



RESOLUTION 2011-008

A RESOLUTION AMENDING RESOLUTION 2011-004 TO CORRECT AN ERROR IN THE INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF WILSONVILLE TO REFLECT THE CORRECT DOLLAR OF THE IGA

WHEREAS, the City Council adopted Resolution 2011-004 on January 4, 2011; and

WHEREAS, Resolution 2011-004 approved an IGA with the City of Wilsonville for certain water system improvements; and

WHEREAS, during the Executive Session on January 4, 2011, the City Attorney informed the City Council that the IGA referenced an incorrect dollar amount and recommended the Council make an amendment in open session to correct the amount; and

WHEREAS, after the Council adopted Resolution 2011-004, which included the IGA as Exhibit A, it was brought to the City's attention the IGA Exhibit still referenced the incorrect dollar amount; and

WHEREAS, the City Council now intends to re-adopt the IGA attached hereto as Exhibit A, corrected to reference the correct dollar amount of \$7,313,833.00 as noted in page 1, Section B of the IGA.

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

Section 1: The Intergovernmental Agreement with the City of Wilsonville attached hereto as Exhibit A is hereby adopted.

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

Duly passed by the City Council this 18th day of January 2011.


Keith S. Mays, Mayor

Attest:


Sylvia Murphy, CMC, City Recorder

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF
SHERWOOD AND WILSONVILLE REGARDING CONSTRUCTION,
OWNERSHIP, AND OPERATION OF A METER VAULT SERVICE
CONNECTION OF THE BOECKMAN ROAD TO GRAHAMS FERRY
ROAD WATER TRANSMISSION LINE (SEGMENT 5A) WITH
SHERWOOD TRANSMISSION LINE SEGMENT 6 AND A
TRANSMISSION PIPELINE CONNECTION (SEGMENT 5B) FROM THE
METER VAULT TO WATER TRANSMISSION SEGMENT 5A**

Updated DRAFT December 20, 2010

This Agreement (“Agreement”) is made and entered into this ___ day of _____, 2011, by and between the City of Sherwood, an Oregon Municipal Corporation (“Sherwood”), and the City of Wilsonville, an Oregon Municipal Corporation (“Wilsonville”), referred to collectively as (“the Parties”).

Recitals

The Parties agree upon the following Recitals:

A. WHEREAS Tualatin Valley Water District (TVWD), Sherwood and Wilsonville each own undivided ownership shares in the Willamette River Water Treatment Plant (“WRWTP”) and appurtenances thereto from raw water intake through Segment 1 of finished water transmission. The WRWTP has a current designed capacity of 15 mgd. Sherwood, through a capacity purchase from Tualatin Valley Water District (“TVWD”), owns 1/3 or 5 mgd of that capacity, while Wilsonville owns 2/3 or 10 mgd of WRWTP capacity in addition to larger capacity interests in other appurtenant facilities.

B. WHEREAS Sherwood and Wilsonville have collectively constructed Segments 2, 4, and 5A of 48 inch diameter water transmission lines within Wilsonville, which in conjunction with the WRWTP and other facilities will jointly serve both cities with a permanent potable water supply. Together these already constructed transmission facilities are 8,183 lf in length and represent a present joint investment of \$7,313,833.00. Sherwood and Wilsonville each own 1/2 of the capacity of Segment 2. Sherwood owns 2/3 of the capacity of Segments 4 and 5A, while Wilsonville owns the remaining 1/3 capacity of each.

C. WHEREAS Sherwood has constructed and owns 18,000 lf of 48 inch diameter transmission (Segments 6-9) from a point near the terminus of Transmission Segment 5A and continuing to a newly constructed Sherwood Reservoir (Snyder Park- 4 mgd capacity). The cost of the construction of these Sherwood transmission facilities is estimated to be in excess of \$11,630,000. Construction of these transmission facilities has just been completed in December 2010 by Emery and Sons ("Emery"), Sherwood's General Contractor. Emery was also the General Contractor for Sherwood for the Snyder Park Reservoir. Completion of construction of these transmission segments had been estimated to occur in the spring of 2011. In order for Sherwood to accept these facilities from Emery they need to be pressure tested and flushed, and then maintained and refreshed with a required maximum amount of potable water (400 gpm). The source of this water is from the WRWTP and the Water Distribution System of the City of Wilsonville. A Temporary Water Supply Agreement is being contemporaneously negotiated between the parties for the 400 gpm water for pressure testing and flushing.

D. WHEREAS it has been long recognized and agreed to by the Parties that the collectively owned transmission linkage between the WRWTP and the City of Sherwood will not occur until the 2500 lf of Segment 3 48 inch diameter transmission is constructed by Wilsonville. This transmission project is a part of a significantly larger project involving the extension of Kinsman Road from Barber Road to Boeckman Road, and the allied construction of sanitary and storm lines. This Project also requires substantial Environmental Permitting because it traverses wetlands, a FEMA established Floodway/Flood Plain, and Bonneville Power Administration (BPA) transmission line. Presently completion is estimated by Wilsonville to occur in 2013 or 2014. This Project is now proceeding through Preliminary Design and Engineering. The Parties will separately negotiate terms of an Agreement wherein Sherwood would front the costs relating to the water transmission portion of this Project subject to Wilsonville reimbursement of its share of water transmission project costs. The Parties are also presently negotiating an Interim Water Supply Agreement, which will involve temporary wheeling of surplus water to Sherwood of up to 2.5 mgd of WRWTP potable water through Wilsonville distribution lines until such time as Segment 3 is completed and on line. The Parties have commissioned Montgomery Watson Harza, Inc. ("MWH") to perform a hydraulic capacity analysis of current facility capacity to ensure the 2.5 mgd is in fact surplus to Wilsonville's ongoing and projected needs. These Projects will be the subject of subsequent Agreements between the Parties.

E. WHEREAS the Parties have also negotiated successfully, in principal, the design and proposed construction of a Meter Vault facility and appurtenant small segment of 48 inch diameter transmission line (segment 5B), collectively referred to as the Meter Vault Project. The Meter Vault Project will link Transmission Segments 5A and 6, provide required metering facilities for surplus water flowing to Sherwood, and house pressure reducing valves and transmission lines to serve Wilsonville's distribution and reservoir systems. Wilsonville will issue bid notices for this project on or before January 15, 2011. The Parties will consider adoption of this Project in an Agreement which will be available for consideration and adoption by the Parties in January 2011. Completion of that Project is anticipated in June 2011. Sherwood has tentatively agreed, subject to successful negotiation of contract terms, to advance funding of its proportionate share of the Project as well as advance funding and construction of the extension of a Wilsonville 24 inch diameter transmission line which will be a wholly owned Wilsonville component of this Project. The terms of this Project are the subject of this Agreement and the aforementioned Temporary Water Supply Agreement between the Parties.

F. WHEREAS the unanticipated early completion of Segments 6-9 of 48 inch diameter transmission by Sherwood in December 2010 and the estimated completion of the Meter Vault in June 2011 leaves a short but very important period when temporary water supply to Sherwood in an amount not to exceed 400 gpm will be required as explained in Recital C above. The Parties have developed a way to provide temporary water supply during this period by the advance construction by Sherwood of a 24 inch diameter transmission line extension. This transmission line extension previously was a part of the Meter Vault Project, referenced in Recital E above, to serve Wilsonville permanently with potable water through the meter vault. All required real property has been acquired by Wilsonville for the construction of this line extension and its connection to Sherwood's Segment 6 transmission line. Sherwood has proposed to pay for the redesign associated with advancing the 24 inch line extension and to front costs for this Project subject to reimbursement of Wilsonville's share through credits against future temporary and interim water sales to Sherwood.

G. WHEREAS Sherwood and Wilsonville agree to the design and construction of the facilities of the Meter Vault Project under the terms and conditions of this Agreement.

H. WHEREAS it is recognized by the Parties that it is necessary to enter into this intergovernmental cooperative agreement through ORS Chapter 190 to provide for the property acquisition, surveying, modeling geotechnical/environmental studies, permitting, telemetry design, and construction, including inspection/Project management, ownership and maintenance of the Meter Vault Project.

I. WHEREAS the Parties have the authority to enter into this Agreement pursuant to their applicable charter, principal acts, and ORS 190.003 – 190.030.

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.

2. **Consideration.** In consideration of the terms and conditions set forth below, the Parties enter into this Agreement to design and construct the facilities of the Meter Vault Project which will link transmission segments 5A and 6, provide required metering facilities and transmission for water flowing to Sherwood, and house pressure reducing valves and transmission to serve Wilsonville's distribution and reservoir systems. The facilities of the Meter Vault Project are more particularly described in the project bid plans and specifications, a copy of which have been provided to each party and which are incorporated by reference.

3. **Term.** The term of this Agreement shall be perpetual unless otherwise agreed to by the Parties.

4. **Reimbursement of Certain Wilsonville Expenses Previously Incurred.** Wilsonville has identified \$99,902.88 of expenses previously incurred for design, right-of-way acquisition, and staff time relating to the Meter Vault Project, which the Parties agree should be reimbursed by Sherwood. Sherwood agrees, within five (5) business days of the Parties' execution of the Temporary Water Supply Agreement between the Parties, to remit this sum to Wilsonville. Receipt of this remittance by Wilsonville will fully satisfy these previously incurred obligations.

5. **Meter Vault Property and Ownership.** The real properties upon which the Meter Vault Project are located is described in Exhibit A and incorporated by reference herein.

Wilsonville has advanced the costs of the acquisition, Level I appraisal and environmental report, purchase price, and closing and escrow costs and staff and consultant time in the amount of \$34,898.00. Wilsonville obtained its fee interest by warranty deed. Upon payment by Sherwood of the sum of \$99,902.88 as more particularly described in section 4 above, Wilsonville agrees to grant to Sherwood a fifty percent (50%) undivided interest as tenants in common by sufficient warranty deed consistent with the terms of the warranty deed it received.

6. Contract Estimated Costs and Award. The estimated cost for the construction of the Meter Vault Project including surveying, inspection and construction management is \$962,545 net of 24 inch temporary water line extension addressed in Temporary Water Supply Agreement between the parties. Those estimated costs are more particularly described in Exhibit B attached hereto and incorporated herein by reference. The Parties anticipate that Wilsonville will issue bid notices for this Project on or before January 15, 2011.

7. Contract Obligations and Payment. The estimated contract costs contained in Exhibit B are broken down for each project element into percentage responsibility of benefit and payment obligations and joint ownership of the Parties. Project elements 1-29 constitute the jointly-owned and jointly-benefitted project elements as well as a 24 inch diameter transmission line with a 12 inch diameter by-pass (project element 28), which latter element is of exclusive benefit to Sherwood and which will be exclusively owned by Sherwood upon the end of construction. Project elements 30-42 and their respective costs are set out in a separate table in Exhibit B. These project elements have permanent sole benefit to Wilsonville and ownership of these project elements upon completion of construction will be that of Wilsonville. By separate agreement (Temporary Water Supply Agreement) the Parties have agreed that Sherwood by contract-change order will pay for the redesign and construct project elements ___ to ___. Wilsonville will reimburse Sherwood for the costs of construction of those identified facilities as provided in the Temporary Water Supply Agreement between the parties to be executed contemporaneously herewith. Sherwood, within two (2) weeks of Wilsonville's award of a contract for the construction of the Meter Vault Project, not including the Meter Vault Project facilities constructed by Sherwood as above described, shall deposit with Wilsonville an amount equivalent to its proportionate monetary interest of the Meter Vault Project so bid and contracted

for by Wilsonville. Wilsonville shall be responsible for the remainder of Project costs so contracted, subject to a true-up by the Parties at Project completion.

8. Change Orders. Sherwood shall be promptly notified in writing within seventy-two (72) hours of any proposed contract change order that exceeds \$10,000 or when the aggregate of any change orders reach \$50,000. Wilsonville shall not authorize any change order that exceeds \$10,000 or any change order or orders that in the aggregate would exceed \$50,000 if Sherwood has notified Wilsonville within seven (7) days of receipt of written notice that Sherwood objects to the same. If the objection is not resolved within a reasonable period of time, work may proceed subject to Sherwood's protest in dispute resolution rights set forth below in section 16.

9. Capacity and Ownership of the Meter Vault and Appurtenant Facilities. The Meter Vault Project facilities are intended to have an actual final peak design capacity of 30 mgd. Sherwood shall be entitled to a 67 percent (67%) capacity share thereof, and Wilsonville the remaining 33 percent (33%) share thereof. Ownership means the right of each party to use for its own benefit its portion of meter vault capacity. In the event that actual operating design capacity exceeds 30 mgd, the supplemental capacity shall be owned by the Parties in proportion to the above-referenced capacity shares. The respective capacity use of the Parties will be metered by appropriate metering facilities. The aforementioned 24 inch transmission extension line to be constructed in advance to serve the temporary water use for hydraulic and biological testing and flushing, and then maintained and refreshed, is intended to be 100% owned by Wilsonville as provided for in the Temporary Water Supply Agreement.

10. Operation and Maintenance Responsibilities. Unless otherwise agreed to by the Parties in writing, Wilsonville shall have the responsibility for operation and maintenance of the Meter Vault Project facilities. The actual, direct, out-of-pocket expenses of post-construction operation and maintenance of the Project (together with any allowance as the Parties may agree upon for general or administrative expenses) shall be billed to the Parties monthly in proportion to their respective ownership interests as set out in Exhibit B. Each Party shall be solely responsible for operation and maintenance for project elements for which they have 100 percent (100%) ownership. The cost of operation and maintenance of jointly-owned project elements shall be shared by the Parties based upon their respective ownership interests therein.

Wilsonville shall exercise due diligence in effecting its operation and maintenance responsibilities under this Agreement. Any non-emergency maintenance project or event in excess of \$10,000 in total costs will require the coordination and consent of Sherwood.

Wilsonville shall ensure that all flow meters are maintained properly and calibrated annually. Wilsonville shall be responsible for the reading of meters.

Subject to shut-down for emergencies, announced scheduled repairs, or precautionary shut-down to allow upstream spills in the Willamette River to flow past the intake of the WRWTP, Wilsonville shall operate the meter vault facility and appurtenances in a manner to not harm Sherwood and to provide Sherwood's ownership capacity share at an adequate hydraulic grade at the point of delivery to Sherwood. The point of delivery is defined as the revenue meter located approximately 400 feet west of the intersection of southwest Grahams Ferry Road and Tooze Road. Unless otherwise agreed to by the Parties, an adequate hydraulic grade at the point of delivery to Sherwood shall be at a level sufficient to completely fill Sherwood's terminal sunset reservoirs which have an overflow elevation of approximately 380 feet.

Should temporary conditions exist beyond the operational control of Wilsonville of the WRWTP which materially impact the ability of the WRWTP to produce sufficient water to meet the demand of both cities, the available supply capacity of the WRWTP shall be split in accordance with the respective ownership rights in capacity at the WRWTP. The aforementioned is not intended to alter the respective ownership of capacity of Parties in the meter vault facility and appurtenances. Neither city shall be responsible to meet the water demands of the other.

Wilsonville shall be responsible for the control and supervision of all activities of the Meter Vault Project and shall prepare and submit to Sherwood financial activity reports of the Project not less than annually and prepare such other reports and information as the Parties may require and mutually agree upon.

11. Transmission of Water to Third Parties. Unless both parties otherwise previously agree in writing, neither Party shall permit use of the Meter Vault Project for the purpose of transmitting water to any person other than Wilsonville or Sherwood customers, save and except a transfer by Sherwood of its ownership interest in the Meter Vault Project to the

Willamette River Water Coalition (WRWC). In the event of such a transfer to the WRWC by Sherwood, the Project shall be jointly owned by Wilsonville and the WRWC. No other party shall have any interest therein unless mutually agreed by the Parties. Subject to sections 14 and 15 below or as otherwise agreed to by the Parties in writing, transmission of water by a Party shall not exceed that Party's ownership share in the WRWTP.

12. Budget. Annually, and 150 days prior to the commencement of each Party's fiscal year, Wilsonville shall prepare and distribute to each Party a forecast of anticipated costs for the meter vault facility and appurtenances for that ensuing fiscal year and each Party shall contribute its share of this amount in proportion to its ownership interests in the Project.

13. Non-Emergency Repair or Replacement. Wilsonville shall monitor the overall condition of the meter vault facility and appurtenances and shall schedule any non-emergency major repair or replacement two (2) years in advance of such major repair or replacement. At the same time, Wilsonville shall prepare an estimated annual expenditure for the cost of the scheduled repair or replacement. Upon preparation of the schedule and annual costs, Wilsonville shall provide Sherwood a copy of the same.

14. Leasing of Supply Capacity. Each Party shall have the right to lease from the other Party any unused capacity of that Party's capacity share of the meter vault facility and appurtenances as the Party with the unused capacity may determine in its sole discretion to be reasonably available and prudent to be leased to the other Party. The compensation to the leasing Party shall be fairly and equitably agreed upon by the Parties.

15. Overuse of Project Facilities. Wilsonville and Sherwood shall each use the meter vault facilities and appurtenances in a manner consistent with prudent water utility practices and to minimize insofar as is practicable interference with each others use of its respective share of capacity to meets its demand. Unless caused by system operation conditions not caused by the overusing Party, any overuse of 10 percent (10%) or greater of either Wilsonville or Sherwood for two (2) consecutive years or for three (3) out of five (5) consecutive years shall result in the overusing Party compensating the other Party at a lease rate that will be fairly and equitably agreed upon by the Parties.

16. 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 respective City Managers of the Parties or their designees are designated to negotiate on behalf of the Party each represents. If the dispute is resolved at this Step One, 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, or earlier after written notice given by a party, the Parties shall submit the matter to non-binding mediation by a professional engineer with demonstrated substantial experience in the design, construction and operation of complex municipal treatment, transmission, distribution, and storage systems. 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 experienced in providing engineering mediation services who do not have an existing professional relationship with either Party. The Parties will mutually agree upon 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(s) is resolved at this Step Two, a written determination of such resolution shall be signed by each Manager and approved by their respective governing bodies, if necessary.

Step Three: If mediation does not resolve the issue within forty-five (45) days of submission of the issue to mediation, the matter will be referred to binding arbitration by a panel of three arbitrators who are professional engineers with demonstrated substantial experience in the design, construction and operation of complex municipal treatment, transmission, distribution, and storage systems. One arbitrator will be chosen by each Party and those two arbitrators chosen will choose a third arbitrator. No panel member may have an on-going professional relationship to either Party. The arbitration panel will reasonably endeavor to reach a decision on the dispute within sixty (60) days of its submission to the panel. The decision shall be binding on both Parties and there shall be no right of further appeal. The prevailing Party shall be entitled to its reasonable attorneys fees as shall be awarded by the arbitration panel.

17. Breach. If a Party defaults under the terms of this Agreement, then upon twenty (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 Section 9. 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.

18. Notices. Notices regarding operation, maintenance, repair, replacement, breach, termination, renewal or other issues shall be deemed sufficient if deposited in the United States Mail, First Class, postage prepaid, addressed to the Parties as follows:

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

City Manager
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

19. Insurance and Indemnity. To the full extent permitted by law, each Party agrees to indemnify and hold harmless the other, its counsel, officers, employees, and agents 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 – 30.300.

20. Succession. This Agreement shall be binding upon any successors to the respective Parties, which through merger, consolidation or other means, including a lawful transfer by Sherwood to the Willamette River Water Coalition (WRWC), succeeds to the water supply treatment and distribution and transmission functions of that Party.

21. Amendment. The terms of this Agreement may be amended or supplemented by mutual agreement of the Parties. Any amendment or supplement shall be in writing and shall refer specifically to this Agreement, and which shall be executed by the Parties.

22. Good Faith and Cooperation. The Parties agree and represent to each other good faith, complete cooperation, and due diligence in the performance in all obligations of the Parties pursuant to this Agreement.

23. Governing Law. This Agreement is governed by the laws of the State of Oregon.

24. Counterparts. This Agreement may be signed in two (2) counterparts, each of which shall be deemed as an original and, when taken together, shall constitute one (1) and the same agreement.

25. Mutual Indemnification. Wilsonville shall indemnify Sherwood as may be allowed for any and all claims by third parties against Sherwood arising out of the negligence or intentional acts of Wilsonville, its officials, employees, agents, contractors, or assigns. Sherwood shall indemnify Wilsonville as may be allowed for any and all claims by third parties against Sherwood arising out of the negligence or intentional acts of Wilsonville, its officials, employees, agents, contractors, or assigns.

26. Instruments of Further Assurance. From time to time, at the request of either Party, each Party shall, without further consideration, execute and deliver such further instruments and shall take such further action as may be reasonably required to fully effectuate the purposes of this Agreement.

27. Severability. In case any one or more of the provisions contained in this Agreement shall be judicially deemed 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.

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 Agreement on their behalf.

CITY OF SHERWOOD
An Oregon municipal corporation

CITY OF WILSONVILLE
An Oregon municipal corporation

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City Manager

City Manager

City Recorder

City Recorder

APPROVED AS TO FORM

APPROVED AS TO FORM

City Attorney

City Attorney