



ORDINANCE 2019-006

APPROVING THE SECOND RESTATED INTERGOVERNMENTAL COOPERATIVE AGREEMENT CREATING THE WILLAMETTE RIVER WATER COALITION, AN INTERGOVERNMENTAL ENTITY FORMED UNDER ORS CHAPTER 190 BETWEEN TUALATIN VALLEY WATER DISTRICT AND THE CITIES OF SHERWOOD, TIGARD AND TUALATIN

WHEREAS, Tualatin Valley Water District (District) and the Cities of Sherwood, Tigard, and Tualatin were original members, along with other municipal water providers, of the Willamette Water Supply Agency, an ORS Chapter 190 intergovernmental entity formed in 1997 to develop and use the Willamette River as a drinking water source within their respective service boundaries; and

WHEREAS, in 2008, the District, Sherwood, Tigard, and Tualatin adopted the First Restated Intergovernmental Cooperative Agreement Creating the Willamette River Water Coalition (WRWC) (First Restated Agreement), continuing the original 1997 intergovernmental entity under ORS 190.003 to 190.265, to develop and use Willamette River water and own, upgrade, expand, operate, and manage a water treatment plant, and transmission and storage facilities; and

WHEREAS, the municipal entities who comprise the WRWC now wish to amend and restate the 2008 First Restated Agreement and enter into the Second Restated Intergovernmental Cooperative Agreement Creating the Willamette River Water Coalition (Second Restated Agreement), effective October 1, 2019, thereby continuing the original intergovernmental entity under ORS 190.003 to 190.265, vested with the powers and authorities set forth in the Second Restated Agreement, attached hereto as Exhibit 1 and incorporated by reference; and

WHEREAS, the Sherwood City Council finds that it is in the best interest of the City of Sherwood to enter into the Second Restated Agreement and to continue as a member of the WRWC; and

WHEREAS, ORS 190.085 requires the City of Sherwood and the other parties to enact an ordinance ratifying the Second Restated Agreement.

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

Section 1: Pursuant to ORS 190.085, the City Council of the City of Sherwood hereby approves the Second Restated Intergovernmental Cooperative Agreement Creating the Willamette River Water Coalition (Agreement), attached hereto as Exhibit 1 and incorporated by reference, and authorizes the Mayor to execute the Agreement.

Section 2: The effective date of the Agreement is October 1, 2019.

Section 3: The public purpose of the WRWC Commission is to receive, hold, preserve, and protect existing and future water rights on the Willamette River for municipal use by the members of the WRWC and use all authority vested in it by the Agreement for the operation, maintenance, design, construction, repair, and replacement of any supply system assets that may be authorized by the WRWC Commission.

Section 4: To carry out its public purpose, the WRWC Commission shall have the following powers, duties, and functions, as more specifically set forth in the Agreement attached hereto as Exhibit 1, and in addition to those specified in ORS 190.003 through 190.265:

- A. To receive and hold Permit No. 49240, issued to WRWC by the State of Oregon Water Resources Department for 130 million gallons per day, with a priority date of June 19, 1973, to acquire new or existing water rights, to develop those water rights on the Willamette River, and to perform all other actions necessary to preserve and protect them.
- B. To study and support water resource stewardship and natural resource protection of the Willamette River to maintain and enhance water quality and availability.
- C. To provide support to other entities involved in efforts to improve the health of the Willamette River watershed.
- D. To purchase, own, hold, appropriate, and condemn land, facilities, and rights of way either in its own name or in the name of an individual Party to develop Willamette River rights.
- E. To design, permit, construct, own, operate, repair, and replace water system facilities as it deems necessary for municipal use in the service territories of each Party.
- F. To otherwise manage the business affairs of the WRWC as set forth in the Agreement, to adopt such bylaws, rules, regulations, and policies as the Parties deem necessary to further the purposes of the WRWC, and to exercise all powers pursuant to the applicable acts, charters, or laws of the individual parties, which are necessary or desirable to economically and efficiently develop and operate the WRWC Commission.

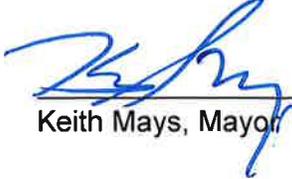
Section 5: This Ordinance has been included in the published notice of the meeting where it was adopted. The published notice stated the time, date, and place of the meeting and gave a brief description of the ordinance to be considered at the meeting, and that copies of the ordinance are available at the office of the City of Sherwood.

Section 6: This Ordinance was adopted following a first reading and public hearing on June 18, 2019, followed by a second reading, public hearing, and affirmative vote of at least a majority of the members of the City Council of the City of Sherwood at its regular meeting on July 2, 2019, and was signed by the presiding officer and attested to by the City Recorder.

Section 7: This Ordinance shall take effect 30 days from the date of its enactment by the City Council and approval by the Mayor.

Section 8: Not later than 30 days after the effective date of the Agreement, the City of Sherwood shall file or cause to be filed with the Secretary of State for the State of Oregon a copy of this Ordinance together with the statement required by ORS 190.085(2).

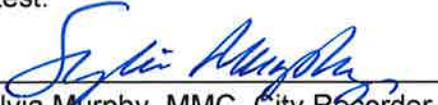
Duly passed by the City Council this 18th day of June, 2019.



Keith Mays, Mayor

7/2/2019
Date

Attest:



Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Scott	<input checked="" type="checkbox"/>	_____
Griffin	<input checked="" type="checkbox"/>	_____
Brouse	<input checked="" type="checkbox"/>	_____
Young	<input checked="" type="checkbox"/>	_____
Garland	<input checked="" type="checkbox"/>	_____
Rosener	<u>Absent</u>	_____
Mays	<input checked="" type="checkbox"/>	_____

**SECOND RESTATED INTERGOVERNMENTAL COOPERATIVE AGREEMENT
CREATING THE WILLAMETTE RIVER WATER COALITION (WRWC)**

THIS SECOND RESTATED INTERGOVERNMENTAL COOPERATIVE AGREEMENT is entered into by and between the following entities: Tualatin Valley Water District, a Domestic Water Supply District formed under ORS 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”), each also sometimes referred to as (“Party”) or collectively as (“Parties”).

RECITALS:

A. WHEREAS, the Parties 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, these Parties and others created the Willamette Water Supply Agency by Agreement and amended that Agreement in 2008 to rename it as the Willamette River Water Coalition (“WRWC”), to develop and use water from the Willamette River through jointly owned water treatment plant(s), transmission pipelines, pumping stations and storage facilities; and

C. WHEREAS, the intent of the WRWC Agreement was to allow Parties to develop and use the Willamette River presently or in the future for water supply needs that could be met by the Willamette River as an economic, efficient and available source; and

D. WHEREAS, TVWD and the City of Hillsboro entered into the Agreement for Design and Construction of the Willamette Water Supply Program (“WWSP”) dated June 16, 2015, to construct an expanded raw water intake facility and water treatment facilities at the Willamette River Water Treatment Plant (“WRWTP”) and finished water transmission pipelines, pumping and storage facilities to deliver water to the TVWD and Hillsboro distribution systems known as the Willamette Water Supply System (“WWSS”); and

E. WHEREAS, the Parties hereto along with the Cities of Hillsboro, Beaverton and Wilsonville engaged in the Willamette Governance Group negotiations regarding participation in all or part of the WWSS improvements that originally envisioned all water treatment plant facilities being located at the (“WRWTP”) in Wilsonville on land owned jointly by TVWD and Wilsonville under ownership and management of an ORS Chapter 190 entity; and

F. WHEREAS, the WRWC Parties engaged in the Willamette Governance Group negotiations to determine how and when the Parties would apply WRWC Water Permit No. 49240 to beneficial use in the new or expanded WWSS facilities or the WRWTP and whether the WRWC would be designated as the ORS Chapter 190 governance entity or if a new entity would be formed; and

G. WHEREAS, for various reasons, TVWD and Hillsboro elected to locate the WWSS Water Treatment Plant on other property near Sherwood and that decision reduced the focus of the ORS Chapter 190 governance entity to include only the upgrade and expansion of the Water Intake Facilities; and

H. WHEREAS, the resulting Willamette Intake Facilities Agreement dated April 18, 2018, provides for the upgrade and expansion of the Raw Water Intake Facilities to approximately 150 million gallons per day, created the Willamette Intake Facilities (“WIF”) Commission, and the Parties, except Tualatin, intend to use the WRWC permit to provide their respective allocated shares of water for treatment at the Willamette River Water Treatment Plant (Sherwood and Tigard) or the WWSS Water Treatment Plant (TVWD and Tigard); and

I. WHEREAS, Tualatin has determined not to participate in the above-described facilities and governance agreements but desires to maintain its opportunity to use the WRWC Permit at some point in the future; and

J. WHEREAS, as a result of the creation of the WIF Commission and the newly created Willamette Water Supply System Commission, under ORS Chapter 190, the WRWC’s primary mission and scope should be changed so that it holds, manages and protects the WRWC Water Permit 49420; acquires new or existing water rights; provides stewardship in water quality and natural resource management services to the Parties; studies local water demands; owns potable water facilities as necessary for the benefit of the Parties; and governs the use of existing permitted rights and future rights and areas of water usage; and being fully advised.

NOW, THEREFORE, the Parties hereto agree as follows:

SECTION 1. WILLAMETTE RIVER WATER COALITION

1.1 WRWC. There is hereby restated and continued the Willamette River Water Coalition. The Parties to the WRWC shall number four (4). The governing body of each Party shall appoint one (1) Board Member and may appoint one (1) alternate to act as Board Member in the absence of the primary Board Member. Each Board Member shall have one vote. Board Members of WRWC shall serve at the pleasure of their respective appointing bodies.

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 receive and hold WRWC Permit No. 49240 for 130 million gallons per day (mgd), 202 cubic feet per second (cfs), with a priority date of June 19, 1973, to acquire new or existing water rights and to develop those water rights on the Willamette River, and to perform all other actions necessary to preserve and protect them.

SECOND RESTATED INTERGOVERNMENTAL COOPERATIVE AGREEMENT

- 1.2.3 To study and support water resource stewardship and natural resource protection of the Willamette River to maintain and enhance water quality and availability.
- 1.2.4 To provide support to other entities involved in efforts to improve the health of the Willamette watershed.
- 1.2.5 To purchase, own, hold, appropriate and condemn land, facilities, and rights of way either in its own name or in the name of an individual Party hereto to develop Willamette River rights.
- 1.2.6 To design, permit, construct, own, operate, maintain, repair and replace water system facilities as it deems necessary.
- 1.2.7 To perform and exercise pursuant to the Charter or principal acts of the Parties 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.

1.3 Effective Date and Duration. This Agreement is effective on October 1, 2019. Subject to Section 6 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 Meetings Law, Oregon Revised Statutes Section 192.610 et seq. A majority of the Board Members shall constitute a quorum for the transaction of business, and only if a quorum is present, a majority of those present shall be necessary to decide any issue, except as otherwise provided herein.

- 1.4.1 Any decision of WRWC seeking financing or other financial obligation shall require an affirmative vote of the governing body of each Party that will financially participate in any project. A WRWC Board Member may bind his/her entity without governing body approval if the amount in question is within his/her delegated contracting authority.
- 1.4.2 A unanimous vote shall require an approving vote of each Board Member. Unanimous votes are required for allocation of WRWC water rights, issuance of WRWC issued debt, admission of new Parties, transfer of interest, and dissolution.
- 1.4.3 A supermajority vote shall require an affirmative vote of three (3) Board Members. Supermajority vote is required for designation of the Managing Agency.

1.5 Meetings. Regular meetings of WRWC shall be conducted at such times as WRWC may designate but shall be no less than semi-annually. The Chair, upon his/her own motion, may, or shall, at the request of two (2) Board Members of WRWC, call a special meeting. The Managing Agency shall endeavor to give notice to Board Members of the WRWC of each meeting no less than seven (7) days in advance, unless an emergency exists. In cases of an emergency, notice reasonable under the circumstances shall be given.

1.6 Officers. Annually, at the beginning of each fiscal year, the Board Members shall elect a Chair and Vice-Chair from among themselves 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 Member 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 the WRWC Board or until their successors shall be appointed and take office.

1.7 Work Plan and Budgeting, Accounting, Audits. WRWC shall annually prepare a Work Plan and a proposed budget for the next fiscal year and distribute it to the Parties by February 1 of each year. This Work Plan shall include an estimate of expenses for general administration and for special projects. It is anticipated that each Party shall budget its own staff and funds for costs or provision of in-kind services as necessary. The Work Plan, Budget, and duties performed by the Managing Agency will include invoice, payment, and other financial procedures and matters.

Each Party'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 Parties, the second half of the total administrative costs for the fiscal year will be divided among the WRWC Parties according to their percentage share of the total number of water meters served by the Parties of the WRWC as of December 31 of the current 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 special projects that will be approved with each budget and separate from general administration, each Party's apportioned share shall be estimated and set forth in a Work Plan detailing the scope of work to be performed and the participating Parties, and the amounts so estimated may be budgeted and appropriated by the Parties in accordance with local budget law. Any special project to design, construct and own water system facility assets shall have a separate Project Agreement between the participating Parties.

1.8 Effect of Participation. Each Party's annual budget contribution shall entitle it to Party status, and each Party shall own an undivided proportionate interest in the assets 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 Party will have the right to equity participation in the construction of new or expanded facilities if proposed, have an option to purchase

an interest in new or expanded facilities at future times, and/or to be a wholesale customer, subject to the terms of any applicable project agreement.

1.9 **Managing Agency.** TVWD shall be the Managing Agency until a change is requested by the Managing Agency or three Parties vote to change, such change to be effective 365 days after such request or vote, unless otherwise agreed by the Parties. Upon the request of two or more Parties, the Board shall solicit proposals for selection of a Managing Agency, subject to the foregoing. The Board may delegate any and all powers to the Managing Agency as necessary to provide for the management functions required to administer the WRWC. The Managing Agency is responsible for administering the day-to-day business affairs of the WRWC. The Managing Agency shall act for the mutual benefit of all Parties at all times in the performance of all Managing Agency duties. In addition to any other duties assigned or delegated by the Board, the Managing Agency's duties shall include, but are not necessarily limited to, the following:

- 1.9.1 Prepare a proposed annual Work Plan and corresponding proposed annual budget.
- 1.9.2 Perform such duties as established in an adopted annual Work Plan and any other duties as directed by the Board.
- 1.9.3 Provide administration of the Board meetings and required public meeting notices and duties.
- 1.9.4 Maintain records in accordance with public records laws.
- 1.9.5 Perform financial planning and management for the WRWC including payment of invoices, accounting, reporting, financial oversight and budgeting in accordance with Oregon law.
- 1.9.6 Develop and coordinate capital improvement plans including the timing of any improvements or expansions related to the WRWC. Each Party will participate in planning projects, such as a Master Plan or facilities plan, and will provide good-faith estimates for future demand.
- 1.9.7 Provide leadership, administration and staffing in support of the Board and Board committees.
- 1.9.8 Prepare and update an Operations Plan in coordination with the Parties.
- 1.9.9 Coordinate with the WRWTP, the Willamette Intake Facilities and the WWSS to support and facilitate the orderly and effective operations of those systems to deliver WRWC water to WRWC Parties.
- 1.9.10 Take prompt action, as necessary, in accordance with a Curtailment Plan or

an Emergency Response Plan pertaining to the WRWC water rights and report to the Parties and the Board as soon as reasonably possible.

- 1.9.11 Procure and manage appropriate insurance coverages and fidelity coverages as directed by the Board.
- 1.9.12 Administer contracts, according to the Managing Agency's contracting rules and subject to direction of the Board.
- 1.9.13 Provide the Parties and their authorized representatives access to all books, documents, papers and records of the Managing Agency that are directly related to the WRWC and associated capital improvement projects for the purpose of making any audit, examination, copies, excerpts and transcripts.
- 1.9.14 Provide public communications and outreach, including response to public information, media or records requests.

SECTION 2. BENEFICIAL USE OF WATER RIGHTS

2.1 Delegation of Powers. It is a primary intent and purpose of this Agreement to enable the individual Parties to develop information, participate in studies, and negotiate relevant agreements regarding implementation of recommendations to design, construct, finance, own and operate facilities to use WRWC Water Rights. WRWC may contract with any Party or other person or entity for performance of services. WRWC and each individual Party shall define the scope of individual Party contributions or individual efforts.

2.2 Existing 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 this resource in the best interests of all Parties subject to this Agreement. Perfection of any permit shall be in the name of WRWC for the benefit of all Parties.

2.3 Administration of Water Rights. WRWC shall have the full authority to modify, combine or abandon water rights and permits and seek new sources through new permits or contracting, or leasing of stored water from federal, state or local storage projects for municipal and industrial needs. Curtailment plans shall be developed and applied based upon water utilization.

2.4 Other Water Rights. A Party may apply for other water rights but must notify WRWC and the other Parties and provide a 30-day opportunity for WRWC or any other Party to join in the application to the Oregon Water Resources Department. Use of such water rights shall be in accord with Section 4, below.

SECTION 3. WATER RIGHT ALLOCATIONS

- 3.1 Allocated Shares of Water. WRWC and its Parties shall each owe a duty of good faith

and fair dealing with each other and a commitment to reasonably allocate the unallocated portion of the Existing Right and new water rights obtained by WRWC according to each individual Party's needs and forecasted demand. For purposes of this Agreement, use of the word "allocated" does not mean a change of permit/certificate name to a Party; it means an allocation of a specified amount of water under a permit or certificate.

3.2 Tualatin Valley Water District. Tualatin Valley Water District originally applied for and obtained Permit 49240 on June 19, 1973 and subsequently assigned this water right to the WRWC.

3.3 Tigard. Tigard abandoned a 1995 permit application to appropriate 26 million gallons per day (mgd) (40 cfs). Tigard is allocated 26 mgd (40 cfs) of the Existing Right.

3.4 Sherwood. Sherwood has constructed transmission facilities to deliver 20 mgd from the Willamette River to its service territory. Sherwood is allocated 20 mgd (31 cfs) of the Existing Right.

3.5 Tualatin. Tualatin forecasts the potential need for 3 to 4 mgd of additional water by 2040. At this time, Tualatin is not allocated a specific capacity share of the Existing Right. If Tualatin elects, TVWD agrees to allow Tualatin to use 3.1 mgd of TVWD's 59.1 mgd capacity share of the Willamette Intake Facilities, subject to Tualatin negotiating agreements with TVWD, WIF, WRWTP, WWSS and/or individual members of those entities as needed to draw, treat and deliver the water to Tualatin's distribution system.

3.6 Unallocated. Accounting for the amounts set forth above in total, the unallocated remainder of the Existing Right is 24.9 mgd as set forth on Exhibit A attached hereto and incorporated by reference. TVWD shall have first call and right to use unallocated water rights. This call right shall be exercised within 30 days from the date a Party requests the WRWC to make an allocation, or at any time upon notice from TVWD to the WRWC.

3.7 Cooperation. All or a portion of a Party's allocated water rights may be used at the Willamette Intake Facilities (WIF) or, subject to Section 4 of this Agreement, at other intake facilities. The Parties acknowledge the provisions of the WIF Agreement shall be complied with and not affected by this Agreement, and that any other intake facilities may be governed by separate agreements. As opportunities arise, the Parties agree to seek additional WIF capacity, when and if available, seek additional water rights, and otherwise cooperate in good faith to achieve a Party's goal.

SECTION 4. USE OF WATER AND CONSTRUCTION OF NEW FACILITIES.

4.1 Approved Uses. Beneficial use of water at the WIF, WRWTP and WWSS, is deemed approved by signature to this Agreement, and TVWD, Sherwood and Tigard are authorized to proceed.

4.2 Future Proposals to Use Water. If any Party should desire to design, permit, finance

and construct, improvements to use allocated or unallocated water rights, as set forth in Exhibit A, it shall notify WRWC and the other Parties in writing (“Notice”) of the amount of water proposed to be used and a description of the proposed construction, expansion or modification (“Project”). The Notice shall include cost estimates and a reasonably detailed description of the proposed Project. The Parties, within 90 days of the date of Notice, shall notify the WRWC of their acceptance or rejection of participation in the Project, and cost shares shall thereafter be allocated. If notice of acceptance of the Project from a Party is not received within 90 days, participation in the proposed Project shall be deemed rejected by the Party failing to respond.

4.3 Individual Rights. Facilities constructed under an approved Project may be in the name of WRWC, but design and construction decision making shall be by the participating Party(ies), as set forth in a project agreement. If WRWC does not construct, expand or modify as proposed by an individual Party or Parties, then by separate written agreement or addenda, any Party or Parties may proceed with the proposed Project if the Parties 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 Parties’ systems. If the proposal is found inconsistent or incompatible, the Party(ies) may use non-WRWC water rights held outside this Agreement. Under all circumstances, no such Project shall impair the ability of the WRWC to serve the other Parties or significantly increase the cost of usage to the other Parties unless the Party(ies) undertaking the Project agrees to pay the increased unit costs to WRWC or the Parties which have declined to participate in the Project.

4.4 Nonparticipating Parties. If a WRWC Party Project is undertaken and participation in a Project is fixed, then a nonparticipating Party shall have no further opportunity to participate unless the Participating Party(ies) 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 Party(ies) shall notify the nonparticipating Parties specifying the changes. Within 30 days of notice, the nonparticipating Parties 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 WRWC to serve the other Parties or significantly increase the cost of usage as described in Section 4.3. Objections shall be referred to dispute resolution.

SECTION 5. SALE OR LEASE OF WATER TO OTHER ENTITIES.

5.1 WRWC. The Parties agree that the Existing Right and any Willamette River water rights hereafter acquired by WRWC are for regional application. The Parties agree to work in good faith to consider other municipal users through ownership, wholesale, mutual aid or emergency basis. Subject to paragraph 5.2, WRWC or its Parties, upon approval by WRWC (and, if the water rights in question have been allocated, approval of the Party to which they have been allocated), shall have the power to sell or lease water and water rights to other non-Party entities at prices determined from time to time by WRWC. Nothing in this section shall overrule the provisions of any other agreement to which a Party may have entered into such as the WIF or WWSS Agreements.

5.2 Proceeds of Sales. The proceeds attributable to the sale or lease of water and water

rights to a non-Party shall be paid to WRWC unless otherwise determined by WRWC. Any distribution of these proceeds shall be as WRWC determines after expenses and costs of debt service, construction, operation and maintenance are met.

5.3 Transmission Line Charges. Sales or leases which may require wheeling through transmission lines of a Party, may be subject to a transmission line charge to be established by the affected Party. Charges for use of transmission lines shall be collected by WRWC from the user and paid to the Party who owns the transmission line.

5.4 Other Charges. Other charges may be established by WRWC as necessary.

SECTION 6. WITHDRAWAL/TERMINATION.

6.1 Voluntary. Any Party may elect to withdraw from WRWC by giving written notice of its desire to WRWC and other Parties on or before April 1 of any year. Withdrawal shall be effective on July 1 immediately following timely notice unless the Parties otherwise agree. Upon the effective date of withdrawal, unless otherwise agreed by the Withdrawing Party and WRWC, that Party shall immediately cease membership in WRWC. The Withdrawing Party shall continue to pay its share of, or be responsible for, any previously incurred joint debt, and shall hold harmless the remaining Parties for those financial responsibilities and obligations attributable to the Withdrawing Party.

6.2 Assets (not including Water Rights).

- 6.2.1 If WRWC, after receiving the notice of withdrawal, desires to purchase the assets of the Withdrawing Party, it shall notify the withdrawing Party in writing of its desire to purchase the Withdrawing Party's interest at market value. Such notice shall be given within 60 days of receipt of the notice of withdrawal.
- 6.2.2 If WRWC declines, then the one or more of the remaining Parties may give notice, within 60 days after notice of WRWC's decline, of intent to purchase assets as provided herein. Unless otherwise agreed in writing, the purchase of assets shall be apportioned equally among the buying Parties and their capital accounts shall be adjusted accordingly.
- 6.2.3 The price to be paid for the assets, whether determined by mutual agreement or otherwise, shall be paid to the Withdrawing Party in full within 12 months following the date of withdrawal set forth in the notice of intent to withdraw.
- 6.2.4 In the event that the WRWC or the remaining Parties fail to purchase the interest of the Withdrawing Party within the 12-month period, or in the event the WRWC or the remaining Parties decline to purchase the Withdrawing Party's interest, then the Parties shall negotiate a mutually agreeable operating

or a co-ownership agreement for the assets. If the purchasing Party(ies) fail to pay the purchase price within 12 months of the date of withdrawal and if the purchasing Party(ies) and Withdrawing Party are unable to agree upon a mutually acceptable payment schedule, then the Withdrawing Party shall have the right to sell its assets to any other non-Party entity approved by the governing boards or councils of the remaining Parties. The Withdrawing Party'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 Withdrawing Party shall remain responsible for all terms and conditions of this Agreement.

6.3 Water Rights. If a Party seeks to withdraw from the WRWC, it may retain its allocated portion of the Existing Right, and its allocated portion of any Willamette River water rights hereafter acquired by WRWC. The Withdrawing Party shall be solely responsible to meet all requirements of any other agreement to which it is a party and obtain consent as necessary regarding use of its retained water right.

Any unallocated amount will remain with WRWC, and the Withdrawing Party shall have no claim or right thereto.

6.4 Further Action. The Parties agree to cooperate to execute all documents necessary to make the water right transfers and assignments described herein.

6.5 Breach. Upon material breach of this Agreement, WRWC or an aggrieved Party may seek all remedies available at law or in equity, including termination of a Party's interest in this Agreement.

6.6 Dispute Resolution.

6.6.1 Method for resolving disputes. If a dispute arises between WRWC and a Party or between Parties (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 City Manager, Chief Executive Officer, or other persons designated by each of the disputing Parties ("Manager"), will negotiate on behalf of the entities they represent. Prior to negotiation, the nature of the dispute shall be reduced to writing and shall be presented to each Manager ("Notice of Dispute") who shall then meet within 15 days or as otherwise agreed 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.

Step Two: (Mediation)

If the dispute cannot be resolved under Step One, within 45 days after Notice of Dispute, 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 5 mediators from Arbitration Service of Portland, Inc. or another entity or firm providing mediation services they may agree to use. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree or if mediation is not completed within 90 days from Notice of Dispute, then the Parties may exercise legal remedies. Any common costs of mediation shall be borne equally by the Parties, and each Party shall each bear its own costs and fees therefor. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Manager and ratified by the WRWC which shall be binding upon the Parties.

6.6.2 Arbitration; Jurisdiction of Circuit Court. After exhaustion of the negotiation and mediation 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 or by a mutual separate arbitration agreement. In the absence of such an agreement, that same court shall have jurisdiction.

SECTION 7. AMENDMENT.

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

SECTION 8. GENERAL PROVISIONS.

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

8.2 New Parties and Assignment. WRWC may accept additional government entities as Parties under terms and financial conditions that WRWC deems just and equitable on a case-by-case basis and only upon a unanimous vote of the Parties, with such approving vote not to be unreasonably withheld. Except for changes of organization through entity formation, merger, consolidation or annexation, no Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior unanimous consent of WRWC.

8.3 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.

8.4 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, postage prepaid, addressed to the Parties as follows:

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

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

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

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

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

8.5 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.

8.6 Attorney Fees. If a dispute should arise between the WRWC and a Party or between Parties regarding any term or portion of this Agreement, each Party shall bear its own attorney fees and expert witness fees.

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

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

8.9 Instruments of further Assurance. From time to time at the request of any Party or WRWC, each Party 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 Parties have executed this Intergovernmental Cooperative

Agreement by the date set forth opposite their names below.

TUALATIN VALLEY WATER DISTRICT

Date: _____, 2019

By: _____
its President: Bernice Bagnall

Approved as to Form:

By: _____
District Counsel

CITY OF TIGARD

Dated: _____, 2019

By: _____
its Mayor: Jason B. Snider

Approved as to Form:

By: _____
City Attorney

Date: _____, 2019

CITY OF SHERWOOD

By: _____
its Mayor: Keith Mays

Approved as to Form:

By: _____
City Attorney

Date: _____, 2019

CITY OF TUALATIN

By: _____
its Mayor: Frank Bubenik

Approved as to Form:

By: _____
City Attorney

Exhibit A

Party	Assigned MGD	Total CFS
TVWD	59.1 * ₁	91.6 * ₁
Tigard	26.0	40.0
Sherwood	20.0	31.0
Tualatin	-	-
Subtotal	105.1	162.6
Unassigned	24.9 * ₂	39.4 * ₂
Total	130.0	202.0

*₁ Tualatin may elect to use 3.1 MGD of TVWD’s WIF MGD allocation, subject to conditions of this Agreement.

*₂ The remaining unallocated water right of 24.9 MGD is available for use by a Party upon approval by the WRWC Parties, subject to conditions of this Agreement. TVWD shall have first call and right to use unallocated water rights, as set forth in this Agreement. This call right shall be exercised within 30 days from the date a Party requests the WRWC to make an allocation, or at any time upon notice from TVWD to the WRWC.