



Resolution 2004-060

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A RENEWAL OF THE INTERGOVERNMENTAL AGREEMENT (IGA) WITH TUALATIN VALLEY WATER DISTRICT (TVWD)

WHEREAS, the City of Sherwood is in need of a secure long-term source of water; and

WHEREAS, the City of Sherwood requires assistance planning, designing, and operating its increasingly complex water system; and

WHEREAS, the TVWD can provide water to meet Sherwood's long-term needs; and

WHEREAS, the TVWD has expertise in water system management; and

WHEREAS, the City and TVWD have successfully implemented the Intergovernmental Agreement to the benefit of both parties; and

WHEREAS, the City Council adopted Resolution 2000-902 on September 26, 2000 authorizing the City Manager to finalize and sign an agreement with TVWD; and

WHEREAS, the IGA provides for renewal of the IGA by mutual agreement.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

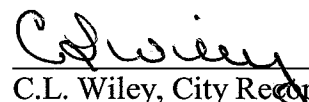
Section 1. The City Manager is authorized to sign the renewal of the Intergovernmental Agreement with TVWD for a period of 5 years to September 30, 2010.

Section 2: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 13th day of July 2004.


Keith Mays, Council President

ATTEST:


C.L. Wiley, City Recorder

~~COPY ORIGINAL~~

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT is effective this 2nd day of October, 2000, by and between Tualatin Valley Water District ("TVWD"), a domestic supply water district organized pursuant to ORS Chapter 264 and the City of Sherwood ("Sherwood"), a municipal corporation organized under the laws of the State of Oregon.

RECITALS

Sherwood owns, operates, and maintains a municipal water supply system consisting of wells, storage tanks, transmission and distribution systems. Sherwood and TVWD wish to enter into an agreement whereby TVWD will provide ongoing administration, operation, maintenance, repair and replacement of Sherwood's system, including securing other supply sources for Sherwood for the term of this agreement and for the consideration hereinafter stated.

The parties have the power to contract with each other in the performance of these services pursuant to ORS Chapter 190.003 through 190.030, and the City's Charter.

NOW, THEREFORE, the parties agree as follows:

1. Services to be Provided.

TVWD, for the consideration hereinafter set forth, agrees to provide:

A. **Supply.** TVWD will supply and manage Sherwood's system to provide water from any combination of Sherwood's wells, City of Portland, aquifer storage and recovery, or other sources available to TVWD. TVWD will obtain the consent of the cities of Portland and Tualatin for use of City of Portland water. TVWD will primarily rely upon Sherwood's wells giving due consideration to impacts on the ground water resource. Applicable commodity or wheeling charges under TVWD agreements with the cities of Portland and Tualatin will be charged to Sherwood in addition to the other payments for services rendered.

(1) **Curtailement.** Where TVWD supplies water from its sources, Sherwood residents will be treated as TVWD retail customers during any curtailment so that they will be reduced just as any other TVWD customer. TVWD will use Sherwood wells in conjunction with TVWD sources so that curtailment does not occur in Sherwood or is minimized.

(2) **Water Quality.** Water quality shall be provided to Safe Drinking Water Act (SDWA) standards.

(3) **Willamette River.** During the term of this contract, TVWD will not use the Willamette River as a source of water to serve the needs of Sherwood.

B. Management of Regulatory Matters.

(1) Water quality testing. TVWD will provide water quality sampling, testing, monitoring, and reporting according to SDWA and the Oregon Health Division (OHD) statutes, rules and regulations for municipal entities of Sherwood's size.

(2) TVWD will provide all regulatory interface with the Oregon Water Resources Department and other regulatory agencies on behalf of Sherwood.

(3) TVWD will develop a wellhead protection program in partnership with Sherwood.

C. Backflow/Cross Connection Control Program. TVWD will provide an ordinance for City adoption and assist in the establishment of a backflow/cross-connection control program. District staff will provide survey, notification, testing, and enforcement of backflow prevention devices.

D. Mapping. Sherwood will provide all available maps, drawings, as-builts, AUTOCADS and other information to enable TVWD to develop a mapping system compatible with TVWD's information system. In the ordinary course and schedule of TVWD business, TVWD will upgrade City mapping periodically.

E. Billing. TVWD will assume all billing and collection functions, including management of any existing agreements Sherwood may have for meter reading and other billing and collection services.

(1) TVWD will include the Sherwood water billings as part of a combined bill with the Unified Sewerage Agency.

(2) Sherwood may include a newsletter to citizens to be included in customer bills so long as it does not increase postage cost for a typical bill. If so, Sherwood must pay the additional postage or send it separately.

F. Public Relations and Media. TVWD will provide public relations and media services related to water, including school outreach programs.

G. Council/City Staff Meetings.

(1) District representatives familiar with Sherwood's system and familiar with current issues of interest to Sherwood will attend council meetings as required by Sherwood, but not less often than quarterly.

(2) The General Manager or his designee will meet with the Sherwood City Manager or his designee monthly to review water service issues.

(3) TVWD will provide such written reports as requested by Sherwood for inclusion in Council packets or for other City departments.

(4) Once each year the TVWD Board of Commissioners will hold a joint dinner meeting with the Sherwood City Council to review water service issues.

H. Off Hours/Callouts/Emergencies. TVWD will designate employees for off hours/callouts. TVWD will keep records of calls and, after one year, the contract may be renegotiated depending upon the volume and type of calls. Sherwood shall make personnel available in emergency events as requested by TVWD.

I. Water Management Plan/Conservation.

(1) In conjunction with City staff, TVWD will oversee the implementation and updating of the City's Water Management Plan and Conservation Plan with the Water Resources Department, the Water Master Plan with the Oregon Health Division and represent Sherwood at regional water providers consortium and conservation meetings.

(2) TVWD will perform water audits and leak detection, as necessary.

J. System Operation and Maintenance. TVWD will operate and maintain Sherwood's system, which consists of wells, reservoirs, piping, booster stations, services and meters.

(1) TVWD will install services and meters for new developments and repairs as needed in accordance with TVWD's standards.

(2) Sherwood will adopt TVWD's standards for construction as part of its City ordinances or as deemed appropriate by Sherwood and its legal counsel.

(3) TVWD will develop maintenance schedules consistent with prudent water utility practices.

(4) TVWD will be responsible for service requests and account inquiries.

K. Capital Improvement. Sherwood will be responsible to budget and appropriate money for capital improvements. Failure to adequately budget and appropriate will cause the scope of services to be reduced appropriately.

(1) Capital improvements shall be made according to Sherwood's Capital Improvement Plan and timing reasonably designated by Sherwood.

(2) TVWD will manage the Capital Improvement Program.

(3) All Capital Improvements shall be constructed according to TVWD construction standards.

(4) TVWD will manage the City's current water-related Capital Projects including: Kruger Reservoir and Acquifer Storage and Recovery (ASR).

(5) When a City Project involves an incidental water system improvement, the City may elect to include the improvement in its overall non-water project. In this case, the City will obtain TVWD review and coordinate with TVWD in meeting the provisions of this agreement. The associated costs will be borne by the City directly unless other arrangements have been made.

L. **Budget.** According to a schedule developed by Sherwood, TVWD will provide a draft budget for water services by January 31st of each year. Sherwood will then use that budget as the starting point for its budget processes. The scope of services will be adjusted accordingly, depending upon Sherwood's budget choices.

M. **Telemetry.** TVWD will manage, maintain, and upgrade, as necessary, the existing telemetry system. TVWD will interface with Sherwood's system. Sherwood will determine what expenditures to make to achieve that interface. Sherwood will be responsible for maintaining its telemetry radio license. TVWD will notify Sherwood when license renewal is required.

N. **Planning.** Sherwood will provide information and cooperate with TVWD to determine ultimate demand needs and water system planning in that regard.

O. **Activities in Sherwood's Right-of-Way.**

(1) Sherwood will not charge TVWD for any right-of-way permit fee for projects benefiting Sherwood.

(2) TVWD will seek the appropriate permits prior to working in Sherwood's right-of-way.

P. **Pay Stations.** Sherwood will designate publicly accessible location(s) for pay stations, which shall include City Hall and the Senior Center.

Q. **Consumer Confidence Reports.** TVWD will prepare Consumer Confidence Reports on behalf of Sherwood, commencing with the report due June 30, 2001.

R. **Landscape and other facility maintenance at City water sites will be performed by TVWD, excepting for the reservoir located at Sydner Park where TVWD will be responsible for only the reservoir and booster station.**

S. **New Development.**

(1) TVWD will review and provide comments to Sherwood on development applications. These comments will be provided within the timelines set in current land use statutes.

(2) TVWD will provide the review and approval of engineering plans for additions or modifications to Sherwood's water system.

(3) TVWD will provide inspection and final acceptance of additions and modifications to Sherwood's water system.

T. **Designated Representatives.** Sherwood and TVWD shall each designate, in writing, a person responsible for maintaining daily contact and interface of the parties.

U. **Field Office.** Sherwood shall provide an office in its public works building for the purpose of housing water system related files, the SCADA system and water system maps. The office space shall also be available for use by TVWD staff.

2. **Payment by Sherwood.**

In exchange for the services provided above by TVWD, Sherwood agrees to pay monthly upon invoice TVWD's actual cost of service for labor, materials and equipment, according to equipment rates adopted by TVWD and the actual cost of providing TVWD employees at their normal hourly rates, including indirect expenses, overhead, and benefits. In addition, Sherwood shall pay, upon invoice, the cost of non-Sherwood water and all costs of delivery. If TVWD determines that work would be better performed by outside contractors, TVWD shall contract for the work with the charges allocated to Sherwood. These charges shall be itemized and sent to Sherwood. Upon receipt, Sherwood shall authorize the payment of these expenses and costs and payment shall be made within 30 days following receipt of the statement. Sherwood dues for regional water activities shall be paid by TVWD and invoiced as an expense to Sherwood.

3. **Term of the Agreement.**

The term of this Agreement shall be for five years commencing October 2, 2000, and ending September 30, 2005, unless the Agreement is terminated for default. By mutual agreement, the contract may be renewed for two additional terms of five years each. Notice of renewal by each party must be given one year in advance of the termination date.

4. **Employees & Equipment.**

The parties agree that TVWD requires additional employees and equipment to manage, operate, and maintain Sherwood's water system. The parties agree that those positions and corresponding persons set forth on Exhibit A, attached hereto and incorporated by reference, shall be transferred from Sherwood to TVWD and TVWD will accept those individuals as District employees with salaries and benefits in accordance with ORS 236.610. These employees will be incorporated into TVWD's work force and assigned by TVWD to best to fit the needs of the District. If the contract terminates, the persons in the positions set forth in Exhibit A will be returned to the City in accordance with ORS 236.640. The parties further agree that the equipment set forth in Exhibit B, attached hereto and incorporated by reference shall be transferred from Sherwood to TVWD at no cost to TVWD. If the contract terminates, the equipment set forth in Exhibit B will be returned to the City in the as-is condition.

5. Indemnity.

To the extent permitted by Oregon law, each party agrees to indemnify and hold harmless the other, its governing body, officers, agents and employees from any and all claims, demands, damages, or liabilities of any type, including attorney's fees and costs of defense, arising solely out of the negligent act of that party. Further, the City hereby specifically assumes and agrees to pay any and all damages, judgments, costs, or settlements arising out of the pending litigation in the case of *Aurora Engineering, Inc. v. City of Sherwood, et al.*, USDC Case No. CV 991236KI and any related case.

6. Insurance.

Each party shall provide general liability, workers compensation and employers liability insurance in an amount not less than the monetary limits of the Oregon Tort Claims Act. Sherwood shall maintain property damage insurance on its water facilities.

7. Notice.

All notices and communications in connection with this Agreement shall be given in writing to:

General Manager
Tualatin Valley Water District
P.O. Box 745
Beaverton, Oregon 97075

City Manager
City of Sherwood
20 N.W. Washington Street
Sherwood, Oregon 97140

8. Termination.

In the event of a default or other breach of this agreement, the non-defaulting party may give written notice of termination of the agreement upon 30 days' written notice to the other party. In the event of termination, the parties shall cooperate and assist in an orderly transition of functions back to Sherwood. This agreement will terminate on the effective date of annexation of the City to TVWD pursuant to paragraph 16.

9. Default.

A default shall occur under this agreement if either party breaches its obligations hereunder. If the defaulting party does not remedy or commence to diligently remedy following 30 days' written notice, then the non-defaulting party may terminate the agreement and the parties shall engage in an orderly transition.

10. Attorney's Fees.

In the event of any suit or action to enforce the provisions of this Agreement, the parties agree the prevailing party shall receive from the other party such as the trial court may adjudge reasonable as attorney's fees to be allowed in said suit or action, and if an appeal is taken, any judgment or decree of such trial court, the parties further agree to pay such sum as the appellate court shall adjudge reasonable as prevailing party and attorney's fees on such appeal.

11. Disputes. If a dispute arises between the parties regarding breach of this Agreement or interpretation of any term of this Agreement, the parties shall first attempt to resolve the dispute by negotiation, followed by mediation, if negotiation fails to resolve the dispute.

Step One: (Negotiation)

Each of the disputing parties shall appoint a person to negotiate on behalf of the entity. The nature of the dispute shall be reduced to writing by the party alleging breach or seeking interpretation and shall be presented to each designated person who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each designated person and ratified by his or her respective Board/Council, which shall be binding upon the parties.

Step Two: (Mediation)

If the dispute cannot be resolved within thirty (30) days at Step One, the parties shall submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each party shall select one (1) name. The two selected shall select a third person. The dispute shall be heard by a panel of three (3) mediators and any common costs of mediation shall be borne equally by the parties who shall each bear their own costs and fees therefor. If the issue is resolved at this step, a written determination of such resolution shall be signed by the General Manager/City Manager and approved by their respective Board/City Council.

Step Three: (Litigation)

If the parties are unsuccessful at Steps One and Two, the dispute shall be resolved in the Circuit Court of the State of Oregon for the County of Washington. Upon breach of this Agreement, the nondefaulting party shall be entitled to all legal or equitable remedies available at law, including injunction, declaratory judgment, specific performance or termination.

12. Successors and Assigns.

All the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and the respective legal representatives, successors, and assigns.

13. Entire Agreement.

This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

14. Assignment.

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement may not be assigned by either party without prior written consent of the other.

15. Severability.

The invalidity of any section, clause, sentence, or provision of this agreement shall not effect the validity of any other part of this agreement, which can be given effect without such invalid part or parts.

16. Annexation.

Upon mutual agreement, the City and TVWD will pass the necessary resolutions and annex to the District. The annexation will be effective at the beginning of the next succeeding fiscal year. If the parties determine to go forward with annexation, an annexation agreement detailing the transfer of liabilities, assets, debt distribution plans, employee matters and the like will be negotiated and executed.

IN WITNESS WHEREOF, the parties have, pursuant to official action of their respective governing bodies, duly authorizing the same, caused their respective officers to execute this instrument on their behalf.

CITY OF SHERWOOD

By:


John N. Morgan, City Manager

Attest


City Recorder

TUALATIN VALLEY WATER DISTRICT

By:


Greg DiLoreto, General Manager

By:


Legal Counsel

Exhibit A

Pursuant to Section 4 of this Agreement, the following persons shall be transferred from Sherwood to TVWD, and TVWD will accept these individuals as District employees pursuant to ORS 236.610.

Special Projects Manager, Lee Weislogel
Utility Billing Clerk, Michelle Caldwell
Utility Services Worker I, Jason Reed
Utility Services Worker I, Paul Visser

Exhibit B

Pursuant to Section 4 of this Agreement, the City of Sherwood agrees to provide the following equipment and materials for use by TVWD.

- 3** Tapping machines and accessories
- All** Hydrant "gut wrenches"
- All** Waterworks materials currently owned by the City of Sherwood and used for the construction, operation and maintenance of the City's water system.
- 1** Portable Water Quality Testing Lab