



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2018-007

APPROVING THE AGREEMENT FOR TRANSFER, PURCHASE, AND SALE OF THE WILLAMETTE INTAKE FACILITIES BETWEEN TUALATIN VALLEY WATER DISTRICT AND THE CITY OF SHERWOOD AND AUTHORIZING THE MAYOR TO SIGN

WHEREAS, the City of Sherwood presently obtains its municipal water supply from the Willamette River using an intake facility and water treatment plant located in the City of Wilsonville; and

WHEREAS, these facilities are currently used by both Sherwood and Wilsonville, and are partially owned by the Tualatin Valley Water District (TVWD); and

WHEREAS, the City of Sherwood, TVWD, and the cities of Tigard, Hillsboro, Beaverton, and Wilsonville are interested in expanding said intake facilities to serve the long-term water needs of said parties; and

WHEREAS, in connection with the above-described project, the City of Sherwood wishes to purchase a portion of TVWD's owned capacity in said intake facilities; and


WHEREAS, the City of Sherwood and TVWD have negotiated an agreement for the transfer, purchase, and sale of capacity in said facilities; and

WHEREAS, after reviewing the terms of said agreement, the Sherwood City Council believes its approval is in the best interest of the City of Sherwood.

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

Section 1. The Sherwood City Council hereby approves and authorizes the Mayor to sign the Agreement for Transfer, Purchase, and Sale of the Willamette Intake Facilities between Tualatin Valley Water District and the City of Sherwood, in a form substantially similar to Exhibit A, attached hereto.

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



Lee Weislogel, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

Resolution 2018-007

February 6, 2018

Page 1 of 1, with Exhibit A (12 pgs)

**AGREEMENT FOR TRANSFER, PURCHASE AND SALE OF THE
WILLAMETTE INTAKE FACILITIES BETWEEN
TUALATIN VALLEY WATER DISTRICT AND THE CITY OF SHERWOOD
EFFECTIVE MARCH 1, 2018**

This is an Agreement for Transfer, Purchase and Sale of the Willamette Intake Facilities (Agreement) between the Tualatin Valley Water District (TVWD) and the City of Sherwood (Sherwood).

RECITALS

- A. TVWD is a domestic water supply district organized under ORS Chapter 264, which distributes potable water to its water system users.
- B. Sherwood is a municipal corporation that operates a municipal water supply utility under ORS Chapter 225 to distribute potable water to its water system users.
- C. TVWD and the City of Wilsonville entered into the Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership dated July 6, 2000 (2000 Master Agreement), the Accord Agreement dated June 19, 2001 (Accord Agreement), and the First Amendment to the 2000 Master Agreement dated _____, 2018 (First Amendment) to construct and operate intake facilities, pumps, a water treatment plant, and certain transmission facilities (Willamette River Water Treatment Plant, or WRWTP, Supply Facilities) upon real property jointly owned by them for the purpose of supplying potable water to Wilsonville and providing a future supply to TVWD. The ownership interests in the real property and WRWTP Supply Facilities of TVWD and Wilsonville are specified in those agreements.
- D. TVWD and Sherwood entered into an Agreement on December 27, 2006 (Sherwood TVWD WRWTP Agreement) for the purchase and sale of five (5) million gallons per day (MGD) of capacity in the WRWTP Supply Facilities.
- E. The WRWTP Supply Facilities include components referred to herein as Intake Facility assets or Intake Facilities, to wit: fish screens, intake pipe, protective bollards, caisson, pump station building, pipe, electrical conduit, instruments and controls, and related appurtenances that convey raw water to the WRWTP.
- F. TVWD has received an offer from Sherwood dated March 1, 2017 to purchase a portion of TVWD's capacity ownership interest in the Intake Facility assets for the purpose of providing Sherwood with a total of a 6.47 percent ownership interest in the Intake Facility, or Nine Million Seven Hundred Thousand gallons per day (9.7 MGD) capacity ownership in the Intake Facility, contingent upon, among other things, completion of capacity expansion improvements so that the Intake Facilities can deliver approximately 150 MGD.
- G. TVWD and Sherwood have or will become members of the Willamette Intake Facilities Commission (WIF Commission) established by the Willamette Intake Facilities Intergovernmental Agreement (WIF Agreement) effective April 1, 2018, to govern management and operation of the Intake Facilities.

- H. According to the terms of the 2000 Master Agreement and Accord Agreement and in consideration of the terms and conditions of the First Amendment, Wilsonville has agreed to waive exercise of its Right of First Offer as to the ownership capacity for the capacity in the existing and expanded Intake Facilities conveyed to Sherwood under this Agreement.
- I. The Parties hereto wish to state the terms and conditions of transfer, purchase and sale of a portion of existing TVWD Intake Facilities capacity from TVWD to Sherwood, and participation by Sherwood in the expansion and construction of Intake Facility improvements to obtain a total capacity of 150 MGD.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

Based on the foregoing Recitals and the mutual promises and obligations set forth herein, and other good and fair consideration, the sufficiency of which is hereby acknowledged, the Parties agree:

1. Effective Date.

This agreement is effective as of March 1, 2018.

2. Recitals.

The Recitals above are incorporated and made part of this Agreement.

3. Intake Facilities.

Intake Facilities shall mean the facilities used to withdraw and transmit water from the Willamette River to the Parties at the System Separation Point between the WRWTP and the WWSS WTP as defined in the WIF Agreement, including the screens, intake pipe, wetwell, pump station building, pumps and associated electric and mechanical systems (e.g. wire, conduit, electrical devices and ventilation equipment). Intake Facilities includes both the existing Intake Facilities and the Intake Facilities after they are expanded and upgraded to the anticipated 150 MGD capacity.

4. Sale of Intake Facility Capacity.

Sherwood currently owns a 5.0 MGD capacity share in the existing Intake Facilities. TVWD hereby agrees to sell, transfer and assign, and Sherwood agrees to purchase, an amount of TVWD's capacity ownership interest in the Intake Facilities such that, when added to Sherwood's existing ownership share, Sherwood's total ownership share will equal an undivided 6.47 percent ownership interest, as tenant in common, of the total capacity of the Intake Facilities, as set forth on Exhibit I, attached hereto and incorporated by reference. It is intended that, when the existing Intake Facilities are expanded and modified as provided in Section 5, Sherwood will own a total of 9.7 MGD of capacity in the expanded Intake Facilities. Accordingly, the sale and transfer of the existing Intake Facility capacity is expressly contingent upon the expansion and upgrade of the Intake Facilities to achieve the approximate 150 MGD capacity, and is subject to

proportionate reduction based on actual capacity achieved as set forth in Section 5.2. Sherwood’s anticipated 9.7 MGD total capacity ownership in the Intake Facilities is based on the following:

Description	Quantity
Existing owned capacity	5.0 MGD
Increased owned capacity based on proportionate scaling up of existing owned capacity in connection with the Expansion Project (assuming 150 MGD total capacity is achieved)	1.2 MGD
Additional capacity acquired from TVWD through this Agreement (assuming 150 MGD total capacity is achieved)	3.5 MGD
Total owned capacity	9.7 MGD

5. Expansion and Upgrade of Intake Facilities.

5.1 TVWD and Sherwood, as well as the cities of Beaverton, Tigard, Hillsboro and Wilsonville, have executed or will execute the WIF Agreement as well as separate agreements with TVWD to provide for the permitting, design and construction of screens, intake pipe, protective bollards, building(s), pumps, electrical wire, conduit and equipment, instrumentation and controls and seismic improvements to achieve expanded Intake Facilities with an approximate capacity of 150 MGD (Expansion Project). Upon completion of expansion, the ownership capacity of the Intake Facilities is expected to be:

Entity	Ownership Capacity (MGD)	Ownership Interest (%)
TVWD	59.1	39.40
Wilsonville	25.0	16.67
Sherwood	9.7	6.47
Hillsboro	36.2	24.13
Tigard	15.0	10.00
Beaverton	5.0	3.33
TOTAL	150.0	100.00

5.2 Following completion of the Expansion Project, if the total capacity of the Intake Facilities is less than 150 MGD, all parties have agreed that the reduction shall be proportionately shared by all of the above Parties; except that in no event will TVWD’s capacity share be reduced below 56.5 MGD nor will Sherwood’s share be reduced below 5 MGD. If proportionate reductions are still necessary once TVWD’s 56.5 MGD and/or Sherwood’s 5 MGD threshold is reached, the remaining parties (without TVWD and/or Sherwood, as applicable) will proportionately share in the additional reduction as provided in the WIF Agreement.

5.3 TVWD and Sherwood agree that the Expansion Project will be managed by TVWD as Managing Agency under the WIF Agreement unless the Parties later mutually agree upon a construction agreement for the Project.

6. Consideration.

6.1 On or before May 1, 2018, Sherwood shall pay TVWD \$238,443 in exchange for an increase to a total 6.47 percent (9.7 MGD) ownership interest in the capacity of the Intake Facilities as set forth on Exhibit I attached hereto and incorporated by reference.

6.2 In addition, Sherwood shall pay to TVWD, through the Willamette Water Supply Program (WWSP), a proportionate share of actual costs incurred for permitting, acquiring and installing new screens, design and construction of seismic improvements, and all other improvements necessary to expand the Intake Facilities to 150 MGD at the estimated cost set forth on Exhibit I, attached hereto and incorporated by reference. These actual costs include costs expended to date and future costs for ongoing work to complete the Expansion Project. As Managing Agency of the WIF Commission, TVWD will cause the WWSP staff to manage all aspects of the Expansion Project.

6.3 The Parties agree that the cumulative amounts described in paragraphs 6.1 and 6.2 above constitute full consideration (the Purchase Price) for Sherwood's 6.47 percent (9.7 MGD) ownership interest in the capacity of the Intake Facilities. If the Expansion Project achieves a maximum intake capacity in excess of 150 MGD, Sherwood is entitled to ownership of the proportionate increase in the capacity in excess of 9.7 MGD based on the Ownership Capacity table shown in Section 5.1 above.

6.4 The Purchase Price paid to TVWD under paragraphs 6.1 and 6.2 above entitles Sherwood to 6.47 percent ownership interest in the capacity of the Intake Facilities with the expectation of realizing 9.7 MGD of capacity ownership. If the final approved design capacity of the expanded Intake Facilities is less than 150 MGD such that Sherwood's resulting capacity is less than 9.7 MGD, TVWD and Sherwood will renegotiate the cost shares of the Purchase Price based on the updated total capacity of the expanded Intake Facilities, following the same methodology used to calculate the proposed purchase price that assumed the total capacity of 150 MGD. If Sherwood's resulting capacity exceeds 9.7 MGD, TVWD is not entitled to an increase in the Purchase Price.

7. Payment.

7.1 TVWD will submit a monthly invoice to Sherwood for Sherwood's proportionate share of Expansion Project costs incurred. The invoice may include costs incurred from previous months that were carried forward provided they are separately listed.

7.2 Sherwood shall review each invoice and pay any uncontested charges within 30 days of receipt. Sherwood shall provide a written notice for any contested charge. Within 15 days of receiving the notice, TVWD and Sherwood shall discuss and attempt to resolve the objection. If not resolved, the matter will be submitted to Dispute Resolution.

7.3 When a disputed cost is resolved and results in payment of all or a part of the amount originally invoiced, Sherwood shall pay the amount within 10 days along with

interest at the rate TVWD would have earned upon the amount in the Local Government Investment Pool commencing 30 days from the original invoice to the date of payment.

8. Conditions of Sale.

TVWD and Sherwood agree that the sale and transfer of capacity ownership of the Intake Facilities is conditioned upon satisfaction of the following:

8.1 Sherwood and TVWD shall each become a party to the Willamette Intake Facilities Intergovernmental Agreement and a member of the WIF Commission.

8.2 The Intake Facilities will be expanded and upgraded to achieve approximate capacity of 150 MGD as provided in Section 5.2.

8.3 The grant of an easement to the WIF Commission by TVWD and Wilsonville over, under and through the WRWTP Property to access, locate, design, construct, operate, maintain, repair, replace and reconstruct the Intake Facilities. The easement form is part of the WIF Agreement and by signature below is acceptable to the Parties.

8.4 The grant of an easement by TVWD and Wilsonville to Hillsboro, Beaverton and Tigard, or to an intergovernmental entity to which they are parties, over, under and through the WRWTP Property for a raw water pipeline, electrical ductwork, surge tanks, electrical equipment, instrumentation and controls and any necessary structures or buildings to take raw water from the System Separation Point and convey it to the WWSS WTP. The easement form attached hereto is acceptable to the Parties.

8.5 Sherwood has water rights through the Willamette River Water Coalition with an approved point of diversion at the WRWTP, River Mile 39.

8.6 The Sherwood-TVWD WRWTP Agreement remains in full force and effect, except as may otherwise be agreed by the Parties thereto.

9. Wilsonville.

9.1 TVWD has entered into various agreements with the City of Wilsonville regarding co-ownership of the Property upon which the WRWTP, the Supply Facilities that comprise the WRWTP, and the Intake Facilities are located.

9.2 Under the 2000 Master Agreement and the Accord Agreement, Wilsonville and TVWD have reciprocal rights of first offer in any proposed sale or transfer of Property or Supply Facilities as well as a right to notice of any requested expansion of facilities to determine whether leasing is available to defer the capital expansion proposed in the notice and whether to participate. By letter dated June 7, 2017, Wilsonville declined to exercise its right of first offer for this sale and transfer by TVWD to Sherwood. TVWD has retained capacity ownership of 59.1 MGD in the Intake Facilities and Wilsonville and TVWD have agreed that the right of first offer remains as to TVWD's 56.5 MGD and Wilsonville's 25 MGD capacities respectively. Sherwood's 9.7 MGD capacity ownership is not subject to the rights of first offer in the 2000 Master Agreement, Accord Agreement or First Amendment.

9.3 Wilsonville has also consented to expansion of the Intake Facilities to 150 MGD with the expectation that its capacity ownership will increase to 25 MGD. Under the First Amendment between TVWD and Wilsonville, among other consideration, those parties agreed that Wilsonville's expansion cost share would only be \$75,000 for intake permitting and \$50,000 for new screens. TVWD and Sherwood understand and agree that

this cap on Wilsonville's cost share will cause the other Parties to the WIF Commission to pay for all other costs for expansion and upgrade at the actual costs as estimated on Exhibit I.

9.4 Sherwood understands and agrees that by entry into this Agreement, it does not become a party to the 2000 Master Agreement, Accord Agreement or First Amendment nor does it acquire any ownership interest in the Property or the remaining WRWTP Supply Facilities, existing raw water pumps, existing electrical equipment or the existing raw water pipeline from the System Separation Point into the WRWTP except as provided in this Agreement (the easements).

10. Intake Facilities Expansion.

10.1 Sherwood agrees that TVWD, as the Managing Agency of the WIF Commission, will be responsible for the permitting, design, construction and commissioning of the Intake Facilities Expansion Project. TVWD shall act by and through the WWSP staff. Under the WIF Agreement, TVWD shall:

10.1.1 Serve as the contracting agency for the Expansion Project including, but not limited to, the preparation and administration of RFPs and RFQs and all procurement solicitations, and management all contracts and change orders in accordance with TVWD Local Contract Review Board Rules.

10.1.2 Following receipt of bids or proposals, WWSP staff shall develop a written recommendation of award for presentation to all participants in the Expansion Project. Sherwood shall have 10 days to approve or object. If approved, then TVWD will issue the Notice of Intent to Award. The Parties will reasonably cooperate to resolve objections. A final decision on award must be made within the timelines stated in the solicitation.

10.1.3 Any change order or procurement contract that will exceed \$100,000 of Sherwood's proportionate share of the contract price will require prior approval except in the case of emergency.

10.1.4 A change order that is deemed an emergency may be approved by the WWSP Program Director, or designee, as the Program Director deems reasonable under the circumstances. The emergency change order will be provided to Sherwood as soon thereafter as reasonably possible.

10.1.5 WWSP will prepare a Work Plan and Cash Requirements Schedule for the Expansion Project and update it periodically so that Sherwood can monitor progress and expenditures, and forecast when monetary contributions to the Expansion Project are due and payment required.

10.1.6 TVWD and Sherwood anticipate entering into a subsequent agreement(s) regarding design and construction of the Expansion Project.

11. Representations by TVWD.

11.1 The execution, delivery and performance of this Agreement have been duly authorized by TVWD's Board of Commissioners and the person signing below has full power to bind TVWD to the terms of this Agreement.

11.2 The entry into this Agreement will not result in a breach or violation of, or constitute a default under, any other agreement to which TVWD is a party.

12. Representations by Sherwood.

12.1 The execution, delivery and performance of this Agreement have been duly authorized by the Sherwood City Council and the person signing below has full power to bind Sherwood to the terms of this Agreement.

12.2 The entry into this Agreement will not result in a breach or violation of, or constitute a default under, any other agreement to which Sherwood is a party.

13. Existing Intake Facilities Assets and WIF Site Conditions.

13.1 AS-IS. The Parties agree that TVWD makes no representation or warranties as to the condition of the Existing Intake Facility Assets and Sherwood, as an existing owner, accepts them in AS-IS condition.

13.2 Site Conditions. The Parties agree that TVWD makes no representation or warranty as to the condition of the property site for construction of the expanded and upgraded facilities. Sherwood accepts the site conditions AS-IS and any and all risks (known or unknown) as to what may be encountered when the Expansion Project occurs.

13.3 Risk of Loss. Risk of loss, damage or destruction of the Intake Facilities assets will be borne by TVWD for the period prior to the effective date of this Agreement. Thereafter, risk of loss, damage or destruction to the Intake Facilities (Existing and Expanded) shall be borne by Sherwood to the extent of Sherwood's proportionate capacity ownership.

14. Sale, Transfer and Assignment.

The Parties agree that any subsequent sale, transfer or assignment of any interest in the Intake Facilities shall be subject to the WIF Agreement.

15. Dispute Resolution.

15.1 Mediation and Litigation. If a dispute arises regarding any term of this Agreement or the performance thereof, then one Party shall give written notice to the other specifying the dispute. The chief executive officers of each Party shall meet. If the matter is not resolved within 30 days from the date of notice, then either Party may request mediation by notice to the other Party mailed or delivered within 15 days after such impasse. The parties shall mutually agree on a mediator. If no mediator is selected or if mediation is not successfully completed within 60 days of the notice requesting mediation, then the Parties may proceed to litigation in the Circuit Court of the State of Oregon for Washington County. The Parties may also mutually agree to arbitration. A Party may seek all legal and equitable remedies. Interest on any judgment shall accrue at the statutory rate.

15.2 Consent to Joinder of Disputes. The Parties understand that TVWD has similar agreements with Beaverton, Tigard, Hillsboro and Wilsonville regarding the Project and that a dispute under this Agreement or a dispute under those agreements may impact each other and the Parties desire to avoid conflicting decisions in the case of disputes affecting the Project. Therefore, the Parties to this Agreement consent to joinder of any dispute hereunder with similar disputes between TVWD and those other parties. This obligation to joinder as a party will apply to any mediation, arbitration, or any litigation in Circuit Court.

16. Breach of Agreement and Remedies.

16.1 Notice. If a Party to this Agreement believes that the other Party is in material breach of its obligations under this Agreement, the non-breaching Party must provide the breaching Party with not less than 10 days written notice of the breach in the case of nonpayment or 30-day notice in all other cases.

16.2 Cure. Within 10 days of receipt of such notice, the breaching Party must provide a written response stating how cure will be performed, if applicable. If the default is for failure to make payment, then payment must be made within 10 days unless the Parties mutually agree otherwise. The disputed amount will be paid but the Party so making payment may proceed to dispute resolution to obtain repayment of the money. Cure for defaults other than failure to make payment must be completed within 30 days unless a longer period to cure is necessary. In such case, within 30 days, the breaching Party must begin diligent cure. Nothing herein prevents a Party from seeking Dispute Resolution.

16.3 Remedies. Following Dispute Resolution, the non-breaching Party may seek all available legal or equitable remedies available under Oregon law.

17. Termination.

17.1 This Agreement may be terminated by mutual agreement of the Parties.

17.2 The Parties agree that voluntary or involuntary termination and transfer of any interest in the Intake Facilities shall be governed by the terms and provisions of the WIF Agreement.

18. Force Majeure.

The obligations of a Party, other than the payment of money, shall be suspended to the extent and for the period that performance is prevented by any cause, whether foreseen, foreseeable or unforeseeable, beyond the Party's reasonable control if the Party is making a good faith effort to resolve or avoid the cause, including without limitation labor disputes (however arising and whether or not employee demands are reasonable or within the power of the Party to grant); acts of God, laws, regulations, orders, proclamations, instructions or requests of any government or governmental entity; judgments or orders of any court; inability to obtain on reasonably acceptable terms any public or private license, permit or other authorizations; curtailment or suspension of activities to remedy or avoid an actual or alleged, present or prospective violation of federal, state, or local environmental standards; acts of war or condition arising out of or attributable to war, whether declared or undeclared, riot, civil strife, insurrection or rebellion, fire, explosion, earthquake, storm, flood, sinkholes, drought or other adverse weather conditions out of the ordinary; material delay or failure by suppliers or transporters of materials, parts, supplies, utilities or services; accidents, breakdown of equipment, machinery or facilities, or any other cause whether similar or dissimilar to the foregoing, provided that the affected Party shall give notice to the other Party within 30 days of the suspension of performance or as soon as reasonably possible, stating in such notice the nature of the suspension, the reasons for the suspension and the expected duration of the suspension. The affected Party shall resume performance as soon as reasonably possible.

19. Severability.

Should any provision of this Agreement be rendered invalid by a court of competent jurisdiction or arbitrator with authority to render a provision invalid, it is agreed that every other part of the Agreement shall remain in full force and effect so long as the benefit of the bargain remains.

20. Entire Agreement.

This Agreement, including all attached exhibits, and the referenced agreements, contains the entire and final understanding of the Parties and supersedes all prior agreements and understandings between the Parties related to the subject matter of this Agreement.

21. No Joint and Several Liability

Each Party to this Agreement assumes its own rights and obligations and does not assume the rights and obligations of any other Party.

22. Counterparts.

This Agreement may be executed in counterparts, all of which taken together shall constitute a single Agreement.

23. Covenant of Good Faith

The Parties agree in construing this Agreement no covenants shall be implied between the Parties except the covenants of good faith and fair dealing.

24. Governing Law and Judicial Review.

This Agreement and construction thereof shall be governed by and interpreted in accordance with the laws of the State of Oregon without regards to principles of conflicts of law. Subject to Dispute Resolution, any claim, action or proceeding between the Parties that arises from or relates to this Agreement shall be brought in the Circuit Court of the State of Oregon for Washington County.

25. Amendments and Modifications.

Any modification or amendment to this Agreement must be in writing and signed by both Parties.

26. Successors and Assigns

This Agreement shall bind and insure to the benefit of the Parties and their successors and assigns.

27. Third Parties.

The Parties recognize and agree that TVWD has entered into this Agreement with Sherwood for sale and purchase of a portion of TVWD's existing Intake Facilities and the commitment by Sherwood to participate in the Expansion Project. This Agreement is pursuant to a larger plan with the Cities of Beaverton, Tigard and Hillsboro under nearly identical Agreements. Therefore, the Parties hereto recognize that those other entities are third party beneficiaries of this Agreement and the Parties to this Agreement are 3rd Party beneficiaries of those Agreements.

28. Non Waiver.

Failure of any Party at any time to require performance of any provision of this Agreement shall not limit the Party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provisions.

29. Time is of the Essence.

Time is of the essence of each and every term, covenant, and condition set forth in this Agreement. A material consideration of the Parties for entering into this Agreement is that each Party will make all payments as and when due and will perform all other obligations under this Agreement in a timely manner.

30. Further Assurances.

Each Party agrees that it will, without further consideration, execute and deliver such other documents and take such other action as may be reasonably requested by the other Party to more effectively consummate or achieve the purposes or subject matter of this Agreement.

31. Notices.

All notices, payments and other communications to the Parties under this Agreement must be in writing, and shall be addressed respectively as follows:

Sherwood: City of Sherwood
 Attention: City Manager
 22560 SW. Pine Street
 Sherwood, Oregon 97140

TVWD: Tualatin Valley Water District
 Attention: Chief Executive Officer
 1850 SW 170th Avenue
 Beaverton, Oregon 97003

All notices shall be given by (i) personal delivery to the Party, (ii) certified or registered mail, or (iii) electronic communication followed immediately by registered or certified mail return receipt requested. All notices shall be effective and shall be deemed delivered (a) if by personal delivery, on the date of delivery, (b) if by certified or registered mail on the date delivered to the United States Postal Service as shown on the receipts; and (c) if by electronic communication, on the date the confirmation is delivered to the United States Postal Service as shown on the actual receipt. Upon a change in ownership, a new Party shall, upon entering into this Agreement, notify the other Party or Parties of their contact person, address and facsimile number. Any Party may change its address from time to time by notice to the other Parties.

32. Remedies Not Exclusive.

Each and every power and remedy specifically given to the non-defaulting Party shall be in addition to every other power and remedy now or hereafter available at law or

in equity (including the right to specific performance), and each and every power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission in the exercise of any such power or remedy and no renewal or extension of any payments due under this Agreement shall impair any such power or remedy or shall be construed to be a waiver of any default.

33. Survival of Terms and Conditions.

The provisions of this Agreement shall survive its termination to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

TUALATIN VALLEY WATER DISTRICT

CITY OF SHERWOOD

By: _____

By: _____

Title: _____

Title: _____

Approved as to Form:

Approved as to Form:

District Counsel

City Attorney

Exhibit I

Cost Shares for Willamette Intake Facilities Purchased from TVWD January 24, 2017

Acquired Capacity (MGD) from TVWD by Party by Asset

Project Element	Wilsonville	TVWD	Sherwood	Tigard	Tualatin	Hillsboro	Beaverton	Total
Screening	0	0	0	0	0	0	0	0
Intake Pipe	0	0	3.45	15	0	36.2	5	59.65
Wetwell	0	0	3.45	15	0	36.2	5	59.65
Pump Station Building	0	0	3.45	15	0	36.2	5	59.65
Pumps	0	0	0	0	0	0	0	0
Electrical - wire & conduit	0	0	0	0	0	0	0	0
Electrical - equipment	0	0	0	0	0	0	0	0
Raw Water Pipeline	5	0	4.7	0	0	0	0	9.7

Cost of Purchase (\$) from TVWD by Party by Asset

Project Element	Wilsonville	TVWD	Sherwood	Tigard	Tualatin	Hillsboro	Beaverton	Total
Screening	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Intake Pipe	\$ -	\$ -	\$ 50,462	\$ 219,399	\$ -	\$ 529,482	\$ 73,133	\$ 872,476
Wetwell	\$ -	\$ -	\$ 80,739	\$ 351,038	\$ -	\$ 847,171	\$ 117,013	\$ 1,395,961
Pump Station Building	\$ -	\$ -	\$ 41,355	\$ 179,802	\$ -	\$ 433,923	\$ 59,934	\$ 715,014
Pumps	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Electrical - wire & conduit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Electrical - equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Raw Water Pipeline	\$ -	\$ -	\$ 65,888	\$ -	\$ -	\$ -	\$ -	\$ 65,888
Total	\$ -	\$ -	\$ 238,443	\$ 750,239	\$ -	\$ 1,810,577	\$ 250,080	\$ 3,049,339