



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2007-013

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A WATER SUPPLY AGREEMENT WITH THE CITY OF TUALATIN (TUALATIN) AND TUALATIN VALLEY WATER DISTRICT (TVWD).

WHEREAS, TVWD and Sherwood mutually entered into a Water Supply Agreement on October 2, 2000 wherein TVWD agreed to provide water to Sherwood for a five-year term; and

WHEREAS, that Agreement has been subsequently renewed and the relationship between the parties has been restructured; and

WHEREAS, Sherwood, Tualatin and TVWD now agree that the primary external water supply responsibility to Sherwood should be from Tualatin with a backup supply responsibility for TVWD in the event that interruptible water is not available to Tualatin from the City of Portland; and

WHEREAS, TVWD agrees to continue to provide capacity in the Washington County Supply Line ("WCSL") to serve Sherwood; and


WHEREAS, Sherwood agrees to purchase water from Tualatin and/or TVWD and to pay applicable wheeling charges under the terms and conditions of an agreement between the parties.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:


Section 1. The City Manager is authorized to enter into a water supply agreement with Tualatin and TVWD for the purpose of continuing to supply an external water supply to the City of Sherwood. A copy of the afore-described Water Supply Agreement is attached hereto as Exhibit "A".

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

Duly passed by the City Council this 20th day of February, 2007.


Keith Mays, Mayor

ATTEST:


Sylvia Murphy, City Recorder

WATER SUPPLY AGREEMENT WITH THE CITIES OF TUALATIN AND SHERWOOD

This Water Supply Agreement (“Agreement”) is effective this ___ day of _____, 2007, by and between the City of Tualatin, an Oregon municipal corporation (“Tualatin”), the City of Sherwood, an Oregon municipal corporation (“Sherwood”), and Tualatin Valley Water District, a water supply district organized pursuant to ORS Chapter 264 (“TVWD”) referred to collectively as (the “Parties”).

Recitals

A. WHEREAS Tualatin and TVWD entered into an agreement on November 27, 2000, whereby Tualatin permitted TVWD to wheel water through Tualatin’s 36-inch pipeline to supply water to Sherwood (“Water Wheeling Agreement”);

B. WHEREAS TVWD and Sherwood entered into an agreement on October 2, 2000 (“October 2, 2000 Agreement”) whereby TVWD provided water to Sherwood and managed Sherwood’s system for an initial term of five years, and subject to renewal thereof. The agreement has since been renewed and the arrangement between the parties regarding supply of water to Sherwood has been restructured;

C. WHEREAS the parties agree the water supply for Sherwood should now come from Tualatin.

D. WHEREAS Tualatin agrees to purchase interruptible water from the City of Portland to supply Sherwood under its Regional Water Sales Agreement. Tualatin agrees to supply up to 3 million gallons of interruptible water per day on peak-day usage to Sherwood under the terms and conditions of this Agreement through Tualatin’s distribution system to the 24-inch water line connection with Sherwood at Tualatin Community Park;

E. WHEREAS the parties agree that if interruptible water is not available from the City of Portland, TVWD shall supply water to Sherwood;

F. WHEREAS TVWD agrees to provide capacity in the Washington County Supply Line (WCSL) to serve Sherwood.

G. WHEREAS Sherwood agrees to purchase water from Tualatin and/or TVWD and pay applicable wheeling charges under the terms and conditions of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Recitals.** The recitals set forth above are incorporated by reference and made a part of this Agreement. Tualatin agrees to secure water from the City of Portland under its Regional Water Sales Agreement to supply Sherwood with interruptible water. Tualatin will supply 3 million gallons of interruptible water per day on peak-day usage to Sherwood under the terms and conditions of this Agreement through Tualatin’s distribution system to the 24-inch water line connection with Sherwood at Tualatin Community Park.

Prior to February 15 of each year, Sherwood shall provide written notice to Tualatin and TVWD of the quantity of water to be purchased for the months of June, July, August and September ("Summer Notice of Quantity"). Sherwood shall pay monthly for water usage described in the Summer Notice of Quantity on a take or pay basis. For the remainder of the year (October 1 to May 30) Sherwood shall pay monthly for water purchased from Tualatin based on actual usage metered at the Tualatin Community Park or at another location mutually agreed upon by the parties.

If Tualatin is unable to secure interruptible water from the City of Portland, TVWD shall supply water to Sherwood through the Tualatin system under the terms and conditions set forth in this Agreement. TVWD shall supply up to 3 million gallons of water per day on peak-day usage to Sherwood.

2. Consideration. In consideration of the terms and conditions set forth below, the Parties hereby enter into this Agreement to provide water service to Sherwood ("Sherwood Service Area").

3. Term. The term of this Agreement shall be for the period commencing on _____, 2007 and ending on _____, 2010, subject to renewal set forth in paragraph 11 below.

4. Assets. The Tualatin assets necessary to serve Sherwood consist of the existing 36-inch transmission line from Southwest 80th and Florence Lane to the City of Tualatin Community Park. At the Tualatin Community Park, the City of Sherwood's 24-inch line connects to the City of Tualatin's 36-inch line. Tualatin agrees to exercise reasonable diligence and foresight to repair, replace and maintain Tualatin's transmission and distribution system so as to provide a normal volume and pressure of water at the 24-inch inter-tie with Sherwood. The TVWD assets necessary to serve Sherwood are the Washington County Supply Line and the meter located at the beginning of Tualatin's 36-inch transmission line at S.W. 80th and Florence Lane.

5. Covenants of Tualatin. The parties agree that existing facilities of Tualatin are adequate to provide Sherwood with the quantity of water purchased hereunder. Tualatin shall have full responsibility to acquire any necessary right-of-way and to design and construct those facilities it deems necessary to serve the Sherwood Service Area, if requested by Sherwood and if Tualatin and Sherwood mutually agree on cost responsibility. Tualatin also agrees to use best efforts to obtain from the City of Portland a supply of interruptible water to serve Sherwood under this Agreement. Tualatin shall have the obligation to comply with the terms and conditions contained in the Regional Water Sales Agreement so that Sherwood may use the interruptible water supplied under this Agreement.

6. Connection, Meters, Pumps. Sherwood's connection to the Tualatin System shall be metered at the Tualatin Community Park or at another location mutually agreed upon by the parties. Costs of meter repairs resulting from this Agreement are the responsibility of Sherwood. The meters shall be used to determine: (1) Sherwood's daily flow information; and (2) the wheeling charges as set forth in Paragraph 8 and Exhibits A, B and C. The Parties shall,

at all times, have access to all meters and may review and inspect water usage records upon reasonable notice.

7. Flow Information. Tualatin or TVWD, if it supplies water under this Agreement, shall provide Sherwood its daily flow rate of water to enable Sherwood to remain in compliance with applicable flow rate and peaking requirements.

8. Rate and Billings. Sherwood agrees to purchase water from Tualatin or TVWD, whoever is supplying the water, the rate from the City of Portland and applicable wheeling charges as provided in Exhibits A, B, and C.

A. Tualatin

October 1st to May 31st.

Sherwood will pay Tualatin monthly for water use (based on actual usage metered at the Tualatin Community Park or at another location mutually agreed upon by the parties) from October 1 to May 31 at the winter interruptible rate Tualatin receives from the City of Portland. Sherwood also agrees to pay any applicable wheeling charges from Tualatin and TVWD. The rates for Tualatin supply of interruptible water and wheeling charges are set forth in Exhibits A and B.

June 1st to September 30th.

Sherwood will pay Tualatin monthly (based on Sherwood's Summer Notice of Quantity) from June 1 to September 30 on a take or pay basis at the interruptible rate Tualatin receives from the City of Portland. Sherwood also agrees to pay any applicable wheeling charges from Tualatin and TVWD. The rates for wheeling are set forth in Exhibits A and B.

B. TVWD

If Tualatin is unable to secure interruptible water from the City of Portland, TVWD will supply water to Sherwood through the Tualatin System. The rate shall be set at the rate TVWD pays the City of Portland under its Regional Water Sales Agreement in addition to any applicable wheeling charge(s) as set forth in Exhibit C (note the Tualatin and TVWD wheeling charges set forth on Exhibits A and B are incorporated into Exhibit C).

C. Billing.

Tualatin Supplying Water to Sherwood. Tualatin will bill Sherwood directly for all water, delivery and Tualatin wheeling charges associated with providing water to Sherwood with a copy to TVWD. Monthly invoices shall be sent. Payment will be due 30 days from the date of invoice from Tualatin. TVWD will bill Sherwood directly for any TVWD wheeling charges. Payment will be due 30 days from the date of invoice from TVWD.

TVWD Supplying Water to Sherwood. TVWD will bill Sherwood directly for all water, delivery and wheeling charges associated with providing water to Sherwood through the Tualatin System. Monthly invoices shall be sent. Payment will be due 30 days from the date of invoice from TVWD.

The initial rate under this Agreement shall commence July 1, 2007. On July 1, 2008 and on July 1 of each year thereafter, Exhibits A, B, and C will be updated to reflect Portland rate changes and the wheeling rates that will be in effect from July 1 to June 30. As soon as is practicable each year after receipt of Portland water rates for the next fiscal year, Tualatin or TVWD as applicable, will notify Sherwood of any water rate change. This update will be for the fiscal year commencing on the next July 1st. If major operational changes or maintenance needs are anticipated, they may be included in the future years' rates.

If this Agreement is extended beyond the initial term, Exhibits A, B, and C will be examined to determine if revisions or recalculation is necessary. If revised or recalculated, the new Exhibits A, B, and C will be part of the new or extended agreement.

9. Detrimental Fiscal and Operational Impacts to Tualatin. Sherwood agrees that it will hold harmless and indemnify Tualatin from fiscal or operational impacts as a result of this Agreement. By way illustration, if Tualatin's peaking factor under its contract with the City of Portland or any other provision of the contract is affected by this Agreement, it shall be the responsibility of Sherwood to hold Tualatin harmless therefrom. Notwithstanding the above, Tualatin agrees that, so long as the rates for water supply and wheeling in Section 8 above are paid, there are no detrimental fiscal impacts to Tualatin. Further, Sherwood agrees to negotiate modifications to this agreement as necessary to prevent any detrimental operational impacts to Tualatin's distribution system as a result hereof.

10. Contractual Rights. The Parties acknowledge that this Agreement does not confer any property ownership interest of any kind and is contractual in nature for the provision of water to Sherwood.

11. Renewal. This Agreement may be renewed by mutual consent. Sherwood shall furnish notice in writing to Tualatin and TVWD not later than 15 months prior to the expiration of the original term of this Agreement for one additional period of five years, so long as the TVWD-Sherwood Agreement as amended is in effect providing the terms and conditions under which Tualatin or TVWD provides water to Sherwood. Tualatin and TVWD will notify Sherwood within 30 days after receipt of Sherwood's renewal notice whether it consents to renewal.

12. Water Quality. The parties recognize that the water is supplied by the City of Portland and TVWD and Tualatin cannot affect the quality thereof. The quality of water delivered by Tualatin or TVWD shall be the same quality as received from the City of Portland in compliance with all applicable provisions of state and federal law. If Tualatin's or TVWD's water does not meet these standards, then Tualatin or TVWD, as may be the case, shall not supply water to the Sherwood Service Area until the matter is rectified.

13. Dispute/Attorneys Fees. 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 and arbitration.

Step One: The General Manager and/or City Manager are designated to negotiate on behalf of the parties they represent. If the dispute is resolved at this

step, there shall be a written determination of such resolution, signed by each party's Manager and ratified by each governing body, if required by the governing body, which shall be binding upon the parties. Step One will be deemed complete when a party delivers notice in writing to the other parties that the party desires to proceed to Step Two.

Step Two: If the dispute cannot be resolved within ten (10) 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 mutually agree on a mediator from the list provided. Any common costs of mediation shall be borne equally by the parties who shall each bear their own costs and fees. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Manager and approved by their respective governing bodies, if necessary.

Step Three: If the parties are unsuccessful at Steps One and Two, the dispute shall be resolved by arbitration proceedings. The parties shall follow the same process described in Step 2 for the selection of the arbitrator. The prevailing party shall be entitled to its reasonable attorneys' fees as may be awarded by the arbitrator.

14. Breach. If a party defaults under the terms of this Agreement, then upon 20 days' written notice, the defaulting party shall undertake steps to commence cure of the breach within a reasonable time, depending on the circumstances. In the event there is a dispute over the amount to be paid, the undisputed amount shall be paid immediately and the Agreement shall not be in default while the solution to the disputed payment portion is resolved under Paragraph 13. The parties understand and agree that water service is critical to each party's customers and that monetary damages may be an insufficient remedy considering the infrastructure involved. Therefore, the parties expressly agree that equitable remedies such as injunction or specific performance are specifically contemplated and allowed by this Agreement.

15. Termination. In the event of a breach that is not cured, this Agreement may be terminated by the nondefaulting party upon one year's written notice.

16. Notices. Notices regarding operation, maintenance, repair, replacement, breach, termination or renewal shall be deemed sufficient if deposited in the United States mail, first class, postage prepaid, addressed to the parties as follows:

General Manager
Tualatin Valley Water
District
1850 SW 170th Avenue
P.O. Box 745
Beaverton, OR 97075

City Manager
City of Tualatin
City Offices
18880 SW Martinazzi Ave
Tualatin, OR 97062

City Manager
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

17. Insurance and Indemnity. To the full extent permitted by law, each party agrees to indemnify and hold harmless the other, its Board, Council, officers and employees from any

and all claims, demands, damages, actions, or other harm caused by the sole negligence of that party, including any attorneys' fees or other costs of defense. Further, independent of the indemnity obligation, each party agrees to maintain general liability insurance in an amount not less than Oregon Tort Claim limits applicable to public agencies as set forth in ORS 30.260 through 30.300.

18. Succession. This agreement shall be binding upon any successors to the respective parties, which through merger, consolidation, or other means succeeds to the water supply and distribution functions of that party.

19. Amendment. The terms of this Agreement may be amended or supplemented by mutual agreement of Sherwood, Tualatin and TVWD. Any amendment or supplement shall be in writing and shall refer specifically to this Agreement, which shall be executed by all parties.

20. Assignment. Neither the benefits received by Sherwood nor the obligations incurred under the terms of this Agreement are assignable or in any manner transferable by Sherwood without the written consent of TVWD and Tualatin.

21. Good Faith and Cooperation. Sherwood, TVWD and Tualatin agree and represent to each other good faith, complete cooperation, and due diligence in the performance of all obligations of the parties pursuant to this Agreement.

22. Other Approvals. Tualatin and TVWD will work with City of Portland Bureau of Water Works to receive any necessary approvals from Portland to implement this Agreement.

23. Emergency Contracts; Excess Capacity Contracts. Tualatin may enter into other agreements for emergency use of capacity only if they do not interfere with Sherwood's supply. Tualatin currently has emergency supply agreements with City of Tigard, City of Lake Oswego, City of Wilsonville, and Rivergrove Water District. Sherwood's supply hereunder is subject to these agreements.

At this time there are no known other requests for the use of excess capacity of Tualatin's lines. If Tualatin receives another request for use of excess capacity Tualatin will give priority to Sherwood first right of use of excess capacity in Tualatin's lines. If others use the excess capacity other than on an emergency basis adjustment to the rate calculations in Exhibits A, B, and C will be made based on the new usage amounts of each party.

24. Governing Law. This Agreement is governed by the laws of the state of Oregon.

25. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed as an original and which, when taken together, shall constitute one and the same Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above-mentioned.

CITY OF TUALATIN

Mayor

City Recorder

APPROVED AS TO FORM

City Attorney

CITY OF SHERWOOD

City Manager

City Recorder

APPROVED AS TO FORM

City Attorney

TUALATIN VALLEY WATER DISTRICT

Jim Doane, President

James Duggan, Secretary

APPROVED AS TO FORM

District Counsel

EXHIBIT "A"

Updated: January 2007

Original Capital Outlay (Phase 1 & 2) 1981	4,769,102
Cost of capital outlay in 2007 \$	10,125,365
Useful Life of asset (years)	40
Return on Capital (Oregon Bond Index, 2006)	4.16%
Annualized cost of capital	\$523,813
Sherwood's actual water use (ccf) for FY 05/06	215,656
Tualatin's actual water use (ccf) for FY 05/06	2,130,503
Total actual water use	<u>2,346,159</u>
Projected Sherwood's TPWL usage %	9%
Projected Tualatin's TPWL usage %	91%
Annualized cost of capital for FY 06/07	523,813
Actual annual O&M for FY 06/07	0
Total Annual Expenditure for line for FY 06/07	<u>523,813</u>
Sherwood's Share	48,148
Tualatin's Share	475,665
Per ccf cost (Sherwood)	0.22
Per ccf cost (Tualatin)	0.22
Based on Seattle Construction Cost Index	
Dec 1980 (3909.16) and Dec 1981 (4230.36) averaged	4069.76
December 2006	8640.58
Capital outlay multiplier	2.123117825
Sherwood's Total rate by season:	
Summer interruptible rate:	
From TVWD per Sherwood Wheeling Contract Exhibit "B	\$0.165
From City of Tualatin wheeling rate	0.220
City of Tualatin's Summer interruptible rate	0.336
Sherwood's Summer Interruptible Water rate	<u>\$0.721</u>
Winter Water rate, interruptible rate method:	
From TVWD per Sherwood Wheeling Contract Exhibit "B	\$0.165
From City of Tualatin wheeling rate	0.220
City of Tualatin's Summer interruptible rate	0.150
Sherwood's Summer Interruptible Water rate	<u>\$0.535</u>

Exhibit "B"
 Updated 02/09/2007

Sherwood Wholesale rates: Calculation of TVWD capacity wheeled to Sherwood

TVWD's Cost of WCSL to the Washington County Line (Portland's Debt Service)	
Original debt issue, 11/01/1986	\$21,320,000.00
City of Portland's share (10%)	\$2,132,000
Raliegh Water District's share (1.5%)	\$319,800
TVWD's Share (88.5%)	\$18,868,200
Less: Tualatin's portion of TVWD's debt (20.34%)	<u>(\$3,837,792)</u>
TVWD's net share of original debt issue.	\$15,030,408.12
Payment per MG for 42.3 MGD	\$355,329
1. TVWD payments to Portland, 1986-2005	\$30,911,661
Less: Tualatin's portion of TVWD's payments (20.34%)	<u>(\$6,287,432)</u>
TVWD's net payments on the WCSL (does not include payments for O&M)	\$24,624,229
Payment per MG (at 42.3 MGD)	\$582,133
inflated using ENR CCI Seattle index, Dec, 2006 to Dec, 1986: (8640.6 / 4585.4)	1.88
Inflated cost for 2 MG $(\$582,133 * 1.88 * 2\text{mg})$	\$2,193,906
Life assumption of 75 years from 1986, depreciation per year	\$29,252
2. Rate of Return (Oregon Bond Index 20 year, Aaa, Jan 5, 2007)	4.13%
Rate Base	\$30,460
CCF assumed for FY 2008 through WCSL	184,854
Cost per CCF through WCSL	\$0.165

Exhibit "C"
Updated 02/09/2007

Sherwood Wholesale rate: TVWD providing non-interruptible water to Sherwood

TVWD's projected rate from the City of Portland, 06-07 rate increased by 5%	\$0.908 per CCF
City of Tualatin's Wheeling Charge	0.220 per CCF
TVWD's Wheeling Charge	<u>0.165 per CCF</u>
Total rate to City of Sherwood for TVWD Uninterruptible water, FY 2007-08	\$1.293 per CCF

Sylvia Murphy

From: Malinda Senger [mjs@chbh.com] on behalf of Clark Balfour [cbalfour@chbh.com]
Sent: Thursday, March 01, 2007 3:22 PM
To: Bernice Bagnall; toddh@tvwd.org; Greg@tvwd.org; jack@gov-law.com; Mike McKillip (E-mail); Bob@tvwd.org; Sylvia Murphy; bbraden@ci.tualatin.or.us; Craig Sheldon; Ross Schultz
Cc: Clark Balfour
Subject: Revisions to TVWD-Tualatin-Sherwood Agreement

In my last email, there was some discussion about the beginning of the term. The parties agreed that the term of this agreement will commence June 1, 2007 and end on October 1, 2010. It would then be subject to a five-year renewal from there. I have filled in the blanks and attached the revised agreement. Craig Sheldon has the original signature pages and I would ask that he attach the signature pages he has in hand to this agreement and then send final copies to all the parties.

FYI:

The city recorders office received the following after the Council adoption of Resolution 2007-013. Per Craig Sheldon, the City's Public Works Director, the attached agreement will be signed by all parties as the executed agreement.

Sylvia Murphy
City Recorder

**WATER SUPPLY AGREEMENT WITH THE CITIES OF
TUALATIN AND SHERWOOD**

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9. Detrimental Fiscal and Operational Impacts to Tualatin. Sherwood agrees that it will hold harmless and indemnify Tualatin from fiscal or operational impacts as a result of this Agreement. By way illustration, if Tualatin's peaking factor under its contract with the City of Portland or any other provision of the contract is affected by this Agreement, it shall be the responsibility of Sherwood to hold Tualatin harmless therefrom. Notwithstanding the above, Tualatin agrees that, so long as the rates for water supply and wheeling in Section 8 above are paid, there are no detrimental fiscal impacts to Tualatin. Further, Sherwood agrees to negotiate modifications to this agreement as necessary to prevent any detrimental operational impacts to Tualatin's distribution system as a result hereof.

10. Contractual Rights. The Parties acknowledge that this Agreement does not confer any property ownership interest of any kind and is contractual in nature for the provision of water to Sherwood.

11. Renewal. This Agreement may be renewed by mutual consent. Sherwood shall furnish notice in writing to Tualatin and TVWD not later than 15 months prior to the expiration of the original term of this Agreement for one additional period of five years, so long as the TVWD-Sherwood Agreement as amended is in effect providing the terms and conditions under which Tualatin or TVWD provides water to Sherwood. Tualatin and TVWD will notify Sherwood within 30 days after receipt of Sherwood's renewal notice whether it consents to renewal.

12. Water Quality. The parties recognize that the water is supplied by the City of Portland and TVWD and Tualatin cannot affect the quality thereof. The quality of water delivered by Tualatin or TVWD shall be the same quality as received from the City of Portland in compliance with all applicable provisions of state and federal law. If Tualatin's or TVWD's water does not meet these standards, then Tualatin or TVWD, as may be the case, shall not supply water to the Sherwood Service Area until the matter is rectified.

13. Dispute/Attorneys Fees. 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 and arbitration.

Step One: The General Manager and/or City Manager are designated to negotiate on behalf of the parties they represent. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each party's Manager and ratified by each governing body, if required by the

governing body, which shall be binding upon the parties. Step One will be deemed complete when a party delivers notice in writing to the other parties that the party desires to proceed to Step Two.

Step Two: If the dispute cannot be resolved within ten (10) 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 mutually agree on a mediator from the list provided. Any common costs of mediation shall be borne equally by the parties who shall each bear their own costs and fees. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Manager and approved by their respective governing bodies, if necessary.

Step Three: If the parties are unsuccessful at Steps One and Two, the dispute shall be resolved by arbitration proceedings. The parties shall follow the same process described in Step 2 for the selection of the arbitrator. The prevailing party shall be entitled to its reasonable attorneys' fees as may be awarded by the arbitrator.

14. Breach. If a party defaults under the terms of this Agreement, then upon 20 days' written notice, the defaulting party shall undertake steps to commence cure of the breach within a reasonable time, depending on the circumstances. In the event there is a dispute over the amount to be paid, the undisputed amount shall be paid immediately and the Agreement shall not be in default while the solution to the disputed payment portion is resolved under Paragraph 13. The parties understand and agree that water service is critical to each party's customers and that monetary damages may be an insufficient remedy considering the infrastructure involved. Therefore, the parties expressly agree that equitable remedies such as injunction or specific performance are specifically contemplated and allowed by this Agreement.

15. Termination. In the event of a breach that is not cured, this Agreement may be terminated by the nondefaulting party upon one year's written notice.

16. Notices. Notices regarding operation, maintenance, repair, replacement, breach, termination or renewal shall be deemed sufficient if deposited in the United States mail, first class, postage prepaid, addressed to the parties as follows:

General Manager	City Manager	City Manager
Tualatin Valley Water	City of Tualatin	City of Sherwood
District	City Offices	22560 SW Pine Street
1850 SW 170 th Avenue	18880 SW Martinazzi Ave	Sherwood, OR 97140
P.O. Box 745	Tualatin, OR 97062	
Beaverton, OR 97075		

17. Insurance and Indemnity. To the full extent permitted by law, each party agrees to indemnify and hold harmless the other, its Board, Council, officers and employees from any and all claims, demands, damages, actions, or other harm caused by the sole negligence of that party, including any attorneys' fees or other costs of defense. Further, independent of the

indemnity obligation, each party agrees to maintain general liability insurance in an amount not less than Oregon Tort Claim limits applicable to public agencies as set forth in ORS 30.260 through 30.300.

18. Succession. This agreement shall be binding upon any successors to the respective parties, which through merger, consolidation, or other means succeeds to the water supply and distribution functions of that party.

19. Amendment. The terms of this Agreement may be amended or supplemented by mutual agreement of Sherwood, Tualatin and TVWD. Any amendment or supplement shall be in writing and shall refer specifically to this Agreement, which shall be executed by all parties.

20. Assignment. Neither the benefits received by Sherwood nor the obligations incurred under the terms of this Agreement are assignable or in any manner transferable by Sherwood without the written consent of TVWD and Tualatin.

21. Good Faith and Cooperation. Sherwood, TVWD and Tualatin agree and represent to each other good faith, complete cooperation, and due diligence in the performance of all obligations of the parties pursuant to this Agreement.

22. Other Approvals. Tualatin and TVWD will work with City of Portland Bureau of Water Works to receive any necessary approvals from Portland to implement this Agreement.

23. Emergency Contracts; Excess Capacity Contracts. Tualatin may enter into other agreements for emergency use of capacity only if they do not interfere with Sherwood's supply. Tualatin currently has emergency supply agreements with City of Tigard, City of Lake Oswego, City of Wilsonville, and Rivergrove Water District. Sherwood's supply hereunder is subject to these agreements.

At this time there are no known other requests for the use of excess capacity of Tualatin's lines. If Tualatin receives another request for use of excess capacity Tualatin will give priority to Sherwood first right of use of excess capacity in Tualatin's lines. If others use the excess capacity other than on an emergency basis adjustment to the rate calculations in Exhibits A, B, and C will be made based on the new usage amounts of each party.

24. Governing Law. This Agreement is governed by the laws of the state of Oregon.

25. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed as an original and which, when taken together, shall constitute one and the same Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above-mentioned.

CITY OF TUALATIN

Mayor

City Recorder

APPROVED AS TO FORM

City Attorney

CITY OF SHERWOOD

City Manager

City Recorder

APPROVED AS TO FORM

City Attorney

TUALATIN VALLEY WATER DISTRICT

Jim Doane, President

James Duggan, Secretary

APPROVED AS TO FORM

District Counsel