steps, the first step would be for Council to pick the methodology for contracting. There would be findings as to why you would be picking this and why you would be directing staff to find an owners rep to represent you. If we don't do that at this step, by the time we have an owners rep we still don't know what we want to tell the owners rep their responsibilities are. You could have them analyzing all of the alternatives which would take more time, and that's an option. But our recommendation would be for you to pick the alternative, go to the owners rep and then we could very quickly begin these discussions with possible firms about impacts on employees. That would make everybody's life easier in that regard</p>
Councilor Ripple	I'm not comfortable making that decision until I know whether any of the firms would not bid if we included the lease back.
Ms. Loble	We can do that first, now that we're freed up we definitely can talk to them first before we bring this back. But I'm saying the next decision that the council would make, only when you are comfortable enough to make it would be to go with this route. That way we can get the owners rep and get the process moving. You can see from the timetable it's a long row to hoe, but it doesn't make sense to head down this path if you are not sure it is the path you want to head down.
Councilor Ripple	The other question I had, was in the presentation did I misunderstand that capacity is only going to last us 13 years until 2025? But we're talking about a 20 year contract, how is that going to work.
Mr. Bowers	The capacity should last at least until 2025, but until we go back and have a reevaluation of our facility plan we need to compare that with how fast the city is growing and do a reevaluation of that.
Councilor Ripple	I don't understand having a 20 year contract on a plant that's only going to have capacity for 13 years.
Ms. Loble	I wouldn't have to be a 20 year contract, it can be just whatever you feel.
Mr. Bowers	I would love to bring in a design built or design build operate firm that could get us greater capacity or the money we allocate.
Councilor Ripple	90 Million dollars, \$50 million for the capital costs, 13 years, I'd like to see it last at least 20.
Mr. Bowers	I could be once we dive into this thing somebody can get us more capacity for it to last until 2035. A lot of design work to have to do that.
Councilor Knapp	Staff has put all their eggs into the DBO basket from what I'm hearing and reading in this presentation. Are you as a staff saying design build and we operate is not on the table, not possible or viable, not cost effective. I don't hear very much alternative analysis. It is being suggested that you think DBO is preferable, but I don't hear you telling us that it will be cheaper. But I hear you telling us is that you will

	transfer risk and therefore trade uncertainty for certainty at an upfront price as the primary advantage of DBO, and you also seem to be suggesting some technological expertise comes with the deal that we might not get otherwise. What am I missing or is that a fair assessment?
Ms. Loble	I think that's a fair assessment. Obviously, you couldn't say that design build and then our own plant people operate it was not a possibility, of course it is. Just as design bid build is a possibility. They are all out there. We had eliminated design bid build on the basis of our experience with the water treatment plant and just pulled that off the table saying with a project of this complexity that would not be our preference. Since then we went into the analysis that says we've had such success with the design build and then the operate with the water treatment plant that we'd like to learn from that and actually use that model here, where we think its even more applicable because of the complexities.
Councilor Knapp	The direct model would be design build and contract the operations.
Ms. Loble	It could be, that's one option, but its not the more direct. I missed your description of
Councilor Knapp	That would be the direct comparable to the water treatment plant.
Ms. Loble	Yes. That's the one were together we agreed that if we had done it sooner it would have been better, if we'd hired the operator at an earlier stage.
Councilor Knapp	So we think there is technology out there that we are not aware of.
Ms. Loble	No, I wouldn't assume that. Let me put it this way. When the city employed Veolia as our operator there is no question that they brought to the table a level of nation wide and then world wide expertise that was not available to us locally. And there really wasn't any other – for example Clackamas Water was one of the proposers who wanted to come and operate our treatment plant; but because of the depth and breadth and years of experience of the their operation they brought something to the table that we did not have locally.
Councilor Knapp	We currently contract with Veolia to manage our wastewater plant?
Ms. Loble	No our water plant.
Councilor Knapp	Don't they also supervise our wastewater plan, what is that relationship exactly?
Ms. Loble	Because we do not have an environmental services manager, we have cajoled Mike Greene who is the manager of our plant to also act, not as personnel manager, but as technical manager for the wastewater plant, but that's only to be a temporary thing until such time as a final decision is made.
Councilor Knapp	And it's only temporary because that's what they choose or we choose?
Ms. Loble	Yes, because they really have no interest in being the half –way manager of the wastewater treatment plant. They've done it because they are here, the have the expertise and we asked them to.
Councilor Knapp	That would not be a model of a possibility for the new plant.
Ms. Loble	No, I asked him. They are not interested in that and nor do I think it's really the appropriate model. Whoever is in that position should also be

	the supervisor of the treatment plant personnel. But they have brought some valuable expertise and I believe Mike has worked well with the treatment plant staff.
Mayor Lehan	Do we need to do anything more with this?
Ms. Loble	If you have other questions Michelle has made it clear what her issues are and I think that Tim has as well. If either you or Alan have more particular things you'd like us to bring back when we're ready to respond to their questions.
Mayor Lehan	No, just a little more fleshed out on both the employee side and the costs side.
Mr. Croft	Were we saying that the design build that we would get just as good a product as with the design build operate.
Mr. Bowers	Not necessarily.
Councilor Kirk	But probably not necessarily the other way either, that you wouldn't.
Mr. Bowers	<p>We've had some very candid discussions with the Union and I don't think the union employees at the plant are perfectly happy with some of the work that's been done at the plant at the wastewater plant in the last 15 years because they weren't operator driven designs they were more engineering driven designs and capital expenses. The owner control may or may not have worked appropriately. I think we have more than one odor control system at the plant. The lay out may not have been optimal for personnel efficiency, nor was there a lot of experience nor collaboration on operation and maintenance plans.</p> <p>I guess I'm expressing there's been not a lot of finger pointing, but clearly there's been inefficiency with regards to our people at the plant, the treatment plant engineering staff, probably the consortium of different contractors we've hired, there hasn't been a single point of responsibility. I personally would expect and history shows elsewhere that when you have a design build team that's got a strong operational component that's driving design, you end up with less expensive operations and maintenance costs and better equipment selection.</p> <p>If we go down the road with a DBO firm, I expect that firm to spend a boat load of time with the current employees injecting, the legacy of service you provided to the city and into the opinion of what needs to be the final design. Hopefully with the same benefits package if we go down the road with DBO you'd simply be changing uniforms and still be the family at the plant working in close proximity to each other.</p>
Councilor Ripple	So in our last expansion we didn't have anybody from operations on the review team, oh we did okay.
Mr. Snyder	The pre-design? Yes, I stated a number of concerns about things that were installed and after the fact the design engineer for the firms said, "You know, we put that in at Rock Creek and it didn't work there either."
Councilor Ripple	Who was the firm that did the last upgrade?
Mr. Snyder	CH2M Hill

Mr. Bowers	<p>Delora pointed out to me there's even a couple things at the water plant that I think we had to bight off the cost of replacing or something because the operations component was not there earlier enough like Arlene mentioned. So we did absorb operation and maintenance costs that probably would not have been our obligation under a longer term warranty time.</p> <p>In essence there is an extended warranty but I think the other efficiency, Councilor Knapp, may be difficult to jump out of there but appropriate equipment and process selection that's the least expensive or at least costly to run and maintain.</p>
Mayor Lehan	Thank you for your presentation it was very helpful.

Review of Agenda

Outdoor Lighting Standards

Councilor Kirk referred to the Curfew and wanted to know how a business that operated 24-hours a day would be able to keep their lighting on the entire night with this section. The Councilor thought the Prescriptive Options supplemental requirements section did not flow logically and would benefit from reformatting. An applicant should not have to hire a professional lighting engineer for the prescriptive method.

Mr. Neamtzu indicated a business that operated continuously was exempted from the curfew, but he would draft clarifying language. In addition the requirements of the ordinance applied to new development or major modifications, or major additions, not to existing businesses.

Councilor Knapp wanted to know how lighting systems programmed into a timer could comply with holidays, and what is the cost benefit to do so. Mr. Benya responded the savings would be approximately \$15 per day.

Adjourn

The work session adjourned at 7:30

Executive Session

Mayor Lehan called the Executive Session to order at 7:30 p.m. pursuant to ORS 192.660(2)(e) Real Property Transactions and ORS 192.660(2)(h) Litigation.

The following City Council members were present:

- Mayor Lehan
- Council President Kirk
- Councilor Ripple
- Councilor Núñez - excused
- Councilor Knapp

Staff included

Arlene Loble, City Manager

Mike Kohlhoff, City Attorney

Jeanna Troha, Assistant City Manager

Michael Bowers, Community Development Director

Mike Stone, Engineer

Gary Wallis, Finance Director

Mark Ottenad, Public Affairs Director

Sandra King, City Recorder

Adjournment

The Executive Session adjourned at 8:00 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

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May 19, 2008
Council Meeting

**MEMO FROM
THE CITY MANAGER'S OFFICE**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ARLENE LOBLE
CITY MANAGER

RE: Work Session

DATE: May 15, 2008

Subject: I-5/99W Connector

The discussions concerning the connector have been continuing at a furious pace particularly given the fact that for months and months Washington County has cancelled most of their scheduled meetings. Now there is a push to have "public hearing forums" held in June in the hopes of staying on track with the selection of an alignment by early fall. The timing is important in order to stay within the federal government appropriations schedule.

These recent meetings have required tremendous amounts of staff time particularly on the part of Michael Bowers and Mike Stone. Mayor Lehan has also had to fit into her busy schedule many meetings on this topic as well.

Enclosed with your packet is a synopsis of what has been happening together with a list of meetings scheduled past and future prepared by Mark Ottenad (all four Charlotte, Michael, Mike and Mark) will be prepared to update the council at the work session.

Subject: Wastewater Treatment Plant Contract Options Update

At your last work session you asked a series of questions about the staff's proposal to use the design build operate method of contracting for the upgrade of the City's Wastewater Treatment Plant. I do not have the questions answered in writing and I am certain that there are some questions that will require more research but Delora Kerber, Public Works Director, and Michael Bowers, Community Development Director, together with Jeanna Troha, Assistant City Manager will be prepared to respond to many of your questions.

I hope you have also been considering what additional information you feel you need in order to make this critical decision. Most of the discussion at your last work session surrounded the potential impacts on the City's 6 employees that currently work at the Wastewater Treatment Plant. The Mayor and all of the Councilors seemed committed to

making sure that the employees would not be disadvantaged by working for a private company rather than the City of Wilsonville.

In talking to two of the most likely DBO proposers (Veolia and OMI) both firms pledge their commitment to working with our employees to individually tailor a compensation package that would meet the needs of each individual. For a starting point, staff recommends that we include in the RFP a requirement that total compensation which would include salary and benefits not be less than the compensation the employees would receive if they continued to work for the City of Wilsonville.

Even if the "lease back" alternative supported by Councilor Ripple was acceptable to these companies it is not legally possible to do so within the State of Oregon. First of all, the City's retirement program (PERS) forbids public employees from working for non-public entities in any capacity. Secondly, the City's health insurance carrier (CCSI) also forbids covered employees from working for any entity other than the insured agency in this case the City of Wilsonville. Third, the City's life insurance policy forbids any employment other than that paid for by the insured. The same is true of worker's compensation.

Bottom line is that the City's employees could not remain City employees technically and still be "leased out" to a private entity.

With that said, there are many advantages to employees to go to work for a private firm while still retaining their retirement benefits under PERS. I won't try to explain this in any detail here but PERS as we know it has been converted to plans that are more like the 401K private employers typically offer. Employees in "Tier I of PERS" (that includes 5 of the 6 now working at the Wastewater Treatment Plant) would continue to collect their PERS benefit until the age of 70 at an interest rate of 8% per year if they chose to do so and also have additional retirement system through the private employer. This is but one example that can be explained to Council in as much detail as you want. My suggestion is that the requirement within the Request for Proposals be that each employee would receive total compensation equal to or better than what they would have received as an employee of the City.

PUBLIC-PRIVATE PARTNERSHIP (PPP) WWTP PROCUREMENT METHOD

A. Partnerships range from these general types:

- ▶ **Outsourcing**
- ▶ **Public – Private Partnerships**
- ▶ **“Privatization”**

Notes:

- ▶ **Wilsonville Focus = PPP**
- ▶ **NOT “Privatization”**
- ▶ **The difference is the level of public control/oversight and ownership**

B. What is a PPP?

A Public-Private Partnership is a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility. (Council for Public-Private Partnership)

C. Private Sector Strengths

The Result of Market Competition

- ▶ **Management Efficiency**
- ▶ **Newer Technologies & Innovation**
- ▶ **Workplace Efficiencies**
- ▶ **Supplies Buying Power**
- ▶ **Deeper Bench of resources (specific experts)**
- ▶ **“Surge” Capacity**
- ▶ **Personnel Development (career growth, knowledge, technology)**

D. Public Sector Strengths

- ▶ **Legal Authority**
- ▶ **Protection of Procurement Policies**
- ▶ **Broad prospective/balance the competing goals to meet public needs**
- ▶ **Personnel – public service oriented**
- ▶ **Capital Resources**
- ▶ **Fiscal Accountability (rate-setting)**
- ▶ **Regulatory/Permitting authority**

E. The Key is to Balance the Strengths of Both Sectors

**CITY OF WILSONVILLE
CITY COUNCIL WORK SESSION NOTES
MAY 19, 2008**

The Wilsonville City Council conducted a work session the Wilsonville City Hall beginning at 5 p.m. on Monday, May 19, 2008.

The following City Council members were present:

- Mayor Lehan
- Council President Kirk
- Councilor Ripple
- Councilor Núñez - Excused
- Councilor Knapp

Staff present included:

- Arlene Loble, City Manager
- Mike Kohlhoff, City Attorney
- Jeanna Troha, Assistant City Manager
- Michael Bowers, Community Development Director

- Sandi Young, Planning Director
- Paul Lee, Assistant City Attorney
- Kerry Rappold, Natural Resources manager
- Delora Kerber, Public Works Director
- Peggy Watters, Community Services Director

Mayor Lehan called the work session to order at 5 p.m.

Wastewater Treatment Plant Options Update

Ms. Loble	Will address the questions raised by Council at the May 5 th work session. Will review the questions as staff understood them at the last meeting and make certain we're on the right track as far as answering them. Staff will explaining which questions they will be answering tonight and, if the Council has additional questions those responses will be brought back to the Council in the June 2 nd work session.
Ms. Kerber	Recapped the questions as staff heard them last week, and told council which ones staff would be addressing this evening. What we had heard was: <ul style="list-style-type: none"> • How will costs or rates be controlled • What happens if only one firm proposes • We would like some more information on lease-back option • What about potential cost benefit results • When it comes to checks and balances how does the DBO compare to the DB or would there be more supervision, eyes on, if you had a DB versus a DBO? • What kind of competition can we expect if the project were DBB, or DBO and what about the costs of risk transfer would that exceed the benefit?

	From those we will address the least back option information update. And then give clarity for privatization versus public-private partnership. Because it sounded like at the last meeting and also in the newspaper there was some confusion about what contract and method we were looking at.
Ms. Loble	Are those the right questions?
Ms. Troha	Did we miss any of the questions Council brought up last time that Delora did not cover?
Councilor Knapp	We had some discussion that I recall about what is the long-term ability of the city in the terms of internal competencies.
Ms. Loble	Core competencies, they are going to cover that part under the comparison, but that was one of those issues I didn't get to talk to you about today. Meaning what are the things that cities or governmental entities should be doing them selves that are not contractual.
Councilor Knapp	Or that you choose are not to contract out in order to maintain your internal competencies.
Ms. Troha	<p>One of the items that Delora mentioned was one of the questions was to look into lease-back options as well as to talk with a couple of the companies that would be prospective bidders on this.</p> <p>So we spoke with two companies, we spoke with Veolia, and OMI CH2M Hill. Both companies expressed their desire to make sure that the employees would receive equal or better total compensation when the come and work for the private company. Both those companies indicated that they would not want the employees to be disadvantaged at all by leaving public employment and going to private employment. They also mentioned they would be willing to meet with the employees individually and to take a look at their total compensation and tailor something to the individual needs of the employees. As well as to sit down with the employees and to address any concerns that the employees have as it relates to what their current compensation and current benefit packages are with the city and how those would be different or comparable with a private company.</p> <p>Then we spoke with them about lease-back options. One of the things in doing some research and taking a look at lease-back is that PERS which is our retirement pension plan would prohibit doing any type of lease-back. As well as CCIS, which is our health, dental and vision insurance. Our life insurance policy along with our workers compensation also prohibit doing any type of lease-back arrangements.</p> <p>All those are based upon the fact that the work is being done by the employees would be done under the direction, supervision and for a private entity. Even if they were paid by the city or on the city's payroll the actual work that is being performed regardless of how that person is being paid the work is being performed by a private company. And because of that we would not be able to do any kind of lease back option for any of those, for</p>

	<p>PERS, CCIS, life insurance or workers comp.</p> <p>That is not an option for us to look at. When we spoke with Veolia and OMI both of them said that they would likely not bid on the project should we require a lease back option for all of the employees. There were a number of reasons why. The challenges they see with lease back options is that they have an employee that is working under a different set of work rules than other employees even though they may be working side by side with them. So if the employee still works for us and under a different union contract than another employee who is working side by side with them, they expressed that a challenge in trying to integrate those employees into their culture and into the company when they are working under two different sets of work rules. There are also challenges as it relates to seniority, because you may have two different unions. There may be challenges as it relates to overtime to promotions, etc. They said that the challenges of doing a lease back option they believe are so great that they would not bid on the project because of that. They have done it I think in only one or two cases and only with one employee and this was in other states, not in Oregon, they were in other states where they were able to do that under their pension program. Or under their equivalent to PERS. And they've only done it with one or two employees where were near retirement, not done it for all of the employees.</p>
Mr. Bowers	Was there a specific duration?
Ms. Troha	<p>One of two years, and only in cases where that particular employee would be close to retirement and only until that individual retired. But they wouldn't do it for all employees.</p> <p>There was a question at the last work session about the retirement and concerns if the employees were to go to the private company, what would happen to their PERS what would happen to their current pension. All but one of our employees, there are six employees that would be affected by this, all but one are in Tier 1 PERS. PERS has changed the rules over the years, so we have employees that are in different plans as PERS has changed the rules. All of those employees in Tier 1 would retain their accounts, and they could access it upon retirement, or choose to leave it in up until the age of 70+. That account would gain 8% annually and it stays in PERS, it doesn't change even if they go to the private entity. That money stays there until they retire and reach the age of 70. The only money that the city currently contributes to Tier 1 employees is to a plan called an IAP, which is similar to a 401K in the private sector. It would be very similar to what employees would get with Veolia or OMI or any other private company, it's a similar type of plan to a 401K plan, and that's the only plan that with Tier 1 employees currently have money contributing towards.</p> <p>So the impact from a pension standpoint is the money can stay in PERS until they retire or until they reach age 70. And the money that the city is currently contributing to their plan is similar to what they would be getting in</p>

	<p>the private sector. When we talked with Veolia and Ch2M Hill about that they said they are familiar with the PERS plan and it was very similar to their 401K and all of them mentioned they have matching contributions from the employer to the 401K.</p> <p>I think that was all of the information as it related to lease back as well as to PERS.</p>
Councilor Knapp	<p>Within all of that discussion, how confident can you be or the Council be that the RFP that goes out to talk about this would be able to insure that benefits for these people that are currently our employees would not be, would be at least equivalent for the bidder? How much of that is our discretion in the RFP and how much is it the private company's discretion later on and how do you control them.</p>
Ms. Troha	<p>We would put language in our RFP that would require that the company do equal or better total compensation. And that includes everything from salary to benefits, health insurance, retirement, total compensation. That they do equal or better for each individual employee. The mix could be different.</p>
Councilor Knapp	<p>This one a little better, this one not quite as good, trying to assess the whole array</p>
Ms. Troha	<p>The mix between private companies or the mix between a private company and the city.</p>
Councilor Knapp	<p>The second.</p>
Ms. Troha	<p>When we spoke with Veolia and CH2M Hill and OMI they both mentioned that. They are going to look at total compensation, it may mean that salary is higher in the private company as a trade off for some changes in some benefits. So the salary may be higher than what the salary is here for the employee, but maybe different in that they have to contribute more to health insurance in the private company. That's why we're looking at total compensation that would include, salary, benefits, health insurance that the employee receives with us, and compare that to the private.</p>
Mr. Bowers	<p>So they have said to us they would like us to level the playing field among the competitors and depict in our RFP the minimum benefits package that each of our employees would receive and describe that in terms of the total package that Jeanna mentioned and they would be obligated to demonstrate that they are meeting that minimum benefits package for each of our employees.</p> <p>Whether we would need to tailor that and tier it in terms of employees that have this much length of service to that level of detail, we would need to find that out when we have the industry forums and have more detailed discussions. They want us to caveat a minimum package for each employee in our RFP that they have to fill.</p>
Ms. Troha	<p>And they are used to doing that and it is something they see in an RFP and they are used to seeing and being required to do equal or better.</p>
Councilor Ripple	<p>And also hiring all of the employees?</p>

Ms. Troha	Yes.
Mr. Kohlhoff	There is also some room in the negotiations to structure contractual language. So if they've come up with a package there may be some negotiations in the final contract [garbled].
Mayor Lehan	But in terms of over time they would essentially have a contract they've made a commitment to.
Mr. Kohlhoff	Both of the companies are more than willing to sit down and meet with perspective employees and were willing to bring some folks that had come from municipal jobs that had move to the private sector in one of these public/private partnerships because they've had pretty good experience from what they've been willing to tells us.
Councilor Knapp	Just like most references they're the ones
Ms. Troha	They're willing to sit down with each employee individually and find out what their needs are and what their concerns are and find out about their own personal situation They are willing to do that.
Councilor Knapp	Is that after a contractor had been picked by the City or would that happen as part of the process of them putting together their individual proposals?
Ms. Kerber	I would say from what they've discussed with us as part of putting together the proposal sitting down and one of them recommended having all of the potential bidders at the table so everybody can discuss it at the same time. When you walk away it is clear to everyone what the expectations were. That would be rolled into the RFP.
Mr. Bowers	Having gone through one of these major outsourcing initiatives once before, usually the private party will bring in HR people, their life insurance people, their health benefits people and they'll make sure the employees' have a question and answer forum before they get to the point where they are actually signing on the dotted line of a labor contract. So they would walk through all of those details so the work force is informed to the maximum extent possible. Sometimes during the process they have one on one interviews they can ask more detailed questions if the employees don't want to do so in a larger group setting. So we'll have to set up a specific HR half day conference or something during the RFP process.
Councilor Ripple	What would happen if we went that route all the employees got hired by whom ever and the whole thing didn't work out, rates were going up too much, the public wasn't happy and we decided wit wanted to take back operation of our waste water treatment plant. How would we do that?
Mr. Bowers	If we wanted to take back the operation? We would terminate the contract and rehire the work force under the city current contract or whatever.
Councilor Ripple	If they wanted to come back to work for us, but if they didn't would the city have the expertise to run the water treatment plant?
Ms. Kerber	There would be like with the water treatment plant there is a clause in there if either party wanted to terminate the contract there is a period of 6-12 months. If we decided we wanted to terminate it now, they would still have to carry on to give us a chance to roll over and get our ducks in a row. I would imagine the same kind of language.
Mr. Kohlhoff	The way you set up your hypothetical the city chose to take it back, the city

	can also choose to re-contract. And one of the situations that was presented to us, and I'm not sure if it's King County, they did a public/private contract with one of the DBO's in one area and another DBO in another area and they thought that was a good situation.
Mr. Bowers	If the relationship ever got to that point there would be a lot of warning signs and prep time that would build up to our decision to do that or maintain an outsourced contract but use a different firm or look at other options.
Councilor Ripple	For us the whole process I would feel better if we had one person on city staff that was familiar with the entire plant and knew how to operate it. Once its fully automated it will be easier to run than it is today probably.
Ms. Loble	One of the questions that was not responded to was what if rates increase too much.
Councilor Ripple	That was just some scenario of if we were going to take back operations.
Ms Loble	<p>And I'm saying that's an example of something that came out of control, because we didn't have a good contract or operation . First of all it would be unlikely that the city would take it over we could then make all of the problems go away and lower the rates, but what we can do is go into a guaranteed price contracting which is what we've done with Veolia on the water treatment plant.</p> <p>We signed less than a year ago, the renewal of a five year contract with them that has set amounts set prices, and within that contact we set aside things which neither Veolia or the city has any control, like electrical prices for example. There is no way Veolia can control those any more than the City can control those. Those are separate costs. But as to the rates the rates are part of that core competency that you are talking about that remains in the control of the city and that the operator DBO would not have any control over.</p> <p>It goes back to negotiating a good contract as I believe we've done in the Veolia example.</p>
Mr. Bowers	<p>The handouts seek to answer some of Mr. Knapp's questions and some of Councilor Ripples as well.</p> <p>This is a two slide handout. We have explained to the Union that Management is not in favor of privatization as well. The article in the newspaper last week spoke heavily about privatization and the literature in the report the managers put together had information about privatization.</p> <p>I thought we should speak about the difference between privatization and public/private partnership.</p> <p>What the city management team is recommending in this instance is a public/private partnership (PPP) versus privatization. There are a couple of different forms in working with a private company if you are contracting out with a private company, one is labeled 'outsourcing'. Usually outsourcing is</p>

for a specific function. Examples of how the city outsources today is traffic signals. We don't have an in house traffic signal person in the city, we use a contract to adjust our traffic signals. Likewise we don't have street sweeping inherently in the City. We have a contract with an outsource for street sweeping.

When we get to private/partnership probably the best example the city has undertaken to day is the water treatment plant. We controlled the design build contract, we brought in an operator, we still retain the ownership of the entity and the rate setting of the entity as we neonate modifications to the contract. We still retain the legal authority over that contract.

When you get into the realm of privatizing, typically that is a handoff of several things, usually ownership from the capital physical plant standpoint. A good example of utility privatization would be when Enron was attempting to take over large sects of the public sector in terms of water, power etc. another example is the difference between how we do waste services on the west coast versus the east coast.

On the west coast we use franchise agreements to do trash hauling, often time on the east coast that is a municipal function with in-house workers.

In privatization you would normally see company logos on the plant, trucks, tool boxes, in addition to the uniforms of the people doing the work. It is a greater extent of moving things to that private sector.

There is a definition on the first page, "What is a PPP?" I'm not going to read that but I'll let you know that under a public/private partnership the idea is seeking a win-win scenario where the private firm has an attractive procurement package that is going to be beneficial to their core competencies along the same lines, the city is also taking advantage of our core competencies and they're not broaching an arena where were contracting out our core competencies as a government agency.

Government agencies have contracted out their core competencies and some of those are privatization examples have turned out to be disastrous. They've turned out to have control issues, quality control issues. After a partnership that has checks and balances in it as we move forward with the proposal.

Let me tell you the definition is not something the city came up with, it came out of an agency called the Public/Private Partnership council. That council is not made up of utility companies driving privatization, it is a mixture of government agencies, design experts, other disinterested parties coming together to form the best of both worlds.

Mr. Bowers covered the private sector strengths, and the public sector

	<p>strengths things we would not contract out.</p> <p>The last thing I'll mention is more towards personnel. They have a deeper bench of resources and they have the ability to develop surge capacity. If we have personnel turnover in the city or are going through a two-year construction project and we need expertise and our waste water team does not have in terms of odor control or filtration, or something, we have a lot of shift work and we have 6 FTE on board today, and lets say we need 8 FTE for a 6 month period of time, they have the ability to ship people in and out of our area of operations if we need additional talent for a short duration.</p> <p>Finally they have a broader opportunity for people to have different skill sets today than and additional promotional or training opportunities than we can provide as a small outfit.</p> <p>Mr. Bowers discussed the public sector strengths.</p> <p>Core competencies we would not contract out; in a DBO contract that is not privatization we own the capital plant. If there is a future major capital expense required for the plant and it increases the capacity, the liability is not transfer to the private form. If we predicted incorrectly what capacity was required and when that would be a cause for unexpected rate increases. But we retain that as part of the city staff. We are the rate setting agency, not the private entity. And we have regulatory and permitting authority over the plant, this does not transfer to the private entity.</p> <p>Bottom line the key is to balance the strengths of each entity at the table.</p>
Councilor Knapp	<p>The structural concern I had is to what extent do we as a city end up not having our own skills and being a the mercy of a private sector entity, which may be acquired by an unknown entity, as well as other activities of the corporate world. To what extent does that cause us a risk in our ability to deliver the product. I am uncomfortable with the idea that we are out of control when contracting with someone that we are placing confidence in but that we don't have a way of knowing how its going to come out in the long run. And I have an uncertainty about our fall back position if things start to go bad or if changes happen on the private side that we don't have any control over and we see adverse things happening as a result. It's a concern about how this approach works if things do not go optimal.</p>
Ms. Loble	<p>Tim I know you weren't on the council when they opted to go design build operate for the water treatment plant. You see this as a distinguishable situation from that?</p>
Councilor Knapp	<p>Probably the same concerns would be there in that scenario.</p>
Ms. Loble	<p>And they did sell the company and they sold it to an overseas company and all the things you just listed happened with Veolia. But the impact</p>
Councilor Ripple	<p>We can walk in and operate the water treatment plant. WE couldn't just</p>

	<p>walk in and operate the waste water treatment plant, it's a lot more complicated process.</p> <p>My concerns are exactly the same as Councilor Knapps. I want to know what scenario is what the fall back plan is. Aside from we can find someone else to run it, were going to have however long to do the transition. But if we decide for whatever reason that the whole thing is not working and we need to take back operations of our waste water treatment plant what is that fall back plan going to be? We cant guarantee that even if our employees are still working in Wilsonville for whoever the contractor is that they are even going to want to come back to work for us. I want to know what the plan is.</p> <p>That brings to mind another thing we need to put into the RFQ, employees cannot be transferred away from Wilsonville against their will. If they are going to hire them, one way they could get rid of them if they wanted to is to say they are going to transfer them where they don't want to go.</p>
Ms. Kerber	I will share with you in our conversations with both of the entities we had brought up the concern about transferring away employees, and all of them had said that there is no reason that they would want to. They really value the knowledge.
Councilor Ripple	I understand all that, I'm just wanting to make sure we've got all the bases covered in the event, hopefully it will never happen, it will be a great partnership and everything will be wonderful., but I want to know what the plan is if it isn't.
Mr. Bowers	So is the concern that if we do end up going down this procurement path that we have a contingency plan in our pocket if somehow the relationship went sour we would know exactly what our action steps would be in order to
Councilor Ripple	That the city's going to know how to operate that plant so that we could hire other people to do it in a relatively short time.
Mr. Bowers	There are municipalities hat have had to do that so it can be done, it has been done, and from my reading of how some of those contracts came to be and why they came back in house, it was a pretty crappy contract. And there wasn't enough due diligence on the part of the agency. We have an obligation to do due diligence in terms of financial capacity, are they growing and gaining expertise and performing better in the client service area, etc.
Councilor Kirk	Will bring his questions next time.
Ms. Loble	The remainder of the questions will be brought back next time. The contingency planning and the due diligence are two additional things.
Councilor Knapp	We talked last time about performance based contracting and the observations and some of the literature that was part of that package about the level of technical special knowledge needed to develop goo performance based contracting and how some of the municipalities had not used the expertise available in that area.
Ms. Loble	Okay, we'll be back on the 2 nd .

Review of Agenda

The ordinance for adopting Outdoor Lighting Standards was reviewed by Chris Neamtzu.

Adjourn

Council work session adjourned at 7:30 p.m.

Executive Session

Mayor Lehan called the Executive Session to order at 7:30 p.m. pursuant to ORS 192.660(2)(e), Real Property Transactions; and ORS 192,660.(2)(h) Litigation.

The following City Council members were present:

- Mayor Lehan
- Council President Kirk
- Councilor Ripple
- Councilor Núñez - Excused
- Councilor Knapp

Staff included

- Arlene Loble, City Manager
- Mike Kohlhoff, City Attorney
- Michael Bowers, Community Development director
- Mike Stone, City Engineer
- Gary Wallis, Finance Director
- Jeanna Troha, Assistant City Manager
- Sandra King, City Recorder
- Mark Ottenad, Public Affairs Director

The Executive Session adjourned at 8 p.m.

Adjournment

Respectfully submitted,

Sandra C. King, MMC, City Recorder

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June 2, 2008
Council Meeting

Subject: Waste Water Treatment Plant Contract Options Update

Enclosed with your packet is the latest response prepared by staff to a series of questions that were asked by Council at your May 19th work session. Related primarily to providing the Council more specific information and hopefully a greater comfort level about moving forward with the City staff recommendation to utilize the Design Build Operate Contracting Model for the reconstruction and future operation of the Waste Water Treatment Plant.

Intuitively I had thought that there would be substantially fewer proposers interested in a DBO contract than in a design build alternative such as we used when constructing the water treatment plant. In fact, there are relatively few firms with competencies in water and waste water construction and management. Just submitting a proposal is an expensive and time consuming process therefore the firms are very selective about responding to an RFP be it for design build or design build operator.

The one issue that was raised by Councilor Knapp, and a response is not included in the staff memo, is how a City should determine what its core "competencies or expertise" should be and where and when a City Council should feel comfortable outsourcing a portion of that responsibility.

Of course there are many cities that have neither water nor sewer plants, for example in the case of all of the cities and unincorporated areas in Washington County sewer is provided by a special district provider (Clean Water Services). Since the City was incorporated in 1969, Wilsonville has provided water and sewer services directly to the public. Under the proposed DBO model, that responsibility would not change.

In my opinion, the City should only contract for those services that we have the in house technical competence to oversee. Wilsonville for example has no background or experience in managing fire services because services have always been provided by a separate district. The City could provide its own law enforcement services but instead has chosen to contract with the Clackamas County Sheriff's Department. Some cities such as Canby actually run their own electrical utility. I think there are simply too many models for there to be one "best practice" that fits all situations.

In the case of the Waste Water Treatment Plant, I am recommending the Design Build Operate contracting method because I think it will bring us an experienced team with the "competencies" necessary for the construction and management of a technically complex and critical service.

Subject: SMART Budget Update

On tonight's Council agenda will be the adoption of the annual operating and capital projects budget for the upcoming fiscal year beginning July 1, 2008. During the public hearing Gary Wallis, Finance Director, will be doing his normal overviews but special

**WWTP UPGRADE #2051
STAFF RESPONSE TO COUNCIL QUESTIONS
JUNE 2, 2008**

1. How does the City control wastewater rates during a DBO contract?

The 2006 wastewater rate study anticipates our City operations/maintenance (O&M) expense to increase from \$3.4M/year at present to \$4M/year in 2013, at the completion of the WWTP expansion. Of the \$3.4M, only about \$2M are for labor and materials, with the additional costs related to financing, overhead and equipment replacement costs.

The 2006 study also evaluated the capital costs and includes an additional \$3M+/year for capital and financing for the expansion. Therefore, approximately half the new rates pay for O&M and half pay for expected capital equipment, financing needs and City overhead. So, the risk for cost control lies primarily with the City for defining reasonable construction expansion scope and to a lesser degree with the O&M effort for maintaining efficient life-cycle costs.

Via a DBO contract, the principle focus up-front is to design a plant upgrade to maximize quality processes, equipment selection, and energy efficiency that will ultimately minimize future O&M lifecycle expenses. Cost control is achieved by getting a firm-fixed price for labor/materials with annual cost index adjustments using CPI. Additionally, DBO contracts have clauses that protect the City from short-term equipment replacement costs by an "extended warranty" for any equipment failures due to the design and/or selection of such equipment made by the DBO entity. Further, incentives can be crafted in the DBO contract for reducing O&M costs and including sustainable components.

2. What happens if just one firm proposes?

If the proposal meets all the City's expectations as outlined in the request for proposal (RFP) then the City would award the contract to that firm and it would not be an issue. If the requirements are not met, then the City is not under any obligations to accept the proposal. In the past, the City has awarded several capital projects to the lone bidder with great success.

3. How many firms are likely to submit if it is a DB or DBO?

In reviewing numerous Design-Build (DB) and Design-Build-Operate (DBO) projects that have been completed over the past several years it appears that the number of applicants tends to be the same regardless if the project was a DB or DBO. For both contracting methods there are typically four or more teams that will submit Statements of Qualification (SOQ). Of those applicants, either two or three teams are short-listed and submit proposals.

Factors that have a propensity to affect the number of DB or DBO firms that will propose on a project are: location of the project; business opportunity presented by the project; assessment of the competition; what other business opportunities may be available; whether or not the project plays to the firm's strengths; and the availability or ability to deploy resources.

4. What is the DBO cost-benefit in an existing plant expansion?

A DBO would be responsible for the operation of the plant both during and after construction and will provide performance guarantees for the life of the contract. Thus they are highly incentivized to proficiently handle the complex transition period. For an existing plant that needs to have continuous operation without any permit violations this can be very challenging. A DBO firm is able to provide a greater depth of resources to address performance or operational concerns and provide supplement expertise to trouble-shoot issues.

Given that a DBO contractor is part of the project for the long term, they will be more strategic in their selection of capital improvements to ensure the selected equipment and materials will afford the least maintenance, longest life, most effective processes and efficient use of personnel thus ensuring the best life-cycle costs.

5. During a DBO plant expansion, who provides the independent oversight?

There are strategic advantages for partnering with a design-build-operate (DBO) team. Specific to oversight, DBO firms offer an opportunity to have the designers and operators debate their opinions internally to determine the best solution for all parties, as the DBO firm has responsibility to have a competitive product (best capital costs) that is easy to maintain (best operating costs) and will meet the performance guarantees. In addition, if the chosen solution needs a remedy, it will be the financial responsibility of the DBO to correct.

For the optimum solution, the dialogue between the DBO's designer, contractor and operator will include review and input from various stakeholders. For this project, the oversight would be provided by various City departments such as engineering, public works, planning, inspection, and legal. The City's Owner Representative would provide specialized knowledge in plant design and operations along with geotechnical expertise and quality control/quality assurance. In addition, other stakeholder involved in the review of the project include outside legal advisors, state agencies and citizens.

6. Discuss Risk Transfer Opportunities and Challenges of a DBO

Councilor Ripple posed the question of whether or not there would be a cost to transferring risk that would be equal to or greater than retaining risk. The risk

that is being discussed is the risk of meeting operational performance standards 1) during the construction phase and 2) over the subsequent 20 years of operation and beyond.

First, it should be stated from the outset that the City will be retaining ownership of the plant and ultimately will be responsible for performance. However, the issue is whether the recommended contracting method can reduce the likelihood of a failure of operational performance and if there is a failure, that the method of contracting can reduce the City's financial responsibility.

The recommended method is that of contracting with a DBO firm that is capable of design, build, and operate as one entity. With a DBO, the transfer of risk would not be subject to being divided or watered down by separate entities or subject to finger pointing by separate entities when and if operational performance is not met. Any time there is a transfer of risk, there is a cost associated for relieving the City of the burden and for the contracting firm taking on the risk. All things being relatively equal, there should be less cost to the holistic approach of a DBO as opposed to two entities, one the design-builder and the other the operator because in the latter situation there is the additional risk transfer costs between the separate entities. In the DBO case, that cost will generally be assessed at the due diligence period and be included in any guaranteed price. Therefore, the DBO situation logically should be less costly to transfer risk and more likely to accomplish the end of transferring the desired risk at the contract cost. That is not to say cost analysis and refinement are not a continuing processes over time; however, operational contract provisions provide for reviews and adjustments to manage these types of ongoing refinements. Again due diligence, quality control and life cycle costing determined through a professional and experienced design, build and operate firm, through transition of constructing while operating and to final operation, should give everyone a firm handle on costs of operations which, in turn, should minimize refinements over time.

7. What is the contingency plan if the DBO does not work?

We are confident that the DBO will succeed and staff will perform due diligence during the proposal process will help ensure that success. However, to cover unexpected circumstances, safe-guard language can be included in the project contract. Terms that could be added include: requiring liquidated damages for specific violations of the agreements including performance guarantees; requiring the firm to provide additional or support resources to address problems; allowing the City the first right of refusal to rehire staff if the City chose to take the operations back; and requiring the firms to provide a minimum of six additional months of operations if City chose to cancel the contract so the City would have time to hire another firm. The above language is just an example and may or may not be part of the final contract. Based on other recent DBO projects, we are confident that a contingency plan will not need to be implemented.

"While publicly operated water systems are managed to deliver clean, safe and affordable water to you and your family, privately operated systems are managed to get as much money as possible from you and your family."

--Veolia Environnement: A Corporate Profile by Public Citizen

As we have stated in both of our responses to the City's suggestion that a DBO contract is best for Wilsonville, the Union is concerned, of course, with the jobs of current City employees, but also with what it means for the City to contract with a private entity both philosophically and in day-to-day lives of the citizens of Wilsonville. And, after looking at all of those factors, we do not agree that a DBO contract is best for Wilsonville. One reason is the track record of water privatization in other places, which we have already shared with City Council. Another reason, that we would like to share some information with you today, is the companies themselves.

Veolia would be one of the likely candidates for this contract. Until 2003, Veolia Environnement was part of Vivendi Environnement, which was part of Vivendi Universal. Vivendi Universal, in order to protect its water industry from some of its other debt, created the subsidiary Vivendi Environnement. Still suffering from debt, it sold off the majority of its share in Vivendi Environnement and changed the name to Veolia Environnement. Veolia Environnement is currently focusing on debt reduction through long-term service and management contracts with clear cash flows and little in the way of capital commitment. These are contracts where the company can lease assets and collect revenue without being required to make any major capital investments in maintaining, expanding or rehabilitating the water system infrastructure. When situations occur where major repairs are needed, they are slow to make them such as in the case of New Orleans where they were aware of non-functional equipment, but held off on replacing it, which caused raw sewage to be dumped into the Mississippi River. The City of New Orleans, according to one of the City Councilman, had to pay the resulting fines.

Internationally, Veolia is a member of several corporate lobbying groups including the U.S. Coalition of Service Industries (USCSI). One of their major goals is to get countries to commit their water sectors under the General Agreement on Trade Services (GATS) negotiations, which would give Veolia and other multi-national corporations greater access to national water resources and will create the legal and institutional framework to promote even more extensive water privatization.

What people interested in privatizing water do not admit is that water service is a natural monopoly – companies in the business of water service have profited from the free market, but market forces have nothing to do with water delivery. Once Veolia lands its preferred contract, which is to say one that lasts so long it will outlive the contract negotiators, dissatisfied communities do not have the option of simply waking up one morning and turning to a competitor.

Is this a position that Wilsonville is willing to find itself in and is this the type of company that it wants to do business with?

We also wanted to address the question of the "lease-back." While the City stated that lease-backs are not possible in Oregon, the President of SEIU Local 503 operates on a lease-back contract. The President remains an employee of his/her current employer (say the State of Oregon) while coming to work full-time for Local 503. The employer continues to pay the President his/her salary, his/her health insurance, other benefits, and PERS. Then, SEIU Local 503 reimburses the employer for the cost of all these things. Our legal department is currently investigating why we are able to set up such a contract, but the City of Wilsonville is not.

Comments to Mayor Lehan and Councilmembers

June 2, 2008

Thank you for allowing me the opportunity to speak with you again.

I'm Cindy Kehoe and I work at the Wastewater Treatment Plant. More than 40 people applied for the job I got, the position of Operator I at the Wastewater Treatment Plant. The selection process began in early July of 2007 and culminated with my hire in late September last year.

I almost didn't get the job. I was Wilsonville's #2 pick. In the job interview, management was up front with each applicant about the possibility of privatization. The City's #1 candidate initially accepted the position, then was offered a comparable entry level job with Clackamas County's Water Environment Services. When he chose to take the lower paying County job, I assume in large measure due to its secure public sector status, I slipped into his #1 slot.

I'd like to shake that fellow's hand some day.

The rigor of Wilsonville's hiring process stood in stark contrast to my first Water Quality job offer. I thought sharing that experience might be of value to you. Though a decade has passed, one thing hasn't changed; there is a VERY REAL difference, in the eyes of both your current and your future employees, between public and private sector employment.

Two weeks after I graduated from Clackamas Community College's Water Quality Program in 1998 there was an ad in the Oregonian for an entry level opening with OMI, who at that time was the contract operator for City of Gresham's Wastewater Treatment Plant.

I responded to the ad, was quickly interviewed and, within a few days was offered a job. The hiring process was fast, blindingly so in contrast to my experience with Wilsonville. I remember being disappointed with the pay, which was considerably less than the starting wage at City of Canby's Wastewater Treatment Plant, where I had interned and had continued on as a volunteer for nearly a year. Still, I was thrilled to get a job offer so quickly after graduating.

Before accepting, I spoke with my friends at Canby. Everybody said the same thing. "Take the job. The pay is lousy, but it's a place to start. Good people don't stay there more than a couple of years. They put in their time, get their II's (State Level II operator certifications), then either the corporation transfers them up and out or they move on to the jobs they REALLY want...in the public sector."

I called my Wastewater instructor at CCC to get his feel for OMI and contract operators in general. He'd personally shepherded hundreds of students from school into Water Quality jobs over his nearly twenty years there. He echoed what I'd already heard. "It's not where you'll end

up, but think of it as a spring board. Put in your two years there, get your 'll's', then go get the city or county job you REALLY want. You'll be ready."

I remember thinking at the time how unfortunate it was for the City of Gresham that their Wastewater Treatment Plant had become a revolving door for quality operators. Those with ability and ambition passed through rather quickly, leaving to pursue employment in the public sector or move with OMI to more lucrative corporate positions elsewhere. The consequence of that turnover was costly (training a new operator is very expensive) and the disruption caused by frequent staffing changes had to have had an impact on operations there.

Ultimately I chose not to accept OMI's offer, mostly because my heart just wasn't ready, after a lifetime of corporate employment, to give up on the dream of serving a city. It was that sense of service to a community that I knew would never be quite the same working for a corporation. Even before I'd attained it, I knew there really WAS something different, something intrinsically more rewarding, in service to a public entity.

Now I know that for sure.

Perhaps what was true in 1998 isn't anymore. Maybe contract operators like OMI aren't the "easy hire", revolving door operations they seemed to be then. Certainly our Water Treatment Plant has had stability in its staffing.

Still, I can't help but wonder why Wilsonville would want to run the risk of becoming what was then a "pit stop" for operators on their way to something better.

Why would you do that when what you already have here IS that "something better"?

As you deliberate, I hope that you appreciate this particular "downside" of privatization, the inevitable shift from a workplace where employees feel a deep, almost family-like, sense of commitment toward their work. This notion of personal ownership in our work is nebulous I know, hard to describe and impossible to quantify, yet I think it is the very core of what it means to work here.

I just can't fathom why the city would knowingly jettison something so valuable.

Thank you again for allowing us to share our concerns with you.

Cindy Beckett Kehoe

Operator I, City of Wilsonville Wastewater Treatment Plant

PUBLIC-PRIVATE PARTNERSHIP (PPP) ?
WWTP PROCUREMENT METHOD

6/2/08
CC WWT.
Session.
provided by
Union member
Steve Green

Management states that the WWTP is not being privatized, yet if our jobs are turned over to a private company, to us that means privatization.

What is a PPP? PPP is a euphemism for privatization.

As noted in an online document from the UK, "As privatization became politically controversial, even in the UK, new terms were introduced. "Public-private partnership, abbreviated as PPP, was created to present the same forms of involvement of the private sector as more a *collaborative, technical exercise rather than an aggressive transformation of relations.....*"

And a quote by the author of the book: Privatization and Public-Private Partnerships, E.S. Savas'

"....and it is increasingly common to refer to 'public-private partnerships,' a less contentious term....than privatization"

The use of semantics to "soften" its delivery in no way alters the message, nor its meaning.

Private Sector Strengths:

Management Efficiency- within the City of Wilsonville, the management structure for the WWTP is:

- City Manager
 - Public Works Director
 - Environmental Services Manager (position unfilled for the last 5 years)
 - WWTP Lead Operator

I do not know what the management structure would look like if the WWTP was under privatization, but I do know that the large corporations that would likely operate the plant would have a more complex and probably less efficient management. The fact that the treatment plant has operated without a full time Environmental Services Manager for more that five years is testament to the quality and commitment of the present employees.

Newer Technologies and Innovation:

As with any technological field, the wastewater treatment technology is always changing. The WWTP staff is constantly investigating new technologies that we see in the trade journals and other sources. The same information that a private company would have access to, is available to us and any engineering firm that would design the upgrade. Hopefully that engineering firm would consult with the plant staff when considering different aspects of the upgrade to ensure successful operation.

Workplace Efficiencies:

The much more complex operation of the WWTP is staffed by 6 people vs. 9 for the much simpler operation of the water treatment plant. We couldn't get any leaner. When CH2MHill did a plant study back in 1998, they recommended 10 employees to operate the plant. At that time, we had 7 here, and we lost 1 along the way, never to be replaced, as well as the Environmental Services Manager.

Supplies Buying Power:

The city currently can buy through the State of Oregon pool for significant savings on many items. We also get a discount with local vendors (Napa Auto supply, Ryan Herco, and many others) due to the fact we get a municipal discount. We have long term relationships with local vendors and favorable pricing which the City itself has negotiated. These relationships are important, both for the efficiency of readily available products and supplies and for the benefit to the economy that comes from supporting local business.

Deeper Bench of Resources (specific experts):

The WWTP staff knows this plant better than any outside "expert". There are broad principles that govern the operation of wastewater treatment plants, but every plant is different, and outside experts can only offer general guidance that the staff can and has been able to obtain. We have had specific experts from the private companies offer guidance for problems and they were no more helpful than experts we

consulted on our own. The private companies may have experts available on staff, but there are numerous technical resources available to anyone in the field of wastewater, it is a matter of taking the time to contact and utilize their expertise when you need to.

Surge Capacity:

This has not been an issue from the time this treatment plant went online. With any large upgrade, there may be additional staff needed and that will have to be evaluated at that time, but the plant has never had a need for "surge capacity".

Personnel Development:

Anyone that goes to work in a small workforce environment knows that the chance for advancement is limited. Sometimes there are other considerations such as shift work and commute time. If personnel were

concerned about this issue, they would have moved on before now. I venture to say, that the staff is satisfied with the current situation.

In regards to the June 2, 2008 memo:

A DBO could would not extend the warranties of equipment, only design and selection failures. And it? the point is made that the DBO would "reduce the likelihood of a failure of operational performance...."

Although wastewater treatment is a complicated technical enterprise, there aren't a lot of radical design and operational alternatives. There are tried and true technologies that would be available to any competent engineering firm. And that the current plant staff, with training and support, is capable of operating. With due diligence on the part of the city engineering, public works, planning, inspection, and legal departments, working in a coordinated effort with the plant operations staff and a competent engineering company, this issue would be a non-issue.

This whole process it a smokescreen to hide the real reason behind the DBO proposal. I have worked in many different environments including family owned, large corporations, self-employed and the public sector. I have never worked anywhere where I have felt that my value as an employee counted for so little. From the very top management of this city, as least as far as public works is concerned, employees are considered a liability and not an asset. The question was brought up before, about what the city will be; either a collection of contract workers, or city employees that have a sense of ownership and loyalty to the city. I think that this proposal before you now is where that will be decided.

**CITY OF WILSONVILLE
CITY COUNCIL WORK SESSION NOTES
JUNE 2, 2008**

The Wilsonville City Council conducted a work session the Wilsonville City Hall beginning at 5 p.m. on Monday, June 2, 2008.

The following City Council members were present:

- Mayor Lehan
- Council President Kirk
- Councilor Ripple
- Councilor Nunez
- Councilor Knapp

Staff present included:

- Arlene Loble, City Manager
- Mike Kohlhoff, City Attorney
- Jeanna Troha, Assistant City Manager
- Michael Bowers, Community Development Director
- Sandi Young, Planning Director
- Paul Lee, Assistant City Attorney
- Sandra King, City Recorder
- Starla Schur, Executive Secretary
- Gerald Fisher, Civil Engineer

- Eldon Johansen, Special Projects Coordinator
- Kristen Retherford, URA
- Jadene Stensland, Assistant City Engineer
- Dan Knoll, PIO
- Mark Ottenad, Public Affairs Director
- Steve Allen, Transit Operations
- Cynthia Thompson, SMART Director
- Kerry Rappold, Natural Resources manager
- Delora Kerber, Public Works Director
- Peggy Watters, Community Services Director

Mayor Lehan called the work session to order at 5 p.m.

Ms. Loble indicated the first item was a review of the work done on Parks SDCs by Eldon Johansen and Debbie Galardi. The goal is to hold the public hearing on this issue on September 15th. Mr. Johansen's staff report outlining the changes and updates to the dated June 2, 2008 is attached to these minutes.

Waste Water Treatment Plant Options

Ms. Loble	A memo was prepared by staff in response to Council's questions. The cost benefit issues are still being researched. More examples from other plants will be forthcoming. Staff wanted to know if they were on track in responding to the questions raised by Council. Ms. Loble asked Council if the memo raised additional questions. The Union representatives would like to address Council.
Councilor Knapp	The employee protection issue is not a enumerated amongst your
Ms. Loble	It was in the last stuff.
Councilor Knapp	Right. So you're asking now tonight does this cover everything, and I'm saying well

Ms. Loble	My assumption was we've already answered a series of questions and these were the newly raised questions, so in the end we'll put them all together, but do you have questions that have not been raised earlier for this particular missile that we want to make certain that we
Councilor Ripple	How did we determine that we'd likely get the same number of bidders if it was designed build vs. design build operate. I find that hard to swallow.
Ms. Loble	I was surprised by that too which I covered in my cover memo, but I think I'll let Delora respond to that, or Jadene.
Delora Kerber	<p>So if I heard you correctly, you were asking about the number of responders whether it's a design build operate?</p> <p>So what I had opportunity to talk with some people not only companies DB and DBO but also consulting firms that work on DB an DBO projects. Based on what they said it's really what drives the number is just more of and I outlined it in the memo, what is opportunity of this job, what are other lost opportunities if they pursue this one, where is it located, do they have the resources. And based on 8-10 different one I had specifics of I looked at 3-4 were typically submitted their statement of qualifications and cities only short list 3 or less because of the economics.</p>
Ms. Loble	The cost to the proposer. When we did the water treatment plant, we had two. And that was a DB.
Mr. Bowers	It's interesting, even on ODOT projects, when you get into this size of project \$50-100 million dollar range, they seem to have about 1-3 bidders on the construction side. So the market seems to be driving a lower number of bidders because investment to bid on it to put your cost estimators together seems to be pretty large.
Councilor Núñez	Could you give me a time line of what we're looking at for the project.
Mr. Bowers	<p>We would like to proceed with the owners rep contract the month of July, so this summer we would be assembling an owners rep, a technical contract to help us build the RFP.</p> <p>The owners rep would be city's agent to package a request for proposal for the design build operate firms. The Owners rep would do due diligence on the plant in terms of its existing condition, what types of effluent the waste stream getting to the plan over the next 20-25 years, how would we characterize that, as well as what regulatory standards we want to meet for the life cycle of this capital improvement. As well as what is the maximum build out capacity we have in future lifecycle of the acreage we have on site. We would expect a draft of that document to bring in the industry reps to have a participatory discussion in terms of does this draft RFP have any market condition issues we have to talk about .with the top five firms we consider doing business with . That would happen next spring with the intent to transfer operations at the earliest a year to 18 months from now.</p> <p>After we begin negotiations with the design build operating firms. Late</p>

	2009 or early 2010 to actually have a private firm at hand with a contract in place starting design of the capital work.
Councilor Knapp	Do we have the capacity in our internal engineering staff to handle the Wilsonville Road improvement project and this project concurrently?
Mr. Bowers	Yes due to a robust design build operators rep. One think I intend to do with staff, we have a five year CIP we are completing in the next few months. And I want to do resource leveling, 5-10 projects per person to make sure we can handle them, but we haven't completed that in house five-year CIP. We have a couple of options, we can push projects out.
Councilor Knapp	It seems like these are the two big ones we've been talking about and they are going to hit at the same time.
Mr. Bowers	Based on our street money stream, I think the street projects will end up taking longer and the waste water will have consumed it.
Councilor Knapp	This is a little bit off, and I was wondering about the right time to mention it, part of the information I brought back from the League of Cities last year was a discussion I had with a rep of Veolia that they had built a methane recovery component on the Gresham water system that generated electricity with an 8-year payback. And I would like to see us look at that to see whether it would make sense for Wilsonville.
Mr. Stone	We've already included that in our draft owners rep contract we've been working on.
Ms. Loble	So we'll be back to you next time with more information just based on what we're continuing to do. I could ask that if you have more specific questions to make sure you get them to Michael or Delora or to me, so that we're certain that we're staying on top of this. And give the Union the opportunity to address the Council.

Union member Steve Gerry, Utility Worker stated design build is a excellent opportunity and if an RFP is submitted for the DBO, an RFP for DB is also submitted. How would public/private partnerships be interpreted by the union?

Cindy Kehoe submitted written testimony, which has been made a part of the record.

ODOT Project

Ms. Sylvester discussed the latest ODOT errata sheet.

Adjourn

Work Session adjourned at 6:17 p.m.

Executive Session

Mayor Lehan called the Executive Session to order at 6:18 p.m. pursuant to ORS 192.660(2)(e) Real Property Transactions and 192.660(2)(h) litigation. All Council members were present.

Staff included

- Arlene Loble, City Manager
- Mike Kohlhoff, City Attorney
- Jeanna Troha, Assistant City Manager
- Jadene Stensland, Assistant City Engineer
- Sandra King, City Recorder
- Starla Schur, Executive Secretary
- Peggy Watters, Community Services Director,
- Kristin Retherford, Agency Project Manager
- Gary Wallis, Finance Director
- C.J. Sylvester Redevelopment Director
- Mark Ottenad, Public Affairs Director
- Mike Stone, City Engineer

The Executive Session adjourned at 7:10 p.m.

Adjournment


Respectfully submitted,

Sandra C. King, MMC, City Recorder

June 16, 2008



**MEMO FROM
THE CITY MANAGER'S OFFICE**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ARLENE LOBLE 
RE: Work Session
DATE: June 12, 2008

Subject: Wastewater Treatment Plant DBO Update

Enclosed with your packet is the latest in series of information that is being provided to the council in response to specific questions that have been raised in recent work sessions. The enclosed is a response to the question - "what are specific examples of the experience of other communities that have used DBO for the construction and operation of their water and wastewater utilities". The summary of responses is based on personal conversations that Michael Bowers had with representatives in each city together with a survey of North American Water and Wastewater DBO Projects.

Subject: Proposed I-5/99W Connector Update

After months and months of having scheduled meetings cancelled and no progress on the connector, now there are meetings upon meetings in which Wilsonville has done its best to make cogent arguments, however, Wilsonville has not been successful in impacting the Washington County agenda in any way. Enclosed is a memorandum prepared by Mark Ottenad highlighting our efforts together with a postcard that the City is sending out identifying the times and places for the public hearings to be held the week of June 23rd. There is also a meeting of business leaders that may be directly impacted by the connectors impact on I-5/205 that will be held at Sysco during the week of June 12th.

Subject: Review of Agenda – Transit Master Plan – Proposed Transit Tax Increase

The Transit Master Plan and the proposed Transit Tax increase are on your regular agenda and included here under review of agenda for any last minute questions, comments, or suggestions for revisions that Council may want to discuss before the public hearings on Monday night.



Memorandum

To: Honorable Mayor and City Council
From: Michael Bowers, Community Development Director
Delora Kerber, Public Works Director
Jeanna Troha, Assistant City Manager
Date: June 11, 2008
Re: Wastewater Treatment Plant Upgrade Project

At an early work session you asked for information from other cities that have done a DBO (design, build, operate) for their waste water treatment plant. The purpose was to contact cities and learn about their experiences with a DBO; including what worked, what did not work, and if the DBO was a success or not. Specifically, staff asked the agencies about life-cycle O&M or capital replacement costs with the DBO and the impact, if any, on user rates over the life of the DBO contract.

Attached to this memo is a summary of the 10 cities that we received information from as well as a survey of North American Water/Wastewater DBO Projects from Public Works Financing Newsletter. In summary, the cities we contacted indicated the following:

1. Utility rates remained stable with minimal increases under the DBO;
2. Increased efficiency of operations and strong life-cycle benefits;
3. Operator firm like a family instead of a contractor and involved in the community;
4. Overall positive relationship for the city.

In terms of the agency's employees impacted by a DBO, the public employees were offered positions with the private company with equal or greater total compensation packages. Many of the employees accepted the offer with the private company and later indicated they were happy with their new employment.

Overall, the DBO procurement method was a success for the cities we spoke with. Many of them emphasized the importance of the request for proposal (RFP) and the performance standards to ensure that the public/private partnership is a success for all involved. We will be at the work session on Monday, to answer any questions.

Cities Contacted/Notes (5-15 Years DBO Experience)

- ▶ **Newport, Rhode Island** **WWTP expansion to 10.7 mgd DBO.**
 - Cost increases minimized.
 - Escalation clauses for fixed consumables.
 - Energy/utility is a "pass-through" item.

- ▶ **Leonminster, Maine** **WTP & WWTP DBO plant construction/expansion.**
 - Excellent rate stability and lifecycle benefits (plant looks/operates outstanding 13 years after DBO contract)
 - Firm active in Community (educational tours, etc.)

- ▶ **Quincy, Washington** **WWTP expansions/construction, two, 5 mgd each DBO.**
 - Lifecycle benefits on municipal plant, industrial more difficult due to organics for agriculture and food processing plant unforeseen conditions
 - Excellent rate stability.

- ▶ **Mount Vernon, Illinois** **WWTP expansion DBO, 9 mgd peak.**
 - 2 ownership changes past 5 years (regional – to British to German)
 - No continuity issues.
 - Strong lifecycle benefits since 1988 and cost escalation reductions.
 - Old part of plant, equipment replacement to reimbursable: new parts are not.

- ▶ **Vancouver, Washington** **WWTP Operations since 1978.**
 - Firms changed hands several times, but consistent local and regional staffing.
 - Operate and maintain pre-treatment program, 21.3 mgd plant and 16 mgd plant for \$8.5M annually.
 - Solid life-cycle benefits and efficiency.

- ▶ **Fulton County, Georgia** **WWTP expansion DBO, 13-24 mgd, since 2001.**
 - Started with Zurich Water, taken over by American Water
 - Virtually no cost growth above CPI.
 - Uses 3rd party annual inspection, ensuring minimum O&M standards met.
 - 2 law firms and owners rep crafted excellent DBO contract.
 - 1/3 county employees moved over to DBO firm.

- ▶ **Franklin, Ohio** **WWTP DBOF 1996, 5mgd. & WWTP Contract OPS**
 - Rate stability as expected with escalation clauses
 - Earthtech and Veolia have done outstanding jobs.
 - Recently took back WTP in-house though no dissatisfaction of private firms: Simply cost Cutting initiative to reduce loans.

- ▶ **Traverse City (Buckman Township) MI** **DBO 7/97**
 - Operator firm is more like family than a vendor.
 - 10 years of outstanding service from Earthtech.
 - Only cost increases were due to integrity of sewer lines (age/condition).

▶ **Beverly Hills, CA**

DBOF WTP 5 years

- A lot of company pride in O&M workmanship.
- Current building a transition plan to take in-house to reduce finance and lease costs.
- Rate stability has been acquired through minimum volume guarantees.

▶ **Cranston, RI**

(See attached email with details)

Bowers, Michael

From: Sylvia, Anthony [asylvia@CranstonRI.org]
Sent: Tuesday, June 10, 2008 7:56 AM
To: Bowers, Michael
Subject: RE: Wastewater Contract Questions & Concerns

Hi, Michael,

Sewer use rates for Cranston, RI have been stable under our long-term lease and service agreement with Veolia Water North America. The rates have increased nominally over these first eleven years of the contract. I note this with knowledge of the contract history, since I've been in this position for only nine months. Year to year the rates have either remained unchanged or increased at or less than the municipal side of the budget, percentage-wise; wastewater is managed under a separate enterprise fund, which may be the same as your City. Following nine years experience with RIDEM regulating wastewater treatment plants, I gained three years experience 2001-2004 with the City of Newport, RI where we had a 20-year DBO with Earth Tech, Inc. Both in Newport and here in Cranston, what I enjoy the most is a shared interest in the infrastructure – the City owns the car, but the DBO contractor needs to drive it for a long time, and efficiency is the name of their game since undeniably they're in it for some profit. As the municipal official, though, my primary concerns are strong infrastructure O&M, minimizing the user rates, and consistent permit compliance; beyond that, I don't mind that they are profitable. Also, our Facility has a sludge incinerator, which when profits exceed a certain level, the profits are shared with the City.

Overall my feelings toward and experiences with long-term privatized contracts like these are very good. At their website, RIDEM posts a list of all WWTF contacts, where you'll notice those that are privately operated by Veolia, US Filter, and United Water (<http://www.dem.ri.gov/programs/benviron/water/permits/wtf/potwops.htm>).

Best wishes in your endeavor,
 Anthony Sylvia

From: Bowers, Michael [mailto:bowers@ci.wilsonville.or.us]
Sent: Monday, June 09, 2008 3:13 PM
To: Sylvia, Anthony
Subject: Wastewater Contract Questions & Concerns

Anthony: Thanks for getting back to me. We are considering a Design-Build-Operate approach for a 75% expansion of our WWTP facility and I simply have a couple basic questions that I am asking of about a dozen city/county organizations that have between 5 and 15 years of experience with DBO water or wastewater facilities.

- (1) I would expect having the same design/constructor also maintain & operate the plant for anywhere from 10-20 years has creates some economies via life-cycle management. Can you comment about your positive or lack of solid gains in life-cycle O&M or capital replacement costs achieved via the DBO procurement method.
- (2) Has your City been able to achieve user-rate stability thru the DBO contract period – or have unexpected change orders greatly increased forecasted rate growth and if so, can you explain the most prominent reasons.

I appreciate your help in advance as we pursue the advantages and disadvantages of longer-term O&M contracts on our upcoming \$50M project. Thanks. – Michael Bowers, PE, Community Development Director, Wilsonville OREGON

From: Sylvia, Anthony [mailto:asylvia@CranstonRI.org]
Sent: Thursday, June 05, 2008 1:33 PM
To: Bowers, Michael
Subject: Wastewater Contract

6/10/2008

Hi, Mike,
I received message of your call re: the City of Cranston's privatization contract with Veolia Water North America.
How can I help?

Anthony

Anthony M. Sylvia, PE, Director
Department of Public Works
869 Park Avenue
Cranston, RI 02910

Phone: (401) 780-3175
Fax: (401) 780-3176

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Survey of North American Water/Wastewater DBO Projects

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Arvin, Calif.: 35-yr. DBO of 2-mgd wastewater treatment plant.	USFOS	\$54m DBOM fees and costs with \$5.5m in capital and corporate financing by USFOS. Awarded 7/98.
Wilmington, Del.: 20-yr. lease on 90-mgd wastewater treatment plant slated for expansion to 132 mgd	USFOS	\$1 m concession fee to city for transaction costs; \$1.2m capital investment; \$1.64m in fees and costs. Signed 12/97.
Honolulu, Haw.: 20-yr. DBO 12-mgd reverse osmosis reclamation facility	USFOS	\$140m in fees and costs. Awarded 10/98.
Leominster, Mass.: 20-yr. DBO water and wastewater plants	USFOS	Financed with USFOS and has \$36m in fees; \$4.1m turnkey upgrade of both systems. Signed 11/96.
Lynn, Mass.: Turnkey implementation of a combined sewer overflow solution to CSO problem	USFOS (CSO); Aqua Alliance (con-ops)	\$60m capital. Selected preferred bidders 12/99.
Plymouth, Mass.: 20-yr. DBO 3-mgd wastewater plant	USFOS	\$45m in fees and costs. Awarded 6/99.
Taunton, Mass.: 20-yr. service contract to upgrade and operate 8.3-mgd wastewater treatment plant	USFOS	\$50m in fees and costs. Signed 8/98.
Moncton, NB, Canada: 20-yr. BOT of 27-mgd water filtration plant	USFOS (Hardman Group)	\$59.5m capital. Awarded 5/98.
Washington Borough, NJ: 15-yr. DBO for 1.5-mgd wastewater treatment plant	USFOS	\$17.9m in fees; \$8.2m capital. Awarded 6/98.
Franklin, Oh.: 20-yr. BOT 4.5-mgd wastewater treatment plant	USFOS	\$6.8m capital investment to purchase and \$1.7m in fees. Signed 8/95.
Montgomery County Pa.: 20-yr. OM&M/ DBO regional wastewater plant. Expansion to 12.8 mgd	USFOS	\$30m in capital with \$66m in fees and costs. Awarded 1/99.
Cranston, RI: 25-yr. lease/BOT of \$24m wastewater facility excluding AWT upgrade of 23-mgd wastewater system.	USFOS/ Metcalf & Eddy/ Poseidon Resources	\$400m in fees and costs with \$48.1 m up-front contract payment to city. Awarded 12/96.
Woonsocket, RI: 20-yr. DBO 16-mgd wastewater treatment plant	USFOS	\$22.4m in capital and soft costs plus a \$3.9m concession fee; \$75m in costs and fees. Awarded 4/99
Freeport, Tex.: 20-yr. OM&M upgrade of 1.5-mgd sewerage system and 2.6mgd water plant	USFOS/ Metcalf & Eddy	\$45m in fees and costs. Signed 4/95.
Guam. 20-yr DBO 3-mgd water plant and distribution system	Earth Tech	\$45m capital. Under construction 1999.
Oak Grove, Ky.: 10-yr. OM&M; DB water plant improvements	Earth Tech	\$4m in fees; \$1m capital. Signed in 1998.
Gardiner, Mass: 20-yr. op., repair, replace 3.5-mgd water and 5-mgd ww systems; DBO new 3-mgd water filtration	Earth Tech	\$100m in fees and costs. Awarded 11/98.
Traverse City, Mich.: DBO water system	Earth Tech	\$6.8m capital. Awarded 7/97.
Franklin, Oh.: 20-yr. service contract DBO 5-mgd expansion of water plant	Earth Tech	\$15m capital. Started 10/97.
Bessemer, Ala.: 20-yr. DBO 12-mgd water plant and trunk main	Ogden Water	\$63m in fees and costs. Awarded 6/98.
Monroe County, Fla.: 20-yr DBO regional wastewater plant, pipes for Key Largo under evaluation.	Ogden Water	\$58m capital. \$3m/yr. O&M. Low bidder 1/2000,
Bakersfield, Calif.: BOO an initially 10-mgd water	California	\$20m capital. Signed 3/99.

treatment plant; to reach 60 mgd at build-out	Water Service Co.	
San Diego, Calif.: 20-yr. BOT sludge pelletizer at Miramar Naval Air Station Water Tech.	Wheelabrator	\$20m capital. Commercial operation in 1998
Rangeview Metro District, Colo.: 85-yr. DBO wastewater treatment plant	PureCycle Corp.	Cost NA. Signed 1/97.
Tampa Bay, Fla.: 30-yr. BOT 35-mgd RO desalination plant	Poseidon Res./ Stone & Webster	\$120m capital. Signed 7/99.
Mt. Vernon, Ill.: BOT 5-mgd expansion of a sewage treatment plant under a 20-yr. O&M contract	Environmental Mgmt. Corp./ Paric Corp.	\$6.64m capital. Commercial operation in 1988.
Greater Lawrence, Mass.: 20-yr. DBO sludge processing plant	New England Fertilizer Co.	\$49m capital; \$17m 1st yr. fee. Awarded 1998.
Edison, NJ: 20-yr. upgrade and O&M a 9-5-mgd water system	Elizabethtown Water Co.	\$120m in fees and costs. Signed 8/97.
Cactus-Edter-Amarillo, Tex.: DBO wastewater treatment plant.	CET Enviro. Services' Water Quality Mgt.	\$30m capital. Awarded 7/98.
Kyle, Tex.: 20-yr. lease DBO a 1.5-mgd expansion of 4.5-mgd wastewater plant	Aqua Source	Cost NA. Signed early 1999.
San Antonio, Tex.: 10-yr. DBO surface water systems	United Water Services	\$30m capital. Signed 3/25/98.
Seattle, Wash.: 15-yr. DBO w/two 5-yr. renewals for the 120-mgd Tolt River water filtration plant	Camp Dresser & McKee/Azurix/ Dillingham	\$101m capital. Awarded 3/4/97.
Beverly Hills, Calif.: DBO water plant and municipal building	Bidding	Cost NA. Finalists selected.
Tampa Bay, Fla.: DBO 60-mgd surface water treatment plant	Bidding	\$165m capital. USFOS selected preferred bidder 1/2000.
Chicago, Ill.: 20-yr. BOT 150-dry tpd biosolids pelletizing plant	Bidding	\$360m capital. To be awarded early 2000.
Springfield, Mass.: DBO 43-mgd wastewater upgrade under 20-yr. OM&M	Bidding	\$15m capital. Preferred bidder to be selected 3/2000.
Glens Falls, NY: DBO surface water filter plant, OM&M wastewater	Bidding	\$6m capital. Earth Tech selected preferred bidder 1/2000.
Puerto Rico: DBO w/o 7 water plants	Bidding	\$300m capital. First project bid 1/2000.
Newport, RI : 20-yr. DRO to upgrade 10.7-mgd wastewater plant, correct CSO	Bidding	Cost: NA. RFP: 10/99.
Quincy, Wash.: DBO water plant	Bidding	Cost: NA.
Seattle, Wash.: 15 to 25-yr. DBO Cedar River 240-mgd water plant	Bidding	\$160m capital. Proposals due from three finalists 7/2000.
Halifax, N.S., Canada: DBO/F four wastewater plants, pipes	Bidding	\$210m capital. RFP to three finalists 2/2000.
Phoenix, Ariz.: DBO 80-mgd 1st phase of Lake Pleasant surface water treatment plant and pipeline	Planned	\$200m capital. RFQ: 2/2000.
Avalon, Calif.: DBO a 1.2-mgd replacement sewage treatment plant	Planned	\$13m capital.
Sacramento, Calif.: DBO sludge process	Planned	Cost NA.
San Diego, Calif: BOT reclaimed water pipeline, effluent marketing	Planned	Cost NA. RFEI 11/99.
Fulton County, Ga.: DBO wastewater plant upgrade	Planned	Cost NA.
Sioux City, Iowa: 20-yr. DBO 30-mgd wastewater plant, pump, sludge	Planned	\$42m capital; \$3m O&M. REP 3/2000.

City of Lawrence, Mass.: DBO new water plant	Planned	\$40m capital.
Pawtucket, RI: DBO water system	Planned	\$30m to \$60m capital. Studies underway.
El Paso, Tex.: DBO new 300 to 400-mgd surface water treatment plant	Planned	\$500m capital. Studies underway.
Houston, Tex.: DBO new Northwest water plant and pipeline	Planned	\$175m capital.
Vancouver, B.C., Canada: 20-yr. DBO 265-mgd Seymour water treatment plant	Planned	\$80m capital. REQ by 5/2000.

PWF Water Privatization Scorecard

Communities with Long-Term Water Partnerships

February 2001

Source: *Public Works Financing* (908) 654-0397

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Municipality	Description (system type)	Plant Size (mgd)	Contract Term (years)	Estimated Cost Savings
Atlanta, Ga	Water	100	20	\$400 million (45%)
Augusta, Ga.	Wastewater	46	10	\$5 million
Bessemer, Al	DBO Water	24	20	na
Boston, MA	Wwtr sludge	125dtpd	15	\$95 million (34%)
Brockton, Mass.	Water/Wwtr	24	20	\$20 million
Cranston, R.I.	DBO Wastewater	23	25	\$35 million
Edmonton, Alb.	Wastewater	24	8	Cdn\$3.2 million
Evansville, Ind.	Water	60	10	\$8.1 million
Farmington, N.M.	Water/Wwtr	20	8	\$4 million
Franklin, Ohio	BOT Wastewater	4.5	20	23%
Franklin, Ohio	BOT Water	5	20	30%
Fulton Co., Ga	Wastewater	24	10	\$4 million
Hamilton, Ont.	Water/Wwtr	300/5	10	Cdn\$12 million
Indianapolis, Ind.	Wastewater	250	14	\$250+ million
Milwaukee, Wis.	Wastewater	550	10	\$145 million (30%)
Moncton, N.B	DBO Water	25	20	Cdn\$12 million
New Haven, CT	Wastewater	45	15	\$53 million (30%)
Newport, R.I.	Wastewater	10	20	\$22 million (24%)
Norwalk, CT	Wastewater	20	20	\$10 million
Oak Ridge, TN	Utilities	—	10+ 10	\$70 million
Plymouth, Mass.	DBO Wastewater	3	20	\$7.4 million (19.7%)
Rahway, NJ.	Water	6	20	\$32 million
Seattle, Wash.	DBO Water	120	25	\$70 million (40%)
Springfield, MA	Wastewater	67	20	10%
Stonington, Conn.	Wastewater	3	20	na
Tampa, Fla.	DBO Water	66	15+5	\$85 million (21%)
Tampa, Fla.	BOT Desal	25	30	50%
Taunton, Mass	Wastewater	8.3	20	\$62 million
Wash. Boro, NJ.	DBO Wastewater	1.2	15+5	\$2.2 million (11%)
West Haven, CT	Wastewater	12.5	15	\$12 million
Wilmington, Del,	Wastewater	105	20	\$60 million
Woonsocket, R.I.	DBO Wastewater	16	20	\$45 million

U.S. Water Partnerships Scorecard

Communities with Long-Term Contracts

Location	Description (system type)	Plant Size (mgd)	Contract Term (years)	Estimated Cost Savings
Augusta, Ga.	Wastewater	46	10	\$5 million
Bessemer, Ala.	DBO Water	24	20	NA
Bridgeport, Conn.	Wastewater	40	10	NA
Boston, Mass.	Wwtr sludge	125 dtpd	15	\$95 million (34%)
Brockton, Mass.	Water/Wwtr	24	20	\$20 million
Cranston, R.I.	DBO Wastewater	23	25	\$35 million
Wetumpka, Ala.	Water	10	20	\$1 million
Evansville, Ind.	Water	60	10	\$8.1 million
Farmington, N.M.	Water/Wwtr	20	8	\$4 million
Fillmore, Calif.	DBO Wastewater	1.8	20	NA
Forsyth County, Ga.	DBO Wwtr	2.5	20	NA
Franklin, Ohio	BOT Wastewater	4.5	20	23%
Franklin, Ohio	BOT Water	5	20	30%
Fulton Co., Ga.	Wastewater	24	10	\$4 million
Honolulu, Hi.	DBO Wwtr sludge	27 dtpd	15+10	\$35 million
Indianapolis, Ind.	Wastewater	250	14	\$250+ million
Indianapolis, Ind.	Water	140	20	NA
Milwaukee, Wis.	Wastewater	550	10	\$145 million (30%)
Naugatuck, Conn.	Wastewater	10.3	20	\$21 million
New Haven, Conn.	Wastewater	40	15	\$22.5 million
Newport, R.I.	Wastewater	10	20	\$22 million (24%)
Norwalk, Conn.	Wastewater	20	20	\$10 million
Oak Ridge, Tenn.	Utilities	—	10+10	\$70 million
Pawtucket, R.I.	DBO Water	25	20	\$37 million
Phoenix, Ariz.	DBO Water	80	20	\$27 million (7%)
Pinellas County, Fla.	DBO Wwtr sludge	25 dtpd	10+10	NA
Plymouth, Mass.	DBO Wastewater	3	20	\$7.4 million (19.7%)
Rahway, N.J.	Water	6	20	\$32 million
Richmond, Calif.	Wastewater	16	20	\$75 million
Sacramento, Calif.	DBFO Wwtr sludge	30 dtpd	20	NA
Seattle, Wash.	DBO Water (Tolt)	120	25	\$70 million (40%)
Seattle, Wash.	DBO Water (Cedar)	180	18+5+5	\$50 million (30%)
Springfield, Mass.	Wastewater	67	20	10%
Stockton, Calif.	Wtr/DBO wwtr	65	20	\$175 million (22%)
Stonington, Conn.	Wastewater	3	20	NA
Tampa Bay, Fla.	DBO Water	66	15+5	\$85 million (21%)
Tampa Bay, Fla.	DBO Desal	25	30	50%
Taunton, Mass.	Wastewaters	8.3	20	\$62 million
Wash. Boro, N.J.	DBO Wastewater	1.2	15+5	\$2.2 million (11%)
West Haven, Conn.	Wastewater	12.5	15	\$12 million
Wilmington, Del.	Wastewater	105	20	\$60 million
Woonsocket, R.I.	DBO Wastewater	16	20	\$45 million

Source: Public Works Financing
 (Please send corrections, additions to PWFinancing@aol.com)

King, Sandy

From: Loble, Arlene
Sent: Friday, June 13, 2008 3:33 PM
To: Schur, Starla
Cc: King, Sandy
Subject: FW: Public financing scorecard
Importance: High
Attachments: Water Partnership Scorecard - PWF 2007.pdf

For Monday's work session.

From: Kerber, Delora
Sent: Friday, June 13, 2008 1:32 PM
To: Bowers, Michael; Troha, Jeanna; Loble, Arlene
Cc: Stensland, Jadene; Stone, Mike
Subject: Public financing scorecard
Importance: High

Attached is another document from the Public Works Financing magazine, March 2007. I sent this document previously and thought it was the one that was going to be included in management's last memo to council.

It covers some of the same project but with different information. I think it would be worthwhile to make copies of this document and distribute at the meeting on Monday.

Thanks,

Delora

6/16/2008

The Wilsonville City Council conducted a work session the Wilsonville City Hall beginning at 5:18 p.m. on Monday, June 16, 2008.

The following City Council members were present:

- Mayor Lehan
- Council President Kirk
- Councilor Ripple
- Councilor Nunez
- Councilor Knapp

Staff present included:

- Arlene Loble, City Manager (arrived at 5 p.m.)
- Mike Kohlhoff, City Attorney
- Jeanna Troha, Assistant City Manager
- Paul Lee, Assistant City Attorney
- Michael Bowers, Community Development Director
- Mike Stone, City Engineer
- Jadene Stensland, Assistant City Engineer
- Gerald Fisher, Civil Engineer

- Mark Ottenad, Public Affairs Director
- Sandra King, City Recorder
- Delora Kerber, Public Works Director
- Starla Schur, Executive Secretary
- Dan Knoll, PIO
- Steve Allen, SMART Operations Manager
- Jen Massa, SMART
- Sandi Young, Planning Director
- Cynthia Thompson, Interim SMART Director

Mayor Lehan called the work session to order at 5:18 p.m.

Waste Water Treatment Plant

Ms. Loble	Today is focused on questions you raise about other communities experience with DBO.
Ms. Bowers	<p>Staff felt there were two major issues that Council asked questions about. The staff report focuses on those two issues:</p> <ul style="list-style-type: none"> • Should we expect during the life cycle of a DBO contract, any life cycle cost benefits. • What's like going to happen with user rates, i.e. should we expect rate stability for the life cycle of the contract. Will there be unforeseen change orders that would increase rates unexpectedly. <p>Staff went to an independent industry web site that's not aligned with the water industry so it should not be biased. He discovered articles talking about failures of different companies in different regions of the country and why those failures may have happened in a privatized situation or in a DBO scenario.</p> <p>The second piece was looking at firms with 5-15 years of experience having DBO contracts in place. He called those cities, or counties, and asked a couple of questions</p> <ul style="list-style-type: none"> • Tell us about your life cycle experience with your DBO contract in

place.

- Tell us about your user rates experiencing over the lifecycle of the contract

The list of the firms contracted are attached to the staff report, many are huge plants in big cities. Those were not contacted since they were not similar in size or scope of our current project. I called those with waste water facilities about the size of our plant and the results of the phone calls is in the staff report. A summary of the 10 responding cities is contained in the staff report.

Highlights of the results:

- Uniformly all cities were content with the DBO in place as well as the operators
- They felt they had rate satiability, no unexpected change orders, the quality of the work the firms did was excellent. And they were also seeing life cycle cost benefits meaning to minimize the firms costs they were maintaining the plant in a better fashion because they were held responsible for operations, maintenance and equipment replacement costs up to a certain threshold, but by the fact that they had designed and built and upgraded the plant..
- Exceptions to rate stability or they had change orders included how they characterized the influent coming into the plant. Cities that did not plan for growth in agricultural or community may have had unexpected conditions in the plant. The other thing cities did not do well that had a rate increase they didn't characterize the existing treatment system or existing waste water pipe line very well, and some firms that took over the whole system found out the older pipelines had failure and had to be replaced during the life of the contract.

The third lessons learned going through this exercise, in order to have a good contract with a DBO take advantage of lessons learned from other cities, and hire a couple good law firms to draft that procurement. The other was, during the life of the contract, hire a third party certification firm to come in once a year to make sure the operations, maintenance is really being performed as expected by that DBO firm.

Are there questions from Council?

Mayor Lehan	I guess you didn't ask them about employee satisfaction, or turnover.
Mr. Bowers	We talked about that too. It came out strong in two arenas. Council asked about firms changing hands many times, so one theory through that management instability, does that create instability at the plant. The answer to that question was "No". There are a couple of examples in here where over a 5-10 year period firms changed hands 3 times, the cities did not experience at the local level any disruption of staff.

	Secondly, about a third of the union employees prior to DBO coming on board ended up transferring to the private firm. Generally they were given equal or better wages and benefits and once the contract was in place, they had stability with the work force. A couple of cities characterized it as "family". A couple of municipalities felt they had a very strong relationship of quality with those private firms as part of the city team.
Councilor Knapp	Franklin Ohio and Beverly Hills both indicate they are taking back their operations to in house operations, one after 5 years and one after 12 years. Out of 10, 2 decide to go back to that mode of operation how would you portray that. Both seem to indicate cost was a factor in that decision.
Mr. Bowers	In both of those cases the city had planned on taking it back in houses at some point. What was unique about those DBO contract arrangements is the firm they hired in was also responsible for capital financing. And what that meant was the capital financing at that private firm had to invest was 7-8% interest rate – they were almost in a leasing arrangement with that capital plant because the cities were under some consent agreement environmentally and they didn't come up with the cash. What the cities have been doing on a periodic basis was evaluating their financial position to find out if they could get a loan for 4% and if they could beat the overall long term cost by buying the facility back and no longer leasing it. In two cases there was a financial advantage due to the financing piece, second it was not through any fault of the private company or dissatisfaction with the private company in terms of performance.
Councilor Knapp	And the staff proposal for us is not reflective of that position. We would be financing it our selves and not leasing it from the operator.
Ms. Loble	Certainly there are operators who would love to offer that to us, but its not a good financial deal for the city. We're not in a financial position or under some court order that would force us to do anything other than finance it ourselves.
Mr. Bowers	If we put the onus on an operator firm to include capital financing, whether its an upfront large deal or capital replacement of the equipment, that the city is not budgeting for that does tend to be a higher risk arena where there is a future debate whereas how much did the private firm plan for capital expenses how much should they have versus the unique condition of the equipment, that's not the situation we're looking at here.
Ms. Loble	The other parallel we can draw is with our water treatment plant. We negotiated with Veolia there were certain expenses that would not be cost limited. So that there would be no incentive for them to spend less somewhere on supplies for the granulated filter for example, whatever those expenses are to change them out less often, and the same is true with energy costs. We picked the things that neither party had control over except to defer maintenance or something.
Councilor Knapp	Is there significant cost associated with third party certification in an ongoing basis.
Mr. Bowers	I did not get any cost figures. We could get a figure if you need one,

	<p>estimating \$100,000 per year for a QC report of that magnitude.</p> <p>I talked with two Washington plants and from a budgetary stand point what they have budgeted annually for operation and maintenance is similar to Wilsonville's budget. The use of DBO does not cost more than city run, and it does not drive up the user rates.</p> <p>There was a suggestion to put the RFP out as both a DBO and DB to compare. This is a concern since it was felt there would not be enough bidders, and the difference between DBO being driven by the operator versus DB being driven by the engineers.</p>
Mr. Kohlhoff	It would be difficult to do that with the presentation costs. Council should choose the preference and if there is not a significant responses then put the RFP out the other way.
Councilor Ripple	You didn't mention who the operators are
Mr. Bowers	Veolia, American Water, Earth Tec, Southwest Water, United Water.
Councilor Knapp	In your inquiries to the municipalities, is there a way to test whether the employees are really happy with the privatization? Other than asking the municipalities.
Mr. Bowers	<p>The employees seem to fit into three different categories based on conversations with the public works directors and city engineers:</p> <ul style="list-style-type: none"> • 1/3 went to work for the operator • One group was ready for retirement, transition to a new career • One group looked 5 years into the future to see what public works force did they need to transition to for the longer range interest for the city (inspectors, engineering tech) looked for a transition position for some employees to establish vacancies for the long term best interest for the city.
Councilor Knapp	So you would investigate the third category.
Ms. Troha	We haven't done that yet.
Ms. Loble	In part we have done that in the sense that there are employees that were assigned through and to the sewer treatment plant that have now been reassigned to other divisions, the operation of the vector truck is now in operations division; the pretreatment program was part of the sewer treatment plant is now part of public works. Some of that has occurred.
Councilor Knapp	Why wouldn't the quality control certification be done in house.
Mr. Bowers	It is an option. There are three options for quality control, a private firm, the DBO firm hires an independent firm; or a staff person.
Ms. Loble	Does Council have other questions of staff about where we go next.
Councilor Knapp	Is there an independent way to evaluate employee satisfaction? Could the union have a suggestion on how to do that.
Ms. Loble	The union could contact the communities.
Mr. Kohlhoff	The firms offered to bring people forward who they hired from municipalities and they all were willing to sit down and discuss the options

	with the work force involved.
Ms. Loble	We could do that before we've actually selected a firm so the employees could talk with them and understand. We want to bring in the PERS people to explain options and any other counseling the employees would want.

City Councilor Concerns

Review of Agenda

Adjourn

Adjournment

Respectfully submitted,

Sandra C. King, MMC, City Recorder

**CITY OF WILSONVILLE
CITY COUNCIL WORK SESSION NOTES
AUGUST 4, 2008**

The Wilsonville City Council held a work session on Monday, August 4, 2008 at the Wilsonville City Hall beginning at 5 p.m.

The following City Council members were present:

Mayor Lehan
Council President Kirk
Councilor Ripple
Councilor Núñez
Councilor Knapp

Staff attending:

Arlene Loble, City Manager
Jeanna Troha, Assistant City Manager
Michael Kohlhoff, City Attorney
Paul Lee, Assistant City Attorney
Michael Bowers, Community Development Director
Delora Kerber, Public works Director
Sandra King, City Recorder
Mark Ottenad, Public/Government Affairs Director
Mike Stone, City Engineer
Jadene Stensland, Assistant City Engineer

Mayor Lehan called the work session to order at 5:15 p.m.

Ms. Loble's memo to the Council is included here to provide background.

"The work session will be devoted solely to Councilor concerns and discussion of the Wastewater Water Treatment Plant construction and operation plans. Enclosed with your work session packet are copies of the same information that was distributed to you two weeks ago to give you ample time to review the staff recommendations and proposed schedule.

Hopefully you now have all of the information that you require to make an informed decision as to moving forward with the design/build/operate procurement methodology. Enclosed with your packet is a draft resolution selecting the Design-Build-Operate option for the Wastewater Treatment Plant and directing staff to proceed with the hiring of a owner's representative who would then assist City staff in preparing the Requests for Proposals to which the firms interested in the design/build/operate contract would respond. The resolution has been scheduled for Council action on August 18, 2008. The Council of course should feel free to take however much time you think is necessary in order to make this important decision. There are some time constraints in that it is obvious that we need to get on with the construction of the needed plant improvements. Originally we planned to do the improvements in two phases. Phase I includes the upgrades required to meet DEQ requirements for enhanced sludge processing and improved headworks and filtration. Phase II includes expansion of the digesting aeration basins, secondary clarifiers and disinfection. Enough time has passed that it is now critical that we complete Phase

I and Phase II at the same time and have the new plant on line within the next six years. Within the next nine months, the City is also required to update its discharge permit with DEQ. This in and of itself is a time consuming and tedious process that will also require the financial commitment and detailed planning for the plant improvements that will be required under the new permit.

The latest issues raised by some Councilors concern the fear that a private operator will charge the City a premium that would include their overhead and profit and that will make the long term operation of the plant more expensive than if the City were to operate the plant itself. The facts however do not support that conclusion. Enclosed with this packet is a memorandum prepared by Michael Bowers, Community Development Director, in which he not only included the cost in terms of the rate charged to customers for 8 of the 10 sewer treatment plants that we used for comparison purposes but he has also included comparison data for sewer treatment plants that are city operated located in neighboring communities to the Design-Build-Operate plants.

Wilsonville's own experience with the Water Treatment Plant further supports this conclusion. Our experience with Viola as the Water Treatment Plant operator has been positive and professional in every way. This is consistent with the fee Design-Build-Operate we have received from the communities who have private companies operating their sewer treatment plants.

In the case of the Sewer Treatment Plant, I believe there is a compelling reason to utilize the design/build/operate model rather than employing a separate design builder and having a separate operating contract. The whole time that we will be building essentially a new plant, we will also have to operate the existing plant. The potential for conflict and confusion as to who is doing what when is magnified by the complication of trying to do both at the same time.

In my professional opinion, Design-Build-Operate is definitely the way to go."

Michael Bowers' staff report is incorporated for additional background.

"City Staff received additional council member questions and concerns regarding staff's proposal to use a Design Build Operate procurement approach for the upcoming WWTP expansion project. The following additional information has been assembled per the Councilor's questions:

A. Life-Cycle Cost Advantages versus a "premium" price that may be paid to a private firm to accept long-term operations & maintenance liability:

- 1.) Staff was able to investigate 8 out of the 10 Cities with between 5 and 15 years of Design-Build-Operate experience in which we previously contacted in order to obtain sewer user rates these cities were charging and compare them to adjacent city sewer rates.
- 2.) The findings of this comparison are detailed on the attached summary listed by City under Design-Build-Operate contact vs. adjacent City under municipal waste water plant control. These findings are consistent with the industry represented facts previously portrayed to Council which indicate that about 30% cost savings is achieved over time via rate stability and efficient quality operations, along with longer equipment warranties in place under Design-Build-Operate contracts.

Case-Studies Of Rate Stability:

Atlanta GA, Newport RI, Vancouver WA, Leominster MA, Quincy WA,
 Mount Vernon IL, Fulton County GA, and Franklin, OH
 (Design-Build-Operate vs. public operation)*

I. Atlanta, GA
 Sewer Rates –

Year	Operations	Rate Increases
1999	Private	17%
2000	Private	11%
2001	Private	3%
2002	Private	15%
2004	City	45%
2005	City	45%
2006	City	18%

II. Newport, RI

- A.) Sewer rates (Design-Build-Operate firm)
 - 1.) Stable as reported by Newport PW Director.
 - 2.) Price is: \$6.00 per 1,000 gallons with no added service charges
- B.) Providence, RI nearby (City operated)
 - 1.) 73% increase in service charge and 28% increase in user rates with two year period.
 - 2.) Price is: \$5.13 per 1,000 gallons plus \$91 per bill service charge

III. Vancouver, WA

- A.) Vancouver, WA (Design-Build-Operate firm)
 - 1.) Residential Rate = \$4.49 per CCF inside City
 \$6.70 per CCF outside City
- B.) Portland, OR (City operated)
 - 1.) Residential Rate = \$6.08 per CCF

*Staff report dated June 11, 2008 indicated industry average 11% to 34% savings by private operators when compared to government entities.

IV. Leominster, MA

- A.) Leominster (Design-Build-Operate firm)
 - Sewer Rate = \$1.70/CCF
 - Water Rate = \$2.15/CCF
- B.) Fitchburg, MA (City-operated)
 - Sewer Rate = \$3.95/CCF
 - Water Rate = \$2.96/CCF

V. Quincy, WA

- A.) Quincy (Design-Build-Operate firm)
 - Sewer Rate = \$2.27 to \$3.49/CCF
- B.) Enumclaw (City-operated)
 - Sewer Rate = \$4.80/CCF + \$16.14

VI. Mount Vernon, IL

- A.) Mount Vernon (Design-Build-Operate firm)
 - Sewer Rate = \$5.64 for 1,000 gallons
 - \$4.59 for 9,000 gallons
- B.) Centralia, IL (City-operated)
 - Sewer Rate = \$7.41 for 1,000 gallons
 - \$5.99 for 9,000 gallons

VII. Fulton County, GA

- A.) Fulton County (Design-Build-Operate firm) Sewer Rate = \$4.23/CCF
- B.) Fayetteville, GA (City-operated) Sewer Rate = \$12.60/CCF

VIII. Franklin, OH

- A.) See attached City comparison
- B.) Franklin, OH is slightly below the “mean” of adjacent city’s combined sewer and water user costs.”

Waste Water Treatment Plant Procurement

Ms. Loble stated the management staff recommendation continues to be that Council approve the Design-Build-Operate method of procurement. A resolution is included with the Council packet and has been scheduled for a public hearing at the August 18th Council meeting. The resolution adopts the Design-Build-Operate procurement, and instructs staff to proceed with the hiring of the Owner’s Representative (O) so that the process can move forward.

Staff further recommends that we not separate the Design-Build-Operate (DBO) into a phase one and phase two since the 18 months taken to evaluate the pros and cons of the process have cost enough time. The only efficient and cost effective way to move forward is with both phases; phase one being the sludge disposal and DEQ required improvements and phase two the actual expansion of the plant from 4 mgd to 7 mgd.

Additional phases that would come in future years. There is a rate system that has increased the sewer rate structure, consistent with the budget approving another 10% increase in the sewer rates effective this October. We would continue to do that until we’ve met all of the increases required to pay for the \$50 million project and the ongoing operating costs. The Systems Development Charges have already been increased to the recommended model to cover both phase one and two improvements.

At the last NPDES DEQ permit update, the improvements would have been identified to meet the standards in the last five-year period. The permit is due to be submitted for updating in June 2009. The Owner’s Representative would be assisting with the NPDES permit update in addition to preparing the RFP for the Design-Build-Operator, and taking a look at the facilities master plan. The Owner’s Representative would represent the City throughout the process, not just hiring the DBO. They would also be the City’s eyes on the ground and representing the City over the 6 years anticipated to complete the construction project.

Ms. Loble had spoken with each of the Council members individually and answered their questions, but staff was ready to answer additional questions.

Councilor Kirk could not find where it was documented when a public agency was going out to do a Design-Build or Design-Build-Operate, how many responses were received for Design-Build-Operate proposals as well as the number received for a Design-Build.

Delora Kerber said typically the responses for both the Design-Build and Design-Build-Operate were 4-6. Agencies, due to the cost of preparing the proposal would short list three. So if 4-6

companies showed their interest, only up to three would be going into the actual proposal phase. They found there are not necessarily more Design-Build since their areas are more private wastewater plants rather than public agencies, because there is less regulatory requirements

Councilor Ripple wanted to know what would happen if only one company submitted a bid. Staff found that Design-Build-Operate firms were the wave of the future and there was more interest in Design-Build-Operate than Design-Build. Ms. Kerber added if there was one bidder the City is not required to select them especially if they did not meet the City's needs and financial requirements. Most likely, there would be several applicants from which the 2-3 are chosen.

Mayor Lehan asked if the concern was finding the Operators, when we could find the Design-Build-Operates and Design-Builds.

Ms. Kerber said O's were available. What staff was trying to achieve with the DBO is the synergy between the designer, constructor and operator, and to have one single point of responsibility, and one group that works well together. We could pursue a Design-Build and a separate O, but this particular treatment plant is on the smaller side and we may not be able to find a firm interested in pursuing that. Many times Design-Build-Operates make their profit in the O portion of it, so they would come to the table with a reasonable price. Were they the Design-Build and not getting the O their price could be higher, and if you had the O without anything else their prices may be higher and they would not be willing to take on any of the risk if they were not part of the entity doing the design and construction holistically.

Mr. Bowers stated staff learned the way the water treatment plant was built was uncommon; one would separately hire an operator and do the design build construction of a plant as two separate procurements. From a legal, technical and procurement perspective one is likely to get a premium bid on the design build piece and the operator piece because each of them are having risks. On a technical standpoint, the operator coming in after the fact and not being involved in the design and construction process may want to assume a higher price because they are taking on a longer term risk. They may not understand some of the operation and maintenance uniqueness or specialized equipment pieces the designer intended. There are not a lot of cities that have actually done a Design-Build plus O. Most of the people we spoke with had done a design build who had in-house staff or it was an integrated Design-Build-Operate procurement, which seems to be more common over the last 5-15 years in the cities we talked with.

Councilor Knapp referred to the cities surveyed who had used the Design-Build-Operate and staff's comparisons to similar sized operations in the same general area being run by the municipality, and asked for Mr. Bowers to elaborate.

Mr. Bowers commented the staff report contained an industry list of cities that had Design-Build-Operate experiences for either a waste water or water treatment plant. Staff contacted the cities with 5-15 years of experience with the Design-Build-Operate and that had a plant the size of Wilsonville's. They asked about their experience with life-cycle cost in terms of rate stability, were they satisfied with the overall product, and what advice they could give us in terms of lessons learned. We asked if staff had any empirical data for rate stability and life cycle costs,

when compared to a premium paid up front for someone taking a 20-year risk. I asked the 10 cities for their rates, and the name of a near by city with a similar sized plant so we could compare rates. Of the eight cities responding, the cities run by municipalities had higher rates than those with long-term Design-Build-Operate contracts. This would show the cities using Design-Build-Operate were receiving a long-term cost stability benefit. The information provided by Franklin, Ohio and Leominster, MA showed their rates were either lower than surrounding non Design-Build-Operate cities, or in the mid range.

Councilor Knapp wanted to know what options the City had should the Design-Build-Operate contract go bad.

Ms. Loble said there would be 'red flags' and the City would reconsider its position and approach. The reason this would be unlikely is that the purpose of this type of procurement is to bring in firms with expertise that exceeds the expertise of the professional staff to do this type of work. There will be the crosscheck with the owner's representative, as well as using the proficiency of attorneys who specialize in this type of contracting to protect Wilsonville's interests.

Mr. Kohlhoff explained the selection process, first is to make the findings for the contracting method, not the contract itself. Staff will return to Council with the actual contract, prepare findings, and advertise the findings 14 days ahead of time.

Councilor Núñez asked how well the firms interviewed worked with the staff, personnel, and the city.

Mr. Bowers learned from cities staff talked to that the morale of the employees in the private companies was very high and the private companies integrated well with their city staff. Some of the Design-Build-Operate firms, once integrated with the cities, gave tours to local colleges and were strong members of the community. Management and staff turnover was low indicating the morale was high.

Mr. Kohlhoff added the finalists would submit, as a part of their proposal, projects they have done and as a part of Wilsonville's due diligence, the City will conduct a background check to see how the firm was to work with.

Councilor Ripple thought it would be a conflict of interest for a company that acted as Owner's Representative to submit a Design-Build-Operate proposal. Ms. Kerber stated the must be separate companies.

Mayor Lehan understood this expansion would use the available space at the site. Ms. Loble said the third expansion phase envision at the existing site can be done, but it would be tight.

Mr. Bowers stated the Owner's Representative would focus on reviewing the facilities plan, with the hope this expansion would last until 2035-40, or would the City need to plan the third phase for the current site.

At the point of build out, if there was a successful operator the City would stay with the same operator. Mr. Kohlhoff added the Council would want to make the best business decision and a future Council may want to see what else was available.

Mr. Bowers said if the operator was performing well, and the design and construction and operation were superior the City would want to continue, but it depends on the scope of work and are they the best firm for that scope of work.

Councilor Kirk asked why the city of Atlanta went from a private company back to the city running their plant. Mr. Bowers said Atlanta did not conduct their due diligence, and they failed to identify the poor condition of the pipes throughout the city, and they did not adequately plan on how much expansion was needed for growth. This led to many change orders with the Design-Build-Operate firm. Atlanta passed a \$6 million bond measure to upgrade infrastructure city-wide, which resulted in the rate increases.

Ms. Kerber discussed the advantages of a Design-Build-Operate versus a Design-Build and O. With a Design-Build-Operate one is dealing with a single entity, a sole source of responsibility. Typically they are investment grade parent company. You would also have one procurement. The Design-Build-Operate team has experience working together if it is more than one company and is a joint venture and they go into the relationship willingly. In a Design-Build with a separate O there can be a lot of finger pointing because the O was not involved in the decision making process, and if something goes wrong, the Design-Build could say the operator was not operating it correctly, and the operator is saying it was not designed or built properly. With a Design-Build-Operate there is better life-cycle cost because they are incentivized to come up with efficient mechanisms, because they are the operators. If equipment does not work as anticipated the Design-Build-Operate is responsible for replacing it, unlike a Design-Build and O where the O is not responsible for the replacement.

Mr. Kohlhoff noted in a design build situation the warranty period is about 2 years. While not expressed in 'warranty terms' with a long term operating contract with a repair and replace clause, the City would in effect be getting a 20-year warranty.

Mr. Bowers stated companies who bid on these types of projects have a small profit margin during the first three years because of the design and building, and staff is learning how to efficiently operate the plant. The firms are looking for a long-term relationship with the goal to achieve maximum efficiency in the plant over the life cycle, and the profit margin would increase over the last 17 years.

Mr. Stone found during his experience with the construction of the water treatment plant, if there was a design related problem the owner did not necessarily pay for the repairs, the design-builder did so at no cost to the City.

Mr. Kohlhoff pointed out in the negotiations with a Design-Build-Operate firm, there was job protection for employees. The City has included language in the proposed resolution that the finalists will meet with the affected employees. In addition, any contract with a Design-Build-Operate would provide employment opportunities and conditions for affected employees that

would be at a salary and benefit package comparable to, or better than, their current salary and benefit package together with provisions for protecting the employees from involuntary transfers. A contract with an Owner's Representative would also have the same provisions. Mr. Kohlhoff was convinced the employees would be protected. The firms he spoke with were willing to hold 'employee fairs' so the City employees could meet directly with the firms, and interact with the companies.

Ms. Loble explained the operator would come in first while the City was still operating the old plant. The designing and building of the new plant would occur at the same time in the same space, resulting in inherent conflicts for priorities. Having the design builder and the operator both the pre-operator and post-operator, will give the City the most efficient operation and guarantee the least conflict.

Mr. Bowers presented the following scenario. If we have a separate operator that is not integrated with the whole team and we're trying to run the plant while at the same time doing construction, and we predict the construction phase is to last 6 months, staff, whether our staff or an independent operator, would plan for a 6 month construction period. If for some reason it takes 12 months to complete the construction and the design build contractor is separate from that team the City would become responsible for the payment of the additional six months of the contract.

Councilor Knapp commented there have been times when the results were not in line with the engineering expectations; odor control at the sewer treatment plant or the operation of the new fountains for example. He could see there would be an advantage of having the people who are making the recommendation also be there to make it function correctly.

As far as responsibility for the NPEDS permit, the City was still the holder of the permit; however, should there be a violation the Design-Build-Operate would be responsible to reimburse the City for any fines and they would indemnify the City.

Mayor Lehan recognized members of the Union were in attendance. She stated the Council was concerned about employee issues and making sure the employees were treated fairly and there is no net loss for anyone.

Steve Goering, Chief Steward for the Union, Wilsonville Water Department and Heather, Union Representative, both expressed their concerns for the six wastewater treatment plant employees.

Should the Council select the Design-Build-Operate method of procurement, Heather did not want the selection of the final three firms to be done before the time stated in the union contract for notification and interim bargaining had expired. Ms. Loble assured her that would not occur.

Mr. Goering said the union felt the Design Build option incorporated the employees the City has invested in over the years. These employees were trained to be directly responsible for the waster water treatment plant, and the state required designated person in charge is Dan Snyder. The current employees have received training and certifications allowing them to operate a state of the art facility. The staff is highly qualified and trained. Mr. Goering said the residents of

Wilsonville deserve the best the City can give them and the employees were number one. A new plant was necessary; however, the plant should be operated with City employees.

If the Council selected Design-Build-Operate, remember the employees the City has trained will no longer be employees of Wilsonville, who work to make the City a better, safer and cleaner place. He asked Council to make room for public companies if they selected a Design-Build-Operate option: WES (Water Environment Services of Clackamas County), and Clean Water Services of Washington County. He said these two entities are in the PERS system and should one of these providers be selected the employees would be able to remain in the PERS system.

Mr. Goering asked if the City could afford to send the finances of the citizens of Wilsonville outside of the City and felt the money should remain locally. Once operation of a plant has been contracted out, it was nearly impossible to take back the operations since knowledgeable staff has been lost. Costs can be increased significantly after the original contract period is completed, thereby holding the City hostage. He noted the satisfaction rates of the citizens living in cities with plants run by a Design-Build-Operate had not been provided or compared to publicly run plants. Mr. Goering asked if during the employee satisfaction inquires, were the employees directly questioned, or just management. When deciding the fate of these six folks who have dedicated their lives to the City, they are not asking for better pay, they could have already taken their certifications elsewhere to earn a higher wage, but rather they are committed to serving the public.

Councilor Ripple was confident the current employees would be able to operate the new plant. Ms. Loble believed every one of the operators would still be working to operate the plant, just not working for the City.

Councilor Kirk asked why the agreement for the water treatment plant was five years, rather than the 20 years for the wastewater treatment plant. Ms. Kerber stated the water treatment plant was a contract with the operator only and there was a partner involved, TVWD. The twenty-year contract provided incentives to the Design-Build-Operator to insure the long-term performance of the overall plant.

Ms. Loble indicated the next step would be the adoption of the resolution identifying the procurement methodology and to instruct staff to move forward with the hiring of an Owner's Representative. The Owner's Representative would help in developing the RFP for the DBO. She asked if Council was ready to move forward on the resolution on August 18th, or did Council need additional information. It must be clear in the Owner's Representative contract upfront that the City is not asking them to do an alternative analysis, the decision as to the Design-Build-Operate would have been made. The City is asking the Owner's Representative to present us with the next steps that would implement that process. If a company wanted to be the Design-Build-Operate, they would not bid on the Owner's Representative contract. The City Manager pointed out there were few plants run with a Design-Build and separate O, today more typically plants are done with a Design-Build-Operate or a Design-Build then with city itself doing the O.

Council wanted to know if the City's engineering staff would be providing technical supervision to the Owners' Rep. Mr. Stone said Ms. Stensland would be the project manager for this project.

The Owner's Representative would do the day-to-day tasks and interacts with the contractor; City staff would insure the Owner's Representative is going down the right path. At certain points, additional input may be necessary from the City Attorney, Public Works Director, or Community Development Director.

How do we know the Owner's Representative is exercising appropriate technical judgment? If a new plant was being built from scratch, Mr. Stone would be more concerned; however, what is being done is adding more basins, the treatment process is the same and the work is cut and dried. The engineers on staff, Mr. Stone and Ms. Stensland have the technical expertise to guide the Owner's Representative.

Councilor Kirk stated he was not thoroughly convinced the Design-Build-Operate was the way to go, but he did not want to hold up the hearing.

Councilor Núñez wanted information about the satisfaction rate, what types of complaints were received and how were they resolved, and what was the discussion with the employees and management.

Mayor Lehan stated the resolution would move forward on the 18th for the public hearing.

Special Council Meeting

The possibility of a special meeting in September to make up for the Labor Day holiday was discussed. The Recorder would send out available dates so Councilors could check their availability.

Councilor Concerns

Councilor Núñez announced she will become the State Farm Agent for the Newberg area.

Councilor Ripple asked about the status of the bump on the new Boeckman Bridge, as well as the cracks in the sidewalk on the south side of the bridge near 110th Street. The Councilor expressed concern about speeding in neighborhoods where children were playing and asked for more police patrols. She thought a permanent speed posting sign should be installed in all school zones.

Ms. Stensland indicated the contractor was addressing the punch list items on the Boeckman Bridge and the sidewalk cracks and roadway bump would be addressed.

Mayor Lehan wanted to know why stop signs were placed in a round-about at Villebois. The Mayor had also received calls from citizens about the confusing street striping for the left turn lane at Boones Ferry and in front of the Smart building. She asked staff to coordinate where left turns were allowed in those areas with the Clackamas County Sheriff's Department and if necessary clearly stripe the road surface.

Councilor Knapp said the parking situation in Fox Chase neighborhood has not improved, and when called the police do not respond. He asked that the no parking signs be enforced. The Councilor noted vehicles were parked head first in the parallel parking spaces, and recreation vehicles were permanently parked in public areas.

Councilor Kirk mentioned the grand opening of Sophia Park in Villebois this week. It was noted the paint on the playground equipment was damaged by the landscaper, and the equipment would either be replaced or repaired.

I-5/99 West Connector Update

Mark Ottenad gave a brief update on what the businesses located in the north part of the city were doing to make their concerns known to ODOT and to clear up inaccuracy of the information ODOT has published about the alternative alignments for the connector project. Apparently, Vaughn Brown has been requesting one-on-one meetings with the business owners to discuss their uneasiness with the proposal. There was concern the businesses were being told one thing and the meetings were not being held in a public setting.

Adjournment

The Work Session adjourned at 7:15 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

MEMORANDUM

TO: Honorable Mayor and City Councilors

FROM: Michael bowers, Community Development Director
Delora Kerber, Public Works Director

DATE: July 31, 2008

SUBJECT: **WASTEWATER TREATMENT PLANT (WWTP)
EXPANSION VIA DBO**

City Staff received additional council member questions and concerns regarding staff's proposal to use a Design Build Operate procurement approach for the upcoming WWTP expansion project. The following additional information has been assembled per the Councilor's questions:

- A. Life-Cycle Cost Advantages versus a "premium" price that may be paid to a private firm to accept long-term operations & maintenance liability:
- 1.) Staff was able to investigate 8 out of the 10 Cities with between 5 and 15 years of DBO experience in which we previously contacted in order to obtain sewer user rates these cities were charging and compare them to adjacent city sewer rates.
 - 2.) The findings of this comparison are detailed on the attached summary listed by City under DBO contact vs. adjacent City under municipal waste water plant control. These findings are consistent with the industry represented facts previously portrayed to Council which indicate that about 30% cost savings is achieved over time via rate stability and efficient quality operations, along with longer equipment warranties in place under DBO contracts.

Attachments:

- City Sewer Rate Comparisons (DBO to Municipal operations)
- Franklin, Ohio Year 2008 Annual Water & Sewer Rate Survey Combined Water & Sewer Cost

Case-Studies Of Rate Stability:

Atlanta GA, Newport RI, Vancouver WA, Leominster MA, Quincy WA,
Mount Vernon IL, Fulton County GA, and Franklin, OH
(DBO vs. public operation)*

I. Atlanta, GA

Sewer Rates –

Year	Operations	Rate Increases
1999	Private	17%
2000	Private	11%
2001	Private	3%
2002	Private	15%
2004	City	45%
2005	City	45%
2006	City	18%

II. Newport, RI

- A.) Sewer rates (DBO firm)
 - 1.) Stable as reported by Newport PW Director.
 - 2.) Price is: \$6.00 per 1,000 gallons with no added service charges
- B.) Providence, RI nearby (City operated)
 - 1.) 73% increase in service charge and 28% increase in user rates with two year period.
 - 2.) Price is: \$5.13 per 1,000 gallons plus \$91 per bill service charge

III. Vancouver, WA

- A.) Vancouver, WA (DBO firm)
 - 1.) Residential Rate = \$4.49 per CCF inside City
\$6.70 per CCF outside City
- B.) Portland, OR (City operated)
 - 1.) Residential Rate = \$6.08 per CCF

*Staff report dated June 11, 2008 indicated industry average 11% to 34% savings by private operators when compared to government entities.

IV. Leominster, MA

- | | |
|-----------------------------------|--|
| A.) Leominster (DBO firm) | Sewer Rate = \$1.70/CCF
Water Rate = \$2.15/CCF |
| B.) Fitchburg, MA (City-operated) | Sewer Rate = \$3.95/CCF
Water Rate = \$2.96/CCF |

V. Quincy, WA

- | | |
|------------------------------|-----------------------------------|
| A.) Quincy (DBO firm) | Sewer Rate = \$2.27 to \$3.49/CCF |
| B.) Enumclaw (City-operated) | Sewer Rate = \$4.80/CCF + \$16.14 |

VI. Mount Vernon, IL

- | | |
|-----------------------------------|---|
| A.) Mount Vernon (DBO firm) | Sewer Rate = \$5.64 for 1,000 gallons
\$4.59 for 9,000 gallons |
| B.) Centralia, IL (City-operated) | Sewer Rate = \$7.41 for 1,000 gallons
\$5.99 for 9,000 gallons |

VII. Fulton County, GA

- | | |
|--------------------------------------|--------------------------|
| A.) Fulton County (DBO firm) | Sewer Rate = \$4.23/CCF |
| B.) Fayetteville, GA (City-operated) | Sewer Rate = \$12.60/CCF |

VIII. Franklin, OH

- | | |
|---|--|
| A.) See attached City comparison | |
| B.) Franklin, OH is slightly below the "mean" of adjacent city's combined sewer and water user costs. | |

Franklin, Ohio

YEAR 2008 ANNUAL WATER & SEWER RATE SURVEY COMBINED WATER & SEWER COST	
Miamisburg	113.70
Fairfield	117.87
Englewood	126.23
Union	129.20
Greenville	131.89
Sidney	140.02
West Carrollton	142.26
Dayton	143.62
Urbana	147.21
Springfield	150.30
Warren Co	153.23
Clermont County	157.13
Hamilton	157.26
Huber Heights	158.96
Tipp City	160.83
Carlisle	161.55
Vandalia	163.62
Xenia	163.80
Troy	165.51
Middletown	166.98
Germantown	169.77
Bellefontaine	172.02
Brookville	172.90
Fairborn	175.50
Oakwood	176.33
Springboro	179.09
Lewisburg	180.70
Lebanon	182.94
Franklin	187.02
Loveland	189.61
Eaton	190.71
South Charleston	192.36
New Carlisle	195.53
Trenton	196.35
Clark County	199.11
Mason	200.22
Monroe	202.14
Miami County (Dearcliff)	202.44
Farmersville	202.98
Milford	203.07
New Lebanon	204.16
Miami County (Troy)	216.66
Oxford	217.02
Piqua	218.04
Trotwood	218.14
Waynesville	219.30
Centerville (MC)	220.25
Clayton (MC)	220.25
Drexel District (MC)	220.25
Kettering (MC)	220.25
Moraine (MC)	220.25
Northridge District (MC)	220.25
Riverside (MC)	220.25
Butler County	223.53
Harrison	234.60
Bellbrook	235.76
Yellow Springs	240.00
West Milton	245.25
Washington Court House	253.22
Beavercreek (GC)	257.39
Cedarville (GC)	257.39
Greene County	257.39
Wilmington	266.54

Rates are based on 22,500 gallons or 3,000 cubic feet of water in a three month period. Rates quoted are those in effect as of March 1, 2008.

Prepared by the city of
Oakwood Finance
Department

HIGH: \$266.54
LOW: \$113.70
MEAN: \$190.92

63 JURISDICTIONS

COST-EFFECTIVE EXCELLENCE

The charge we keep is to manage assets at the most cost-effective level, as if they were our assets. To accomplish this, we have assisted the city in implementing capital and process control improvements.

The Notown Water Treatment Plant was originally built by the Works Progress Administration in 1936-38 and was completely rehabilitated by Veolia Water at a cost of \$5 million in 1999. This DBO project saved the city \$3.5 million — nearly 45 percent — compared with original engineering estimates.

Additional improvements in operations have included chemical addition to retard corrosion in the water lines, which resulted in a reduction of sampling requirements for lead and copper.

Of special note is the city's commitment to the preservation of its assets. Over the last eight years, the city has spent \$4.5 million on the reconstruction of the Good Fellows and Simmons Pond dams (2006) and \$590,000 cleaning and painting the water system's three steel storage tanks (1998-2000). This is clear indication of the importance the city's places on water matters.

Continued on page 5

AREA WATER BILL COMPARISON

Community	Annual Cost
Leominster	\$ 200.00
Lancaster	\$ 210.00
Worcester	\$ 286.00
Fitchburg	\$ 296.00
Littleton	\$ 299.00
Ashburnham	\$ 396.00
Winchendon	\$ 402.00
Groton	\$ 410.00
Gardner	\$ 468.00
Templeton	\$ 567.00