



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2008-052

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY A "FIRST RESTATED INTERGOVERNMENTAL COOPERATIVE AGREEMENT" CREATING THE WILLAMETTE RIVER WATER COALITION (WRWC)

WHEREAS, the City Council believes it appropriate and necessary for the City of Sherwood to enter into a Intergovernmental Cooperative Agreement creating the Willamette River Water Coalition (WRWC) which will increase Sherwood's allocated capacity share of the WRWC Willamette River Permit from 5 mgd to 20 mgd; and

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

Section 1: The City Manager is hereby authorized on behalf of the City to sign an Intergovernmental Agreement, in a form substantially akin to Exhibit "A" (attached hereto) between the Cities of Sherwood, Tigard, Tualatin and the Tualatin Valley Water District (TVWD).

Section 2: The resolution shall be effective upon its approval and adoption on the date it is passed by the City Council and signed by the Mayor.

Duly passed by the City Council this 16th day of September 2008.


Keith S. Mays, Mayor

Attest:


Sylvia Murphy, City Recorder

FIRST RESTATED INTERGOVERNMENTAL COOPERATIVE AGREEMENT CREATING THE WILLAMETTE RIVER WATER COALITION

THIS FIRST RESTATED INTERGOVERNMENTAL COOPERATIVE AGREEMENT is entered into by and between the following Members: Tualatin Valley Water District, a Domestic Water Supply District formed under Chapter 264 ("TVWD"), the City of Sherwood, a municipal corporation ("SHERWOOD"), the City of Tigard, a municipal corporation ("TIGARD") and the City of Tualatin, a municipal corporation ("TUALATIN").

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RECITALS:

A. WHEREAS, the Members hereto have the authority to enter into this Agreement pursuant to their respective principal acts, charters, and ORS 190.003 et seq.; and

B. WHEREAS, some Members may desire to develop and use the Willamette River prior to broader application of that water throughout the metropolitan region and that the Members hereto presently or in the near future will have water supply needs that could be met by the Willamette River and it may be the most economic, efficient, and available source; and

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C. WHEREAS, these Members created the Willamette River Water Coalition ("WRWC") under ORS Chapter 190 to study their local water demands and jointly evaluate water quality and the use of existing permitted rights and future rights and areas of usage; and being fully advised,

NOW, THEREFORE, the Members hereto agree as follows:

SECTION 1. WILLAMETTE RIVER WATER COALITION

1.1 WRWC. There is hereby continued the Willamette River Water Coalition ("WRWC"). The Members of WRWC shall number four (4). The governing body of each Member shall appoint one (1) Board Representative. Each Board Representative shall have one vote. Board Representatives of WRWC shall serve at the pleasure of their respective appointing bodies. The addition of new Members shall require the consent of a two-thirds majority of existing Members.

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1.2 General Powers and Duties. WRWC shall have the following powers:

1.2.1 To adopt such bylaws, rules, regulations, and policies as it deems necessary in furtherance of the purposes of this Agreement;

1.2.2 To study the best method to develop water sources on the Willamette River. Scope of work for specific tasks or projects/project governance and monetary responsibilities shall be negotiated on a case by case basis which may be by addendum to this Agreement;

- 1.2.3 To perform and exercise pursuant to the Charter or principal Acts of the Members or by Section 190.003 through 190.250 of the Oregon Revised Statutes, all powers pursuant to applicable charter, ordinance, or state or federal law which are necessary to efficiently and effectively develop water sources.;
- 1.2.4 To receive and hold existing water rights and to develop water rights on the Willamette River, and all actions necessary to preserve and protect them, to take all action necessary to design, permit, construct and operate, maintain and replace water intakes, treatment, storage, transmission and distribution facilities, equipment, and rolling stock as agreed ("the System");
- 1.2.5 To issue, sell or otherwise dispose of bonds, securities, or other forms of indebtedness, including the power to issue revenue bonds under ORS 288.805 to 288.945;
- 1.2.6 To sell water, adopt system development charges and engage in rate making pursuant to state and federal law as authorized by the Members;
- 1.2.7 To purchase, own, hold, appropriate, and condemn land, facilities, rights of way either in its own name or in the name of the individual Members hereto to develop Willamette River rights.
- 1.2.8 To provide support to other entities involved in efforts to improve the health of the Willamette watershed.

1.3 Duration. Subject to Section 3 of this Agreement dealing with termination or withdrawal, the duration of this Agreement shall be perpetual.

1.4 Meetings; Manner of Acting. Meetings of WRWC shall be conducted in accordance with the provisions of the Oregon Public Meeting Law, Oregon Revised Statutes Section 192.610 et seq. The majority of the Board Representatives shall constitute a quorum for the transaction of business and if only a quorum is present, a majority of those present shall be necessary to decide any issue except financial matters or new membership. Any decision of WRWC seeking financing or other financial obligation, or other forms of indebtedness, shall require an affirmative vote of the governing body of each Member that will financially participate in any project. A WRWC Board Representative may bind his/her entity without governing body approval if the amount in question is within his/her delegated contracting authority.

1.5 Officers. Annually, at the beginning of each fiscal year, ~~the~~ Board Representatives shall elect a Chair and Vice-Chair who shall be officers of WRWC who shall serve a term of one (1) year. The WRWC Board shall also appoint a Secretary who need not be a Board Representative of WRWC who shall be responsible for WRWC's records and shall keep a record of all WRWC proceedings. Officers shall serve at the pleasure of WRWC or until their successors shall be appointed and take office.

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1.6 Budgeting, Accounting, Audits. WRWC shall annually prepare a work plan and an estimate for the next fiscal year and distribute it to the Members by February 1 of each year. This work plan shall be referred to as general administrative. It is anticipated that each Member shall budget its own staff and funds for costs or provision of in-kind services as necessary.

Each Member's apportioned share of the general administration expenses shall be determined by the following formula: one half of the total administrative costs for the fiscal year shall be divided evenly among the WRWC membership, the second half of the total administrative costs for the fiscal year will be divided among the WRWC membership according to their percentage share of the total number of water meters served by the Members of the WRWC as of December 31 of the preceding fiscal year. WRWC shall maintain financial reports showing its expenditures and receipts by category item for each transaction through the last working day of the preceding calendar month. If necessary, WRWC shall cause an independent audit to be performed and completed by a certified public accountant in accordance with ORS 297.405 et seq., within six (6) months following the end of each fiscal year.

For subsequent projects, for improvements and facilities, each Member's apportioned share of the expenses shall be estimated and set forth in addenda to this agreement detailing the scope of work to be performed, participants and ownership, and the amounts so estimated shall be budgeted and appropriated by the participants in accordance with local budget law.

SECTION 2. SURFACE WATER RIGHTS & FACILITIES.

2.1 Delegation of Powers. The functions of source management and water treatment may be performed by WRWC, pursuant to subsequent agreements authorized by the Members. Transmission and storage shall be performed by the Members using those facilities. It is the primary intent and purpose of this Agreement to allow the individual Members to develop information, participate in the study and negotiate relevant agreements regarding implementation of recommendations to design, construct, finance, own and operate facilities within their respective boundaries. WRWC may contract with any Member or other person or entity regarding performance of services. WRWC and each individual Member shall define the scope of individual Member contributions or individual efforts.

2.2 Water Right. The permitted surface water right to the Willamette River is held by WRWC (130 mgd) as WRD Permit No. 49240, (hereafter "Existing Right"). WRWC shall exclusively own and manage the resources subject to this Agreement.

2.3 Allocation of Water and Diversion Point. WRWC and its Members shall each have a duty of good faith and fair dealing with each other and commitment to reasonably allocate the Willamette River water and manage the System according to an individual Member's needs, considering that Member's:

2.3.1 Capital contribution determined as land is acquired, facilities are constructed or cash is contributed;

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2.3.2 Demand forecast for a rolling 20-year time period;

2.3.3 Other factors as agreed by separate addenda or written agreements.

2.4 Administration of Water Rights. WRWC shall have the full authority to modify, combine or abandon rights and permits and seek new sources through new permits or contracting for stored water for municipal and industrial needs as the Members approve.

SECTION 3. CAPITAL CONTRIBUTIONS.

3.1 Assets. Without limitation, the Existing Right shall be employed in the System. Future agreements or addenda will identify other assets and how they are to be accounted for under this Agreement.

3.2 Effect of Membership. Each Member's annual contribution towards General Administration shall entitle it to Member status and each Member shall own an undivided interest in the System as reflected, which shall be adjusted by capital contributions over time as set forth in addenda or by separate written agreement. If membership status is maintained, then each Member will have the right to equity participation in the construction of new or expanded facilities as they are proposed, have an option to purchase an interest in new or expanded facilities at future times, and/or to be a wholesale customer.

SECTION 4. OPERATION AND MAINTENANCE.

4.1 Generally. At such time that facilities are constructed, unless otherwise agreed in writing by the Members financially participating in the facility, the System shall be operated and maintained by WRWC. WRWC may contract with Members or others to provide daily management of all or a portion of the System. Operation and maintenance will be determined at that time by the Members who are equity participants through subsequent agreement or addendum.

SECTION 5. CONSTRUCTION OF FACILITIES.

5.1 Proposal to Construct. If any Member should desire to construct, expand or modify the System as now or hereafter configured, including the siting of a plant at one of the designated diversion points of 2.3 or at another location on the Willamette River, it shall notify WRWC and the other Members in writing of the proposed construction, expansion or modification needs ("Project"). WRWC shall have 90 days in which to determine whether to participate in the proposed Project. The notification shall include cost estimates and a reasonably detailed description of the proposed Project. The Members, within 90 days, shall notify the WRWC of their acceptance or rejection of participation and cost shares shall be allocated. If notice of acceptance is not received within 90 days, the proposed Project shall be deemed rejected by the Members failing to respond.

Once the participation in a Project is fixed, then a nonparticipating Member shall have no

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further opportunity to participate unless the Participating Member(s) consent and upon such terms as they determine in their sole discretion. If there is a material change in the nature or scope of the Project, the Participating Member(s) shall notify the other nonparticipating Members specifying the changes. Within 30 days of notice, the nonparticipating Members may give notice of intent to participate or they may decline. They may also object if the changes to the original Project impair the ability of the System to serve the other Members or significantly increase the cost of usage as described in Section 5.2. Objections shall be referred to dispute resolution.

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5.2 Individual Rights. Facilities constructed shall be in the name of WRWC but decision making shall be by the participating Members as set forth in a project agreement. If WRWC elects not to construct, expand or modify as proposed by an individual Member or Members, then by separate written agreement or addenda any Member or Members may proceed with the proposed Project if the Members of WRWC likely to be served by that diversion point or facility approve the technical aspects of the proposal to ensure the Project will not be inconsistent with future compatibility with individual Members' systems. If the proposal is found inconsistent or incompatible, the Member(s) may use its own water rights held outside this agreement. Under all circumstances, no such Project shall impair the ability of the System to serve the other Members or significantly increase the cost of usage to the other Members unless the Member(s) undertaking the project agrees to pay the increased unit costs to WRWC or the Members which have declined to participate in the expansion. If the Members likely to be served by the diversion point or facility do not approve use of the Existing Right, then the individual Member may use other water outside this agreement or use the termination provision of Section 7. The Members agree that absent termination, only WRWC may apply for water rights to the Willamette River.

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The Members recognize that SHERWOOD has acquired a five (5mgd) interest in the Willamette River Water Treatment Plant and has a current project to construct transmission facilities to deliver 20 mgd to its service territory. This current Project requires no further process or approval under this Agreement, notwithstanding Section 5.1 and this section.

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5.3 TIGARD. In consideration of and upon the abandonment of TIGARD's 1995 permit application to appropriate 40 cfs, the Members of WRWC hereby allocate 40 cfs of the Existing Right to TIGARD.

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5.4 SHERWOOD. Five (5) mgd (7.75 cfs) of the Existing Right has been allocated for use by SHERWOOD based upon its current capacity ownership in the Willamette River Water Treatment Plant. SHERWOOD plans to obtain up to 20 mgd from the Willamette River through the Willamette River Water Treatment Plant based upon its demand forecast and is building transmission capacity to deliver 20 mgd. The Members agree that SHERWOOD's allocation of the Existing Right shall be increased to 31cfs to equal 20 mgd.

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5.5 Regulatory Matters. All Members served by a facility shall share proportionately in the cost if expansion or modification is necessary to meet regulatory requirements, unless subsequent agreement or addenda provides otherwise.

SECTION 6. SALE OF WATER TO OTHER ENTITIES.

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6.1 WRWC. The Members agree that the Willamette River water rights now existing or hereafter acquired are for regional application. The Members agree to work in good faith to accommodate other users on an ownership, wholesale, mutual aid or emergency basis. Subject to paragraph 6.2, WRWC or its Members shall have the power to sell water to other non-member entities at prices determined from time to time by WRWC.

6.2 Proceeds of Sales. The proceeds attributable to the sale of water to a non-Member entity shall be paid to WRWC. Any distribution of these proceeds shall be as the Members agree after expenses and costs of debt service, construction, operation and maintenance are met.

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6.3 Transmission Line Charges. Sales to any non-Member entity which may require transmission through lines may be subject to a transmission line charge to be established by the affected Member. Charges for use of transmission lines shall be collected by WRWC from the user and paid to the Member who owns the transmission line.

6.4 Other Charges. Other charges may be established by WRWC as necessary and agreed by the Members.

SECTION 7. TERMINATION.

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7.1 Notice of Election. Any Member may elect to terminate this Agreement and withdraw from WRWC by giving written notice of its desire to WRWC and other Members on or before April 1. Notwithstanding the date of notice, withdrawal shall be effective on July 1 immediately following the notice. Upon the effective date of withdrawal, unless otherwise agreed by the withdrawing Member and WRWC, that Member shall immediately cease membership in WRWC. The withdrawing Member shall continue to pay its share of, or be responsible for, any previously incurred joint debt, and shall hold harmless the remaining Members for those financial responsibilities and obligations attributable to the withdrawing Member.

7.1.1 If WRWC, after receiving the notice of termination, desires to purchase the terminating interest in the System, it shall notify the terminating Member in writing of its desire to purchase the terminating Member's interest at lesser of market value or depreciated book value. Such notice shall be given within 60 days of receipt of the notice of termination.

7.1.2 If WRWC declines, then the one or more remaining Members may give notice within 60 days after notice of WRWC's decline of that Member's intent to purchase as provided herein. Unless otherwise agreed in writing, the purchase shall be purchased equally among the buying Members and their capital accounts shall be adjusted accordingly.

7.1.3 The price to be paid, whether determined by mutual agreement or arbitration, shall be paid to the terminating Member in full within 12 months following the date of termination set forth in the notice of intent to terminate. If the other Member fails to pay the purchase price within 12 months of the date of termination and if the Members are unable to agree upon a mutually acceptable payment schedule, then the terminating Member shall have the right to sell its portion of the facility to any other non-Member entity approved by a majority of the governing boards or councils from the remaining Members.

7.1.4 In the event that the WRWC or the remaining Members fail to purchase the interest of the terminating Member within the 12-month period, or in the event the WRWC or the remaining Member(s) decline to purchase its interest, then the terminating Member's rights and duties shall be those specified in this Agreement until a sale is made to some other entity or some other mutually agreeable disposition is made and the original non-Member shall remain responsible for all terms and conditions of this Agreement.

7.1.5 Notwithstanding anything to the contrary, because TVWD contributed the Existing Right, no withdrawing Member shall be compensated for the value of the Existing Right except TVWD. If TVWD decides to withdraw from WRWC, it may:

a) leave the entire Existing Right with WRWC and WRWC shall purchase the right as appraised along with the entities' other assets. However, 40 cfs shall not be valued as part of this appraisal and purchased because it is allocated to TIGARD in consideration of and upon TIGARD'S relinquishment of its 1995 permit application, and 31 cfs (20mgd) of SHERWOOD's allocated ownership of capacity at the Willamette River Water Treatment Plant shall not be valued as part of this appraisal and purchased because it is allocated to SHERWOOD to fulfill SHERWOOD's expectation that 20 mgd of its demand will come from the Willamette River Source; or

b) leave the allocated portion of the Existing Right which will be valued and purchased by WRWC and take the unused remainder back to its sole ownership. However, 40 cfs shall not be valued as part of this appraisal and shall be included in the portion left in WRWC as it is allocated to TIGARD in consideration of and upon TIGARD's relinquishment of the 1995 permit application and 31 cfs (20 mgd), Willamette River Water Treatment Plant shall not be valued as part of this appraisal and purchased because it is allocated to SHERWOOD to fulfill SHERWOOD's expectation that 20 mgd of its demand will come from the Willamette River Source;

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c) TVWD may leave the Existing Right to WRWC without compensation.

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7.1.6 The Members agree that TIGARD shall have a firm right to 40 cfs of the Existing Right in consideration of and upon its abandonment of its 1995 permit application.

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7.1.7. The Members agree that SHERWOOD shall have a firm right to 31 cfs (20mgd) of the Existing Right in consideration of SHERWOOD's ownership in the Willamette River Water Treatment Plant, in its construction and ownership of transmission capacity and in its demand forecast that 20 mgd will be supplied from the Willamette River Source.

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7.1.8 The Members agree to cooperate to execute all documents necessary to make water right transfers and assignments.

7.2 Breach. Upon material breach of this Agreement, WRWC or an aggrieved Member may seek all remedies available at law or in equity.

7.3 Dispute Resolution.

7.3.1 Method for resolving disputes. If a dispute arises between WRWC and a Member or between Members (collectively "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)

The Manager or other persons designated by each of the disputing Parties will negotiate on behalf of the entities they represent. The nature of the dispute shall be reduced to writing and shall be presented to each Manager 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 Manager and ratified by the WRWC which shall be binding upon the Parties.

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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

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and fees therefor. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Manager and approved by the WRWC.

7.4 Jurisdiction of Circuit Court. After exhaustion of the 7.3 processes, if the Parties agree, any dispute or claim shall be settled by arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Washington County pursuant to ORS Chapter 36. In the absence of such an agreement, that same court shall have jurisdiction.

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SECTION 8. AMENDMENT.

This Agreement may be amended by mutual written agreement of the Members, signed by all of the Members. Future tasks deemed necessary shall be agreed to by the Members through an addendum to this Agreement setting forth the scope of work and method of payment.

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SECTION 9. GENERAL PROVISIONS.

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

9.2 New Members and Assignment. WRWC may accept additional government entities as Members under terms and financial conditions that WRWC deems just and equitable on a case-by-case basis and only upon an affirmative vote of two thirds of the Members. Except for changes of organization through entity formation, merger, consolidation or annexation, no Member shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of a majority of WRWC.

9.3 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

9.4 Notices. Any notice herein required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery or by United States mail, first class postage prepaid, addressed to the Members as follows:

Tualatin Valley Water District
Attn: General Manager
1850 SW 170th
Beaverton, Oregon 97075

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City of Tigard
Attn: City Manager
13125 SW Hall Blvd.
Tigard, Oregon 97223

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City of Sherwood
Attn: City Manager
22560 SW Pine
Sherwood, Oregon 97140

City of Tualatin
Attn: City Manager
18880 SW Martinazzi Avenue
Tualatin, Oregon 97062

| The Members hereto are responsible to notify each other of changes and to keep this list current.

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9.5 Meetings. Regular meetings of WRWC shall be conducted at such times as WRWC may designate but shall be no less than quarterly. The Chairman, upon his own motion, may, or at the request of two (2) Members of WRWC, shall by giving notice to Members of WRWC (including notice by e-mail) call a previously unannounced special meeting of WRWC for a time not earlier than twenty-four (24) hours after the notice is given, unless an emergency exists. In cases of an emergency, notice reasonable under the circumstances shall be given. A majority of Board Representatives of WRWC shall constitute a quorum. No action will be taken by WRWC unless a majority of WRWC Board Representatives present vote to support the action proposed, unless a greater number of votes is required.

9.6 Advisory Boards; Technical Committees. WRWC may appoint advisory boards and technical committees. The advisory boards shall meet as needed and shall review and make recommendations to WRWC on such matters as WRWC so assigns. A technical committee shall meet not less than quarterly to develop methods of coordination and functioning between WRWC and the Members.

9.7 Attorney Fees. If a dispute should arise between the WRWC and a Member or between Members regarding any term or portion of this Agreement, the prevailing party shall be entitled to such reasonable attorneys' fees as a trial court or arbitrator may award and on any appeal therefrom.

9.8 Counterparts. This Agreement may be executed in any number of counterparts and by the Members on separate counterparts, any one of which shall constitute an agreement between and among the Members.

9.9 Joint and Several Obligations. For approved WRWC activities, the Members shall be jointly and severally liable to third parties for payment of debts and costs incurred. No Members of the WRWC shall be liable for damages, debts or claims caused solely by the negligent act or omission by WRWC or other Members. The individual Member causing damage by its sole negligence or wrongful act shall be individually liable.

9.10 Instruments of further Assurance. From time to time at the request of any of WRWC, each Member shall, without further consideration execute and deliver such additional

instruments and shall take such further action as may be reasonably required to fully effectuate the purposes of this Agreement.

IN WITNESS WHEREOF, the Members have executed this Intergovernmental Cooperative Agreement by the date set forth opposite their names below.

TUALATIN VALLEY WATER DISTRICT

Date: _____, 2008

By: _____

By: _____

CITY OF TIGARD

Dated: _____, 2008

By: _____

By: _____

Date: _____, 2008

CITY OF SHERWOOD

By: _____

By: _____

Date: _____, 2008

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