

RESOLUTION NO. 2342

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF SHERWOOD AND WILSONVILLE REGARDING TRANSMISSION SEGMENT 3A: REIMBURSEMENT FOR WORK COMPLETED AND OWNERSHIP THEREOF; AND REGARDING TRANSMISSION SEGMENT 3B: PAYMENT BY SHERWOOD TO WILSONVILLE FOR WORK PREVIOUSLY ACCOMPLISHED, EASEMENT ACQUISITION COSTS AND PROCESS, ENVIRONMENTAL PERMITTING, PIPELINE DESIGN SERVICES, AND TERMS OF ADVANCE SHERWOOD FUNDING FOR CONSTRUCTION OF SEGMENT 3B

WHEREAS, the City of Wilsonville and City of Sherwood desire to enter into An Intergovernmental Agreement Between The Cities Of Sherwood And Wilsonville Regarding Transmission Segment 3A: Reimbursement For Work Completed And Ownership Thereof; And Regarding Transmission Segment 3B: Payment By Sherwood To Wilsonville For Work Previously Accomplished, Easement Acquisition Costs And Process, Environmental Permitting, Pipeline Design Services, And Terms Of Advance Sherwood Funding For Construction Of Segment 3B, hereinafter referred to as "IGA Regarding Transmission Segments 3A and 3B," a copy of which is marked as Exhibit 1, attached hereto and incorporated by reference as if fully set forth herein, in accordance with the recitals and the provisions of the agreement.

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

1. The City Council authorizes the City Manager to enter into, on behalf of the City of Wilsonville, the IGA Regarding Transmission Segments 3A and 3B, Exhibit 1 attached hereto and incorporated by reference as if fully set forth herein.
2. This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a special meeting thereof this 19th day of January, 2012, and filed with the Wilsonville City Recorder this date.



Tim Knapp, Mayor

ATTEST:



Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Núñez	Excused
Councilor Hurst	Excused
Councilor Goddard	Yes
Councilor Starr	Yes

Attachments:

Exhibit 1 – Intergovernmental Agreement Regarding Transmission Segments 3A and 3B

EXHIBIT 1

AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF SHERWOOD AND WILSONVILLE REGARDING TRANSMISSION SEGMENT 3A: REIMBURSEMENT FOR WORK COMPLETED AND OWNERSHIP THEREOF; AND REGARDING TRANSMISSION SEGMENT 3B: PAYMENT BY SHERWOOD TO WILSONVILLE FOR WORK PREVIOUSLY ACCOMPLISHED, EASEMENT ACQUISITION COSTS AND PROCESS, ENVIRONMENTAL PERMITTING, PIPELINE DESIGN SERVICES, AND TERMS OF ADVANCE SHERWOOD FUNDING FOR CONSTRUCTION OF SEGMENT 3B

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, originally Tualatin Valley Water District ("TVWD") and Wilsonville partnered to construct and own undivided ownership shares in the Willamette River Water Treatment Plant ("WRWTP") and appurtenances thereto from the raw water intake in the Willamette River through Segment 1 of the finished water 63-inch water transmission line ("Supply Facilities"). The treatment plant portion of the WRWTP has a current designed capacity of 15 mgd. Subsequently, based on certain conditions Wilsonville consented to Sherwood's purchasing certain interests in the WRWTP Supply Facilities from TVWD's interests, which included a capacity purchase from TVWD of TVWD's 1/3 or 5 mgd of the 15 mgd capacity, while Wilsonville owns 2/3 or 10 mgd of WRWTP capacity. In addition, Wilsonville and TVWD own larger capacity interests in other appurtenant facilities.

B. WHEREAS, Sherwood and Wilsonville entered into agreements whereby Wilsonville had constructed or would construct and Sherwood would purchase capacity in 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. All these segments are now constructed and capacity purchased under the terms of the agreements. Together these already constructed transmission facilities are 8,183 lf

in length and represent a present joint investment of \$7,313,838. 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 connecting to the Tooze Road Meter Vault described herein and continuing to a recently constructed Sherwood Reservoir (Snyder Park - 4 mgd capacity) which is also owned by the City of Sherwood. The cost of the construction of these Sherwood transmission facilities, not including the cost of the Snyder Park Reservoir, is estimated to be in excess of \$11,630,000. Completion of construction of these transmission segments had been estimated to occur in the spring of 2011 by Emery & Sons Construction, Inc. ("Emery"), Sherwood's General Contractor. Actual completion occurred in December 2010. In order for Sherwood to accept these new transmission facilities, the facilities needed 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 was negotiated between the parties for the 400 gpm water supply to permit pressure testing, flushing, and line maintenance. An Agreement reflecting those negotiations was adopted by the Parties on January 11, 2011.

D. **WHEREAS**, the Parties have also successfully negotiated the construction of the Tooze Road 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 links previously constructed Transmission Segments 5A and 6, provides required metering and flow control facilities for water flowing to Sherwood, and houses pressure reducing valves and transmission lines to serve existing and planned Wilsonville's distribution and reservoir systems. The Parties adopted the Tooze Road Meter Vault Agreement authorizing the construction of these improvements on January 11, 2011. Sherwood advanced 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. These facilities are now operational and in place.

E. WHEREAS, the unanticipated early completion of Segments 6-9 of 48-inch diameter transmission by Sherwood in December 2010 and the later completion date of the Tooze Road Meter Vault left a short but very important period when water needed to be supplied to Sherwood. The Parties 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 the Recital above, to serve Wilsonville permanently with potable water through the Tooze Road Meter Vault. All required real property had been acquired by Wilsonville for the construction of the Tooze Road Meter Vault and this line extension and its connection to Sherwood's Segment 6 transmission line. Sherwood proposed to construct these facilities by means of a change order to its Segment 6 contract with Emery and 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. The specific terms of this Project are contained in the Temporary Water Supply Agreement between the Parties. This project is now completed. This temporary water supply arrangement has now been operationally replaced by an Interim Water Supply relationship reflected in the immediately following Recital.

F. WHEREAS, the Parties have previously executed an Interim Water Supply Agreement, which involves temporary wheeling of surplus water to Sherwood of up to 2.5 mgd of WRWTP potable water through jointly owned Sherwood and Wilsonville transmission lines and also partially through Wilsonville existing distribution lines until such time as Segment 3 is completed and on line. The Parties commissioned Montgomery Watson Harza, Inc. ("MWH") to perform a hydraulic capacity analysis of current WRWTP and Wilsonville facility capacity to ensure that the 2.5 mgd is currently available through the Wilsonville distribution system in addition to Wilsonville's ongoing and projected needs. MWH completed this analysis on February 22, 2011, and concluded that ample capacity was available to accomplish this. The Parties also contracted with the Galardi Rothstein Group to develop and recommend a methodology and estimated rates of interim water treatment and production and associated wheeling rates for production/delivery of water to Sherwood following completion of the Meter Vault Project described above and continuing until Segment 3 of the jointly owned 48-inch

transmission line is in place and operational. That methodology and interim water rate has been adopted by the parties and is in place.

G. WHEREAS, it has been long recognized and agreed by the Parties that the jointly owned 48-inch transmission linkage between the WRWTP and Sherwood will not be completed until the remaining 2500 lf of Segment 3B 48-inch Transmission Line is constructed by Wilsonville. The first phase of Segment 3B involves easement acquisition, environmental permitting, and pipeline design, and the parties desire to adopt an Agreement to allow this to move forward. Wilsonville has previously constructed Segment 3A and the parties also desire to convey to Sherwood a 1/2 capacity interest therein as well as reimbursement to Wilsonville of 1/2 of its costs previously incurred therefore. Additionally, Wilsonville has advanced certain costs for preliminary work on Segment 3B through August 31, 2011, which need to be repaid by Sherwood.

H. WHEREAS, it is recognized by the Parties that it is necessary to enter into this Intergovernmental Cooperative Agreement through ORS Chapter 190 to accomplish the objectives of Recital G set forth above.

I. WHEREAS, the Parties have the authority to enter into this Agreement pursuant to their applicable charters, 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.

3. Term. This Agreement will effective upon the date of execution by the last signatory party and its term shall be perpetual unless otherwise amended by the Parties

4. Purpose and Framework. As described in the Recitals of this Agreement, the purpose of the Agreement is to set out the terms between the parties as to the following matters:

A. Reimbursement to Wilsonville by Sherwood of 1/2 of Project Costs of Transmission Segment 3A previously constructed by Wilsonville.

B. Conveyance by Wilsonville to Sherwood of 1/2 the ownership and design capacity of Transmission Segment 3A.

C. Within the second phase of Segment B, Wilsonville will be responsible for a pressure reducing vault facility. Based on construction cost estimates, this creates a 53.82% share of the Segment 3B costs for Wilsonville and 46.18% estimated share of the Segment 3B costs for Sherwood. These estimated percentage shares may vary upon true up of the actual costs.

D. Payment by Sherwood to Wilsonville of 46.18% of the environmental permitting contract with Pacific Habitat Services, Inc. ("PHS") subject to final true up between the parties at contract completion.

E. Payment by Sherwood to Wilsonville of 46.18% of the Segment 3B Water Transmission Pipeline Design contract with Westech Engineering, Inc. ("WEI") subject to final true up between the parties at contract completion.

F. Payment by Sherwood to Wilsonville of 46.18% of previously paid Wilsonville costs for Segment 3B expended through August 31, 2011. Cost incurred beyond this date will be allocated by the second phase Segment 3B IGA Agreement between the parties.

G. Agreement between the parties as to acquisition costs of easements for Segment 3B and adoption of an acquisition process.

H. Terms of Sherwood advancement of funds for Segment 3B construction and direct costs related thereto and Wilsonville repayment thereof.

5. **Segment 3A Reimbursement.** Segment 3A has been previously constructed by Wilsonville. It consists of approximately 180 lf of 48-inch transmission line and extends northward from the northern end of Segment 2 of the Water Transmission Line located approximately at the intersection from Barber Road to Kinsman Road. It is more specifically described in the Final Design drawing attached hereto as Exhibit A and incorporated herein by

reference. Wilsonville has incurred \$409,920 in the construction of Segment 3A and Sherwood's 1/2 share is \$204,960. A summary of Wilsonville's previously incurred costs and Sherwood's share thereof is attached hereto as Exhibit B and incorporated herein by reference. Sherwood, within 30 days of adoption of this Agreement by the parties, will remit its 1/2 project share (\$204,960) to Wilsonville.

6. Conveyance of 1/2 Capacity and Ownership Share of Segment 3A from Wilsonville to Sherwood. Contemporaneous with payment by Sherwood to Wilsonville of its purchase of 1/2 the capacity of Segment 3A as described above, Wilsonville conveys 1/2 the capacity and ownership thereof to Sherwood. The Parties agree that Segment 3A has a design capacity of 40 mgd, and that if it has a greater operational capacity, any increase in capacity shall be shared equally by the Parties. Subject to permitting approved by state and federal regulations, the terms of other use rights and responsibilities of Segment 3 including Segment 3A will be set forth in the subsequent Agreement between the parties relating to the construction of Segment 3B. In the interim, use rights and responsibilities shall be as set forth in the Segment 2 Water Transmission Line Agreement entered into between the parties on August 7, 2007.

7. Segment 3A Easement. Wilsonville agrees, subject to Sherwood's compliance with the terms of Section 6 above, to execute and deliver to Sherwood a permanent easement to lay, replace, maintain, and use the Segment 3A Transmission Line for the purposes intended by this Agreement. The purpose and intent of the rights under such easement is to safeguard Sherwood and to be used only if Wilsonville fails or neglects its operation and maintenance responsibilities under Section 8 below.

8. Operational and Maintenance Responsibilities of Segment 3A. Segment 3A will operate as a part of Segment 3 which also shall include Segment 3B which is anticipated to be constructed by late 2013. Subject to permitting approved by state and federal regulations, the terms of operational and maintenance responsibilities of Segment 3 including Segment 3A will be set forth in the subsequent Agreement between the parties concerning the construction and operation of Segment 3B. In the interim, operation and maintenance responsibilities shall be as set forth in paragraphs 2.4 and 2.4.1 of the Segment 2 Water Transmission Line Agreement entered into between the parties on August 7, 2007.

9. Environmental Permitting for Segment 3B. Wilsonville has executed a contract with Pacific Habitat Services (PHS) to prepare and provide to Wilsonville appropriate environmental documentation to support a Joint Permit Application for the Segment 3B Transmission line. A copy of the scope of work of the executed contract is attached hereto as Exhibit C and incorporated herein by reference. The contract amount is \$25,681. Within 30 days of execution of this Agreement by the Parties, Sherwood shall remit to Wilsonville 46.18% of that amount (\$11,859.49). In the event that final costs differ from the contract maximum amount, the Parties shall share proportionally any such overage or underage responsibility.

10. Pipeline Design Contract for Segment 3B. The Parties have been negotiating with WEI to provide Wilsonville with engineering services to provide a Segment 3B Water Transmission Pipeline Design. The Scope of Services is attached hereto as Exhibit D and is incorporated herein by reference. The Final Proposed contract amount is \$214,530. Within 30 days of execution of this Agreement by the Parties Sherwood will remit 46.18% of the contract amount (\$99,070) to Wilsonville. If there is a contract payment difference, then at the time of contract true up, the Parties shall share proportionally any such overage or underage responsibility.

11. Repayment of Segment 3B Costs Advanced by Wilsonville. Wilsonville has previously paid \$73,931 for authorized Segment 3B costs. They are summarized in Exhibit E. Within 30 days of the execution of this Agreement, Sherwood will remit to Wilsonville 46.18% of this amount (\$34,141.34).

12. Easement Acquisition. Wilsonville estimates that property acquisition costs to purchase needed easements from two property owners (Bruer and Inland) will total approximately \$280,000, exclusive of any wetland mitigation or wetland park property that may need to be acquired. They also estimate that appraisals, legal descriptions, negotiations with property owners, and legal work associated with easement purchases will total another \$35,000. Based on current calculations, Sherwood shall be responsible for 46.18% and Wilsonville for 53.82% of the expenses actually incurred. Within 30 days of execution of this Agreement, each Party will pay into a sinking fund \$17,500 to cover the foregoing costs incurred. Any overruns in these costs will be promptly satisfied by the parties on an equal basis. The Parties anticipate that permitting will have to be largely in place, including identification of any required property

mitigation, before formal property acquisition may be concluded. At such time as these elements are in place and there is tentative agreement with one or both property owners, Sherwood will pay 46.18% and Wilsonville 53.82% of the agreed upon acquisition costs into a sinking fund. Based upon current information, there appears to be a need for a 30 ft wide permanent utility easement. Initially, it was contemplated that the Kinsman Road street right of way would also overlap this easement. Present direction from reviewing governmental agencies appears to favor a stand alone water line easement. In the event that this regulatory direction changes, the Parties will review on the basis of equity and fairness sharing of acquisition costs between the water line easement and the other acquiring use.

13. Computation Method of the Parties' Share of Segment 3B Costs. As evidenced in Sections 9, 10, 11, and 12 above, Sherwood has a calculated 46.18% and Wilsonville a calculated 53.82% responsibility for Segment 3B Total Project Costs. These percentages are derived from current estimates of construction costs of the Segment 3B Project, excluding mobilization which is subject to the percentages and added back in. The difference in responsibility for payment relates to the fact that certain project elements (the pressure reducing valve facilities) have no benefit to Sherwood. Subsequently, the final percentages will be reflective of the actual construction costs, and if those costs have the effect of altering the proportional allocation of responsibility for other project costs as listed in paragraphs 9, 10, 11, and 12, the percentage allocations will be appropriately revised. Finally, at the time of Project completion and true up, this allocation will again be reviewed and changed if necessary. The term Total Project Cost shall have the meaning as defined in Section 2.4 of the Agreements for Segments 4 and 5A, which states:

2.4 Cost of Project. The direct cost of the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction including inspection/project management, ownership, maintenance, ownership, maintenance, and operation of ... [the] Project.

14. Responsibilities of the Parties. Wilsonville will be responsible for all contracting of obligations and services required by this IGA subject to oversight and active involvement and coordination of Sherwood in all aspects of the Project. The Sherwood Public

Works Director will be concurrently copied on all correspondence and documents, including emails regarding the Project excepting otherwise privileged Wilsonville communications.

15. Overview of Second Segment 3B IGA and the Construction and Financing Process Regarding Segment 3B. The Parties will subsequently negotiate a second IGA dealing with the costs related to Segment 3B not otherwise covered in this Agreement. It is anticipated that Sherwood will advance funds for the construction phase based upon subsequently negotiated terms, including establishment of initial deposit draw accounts and establishment of coordinated periodic pay estimates. Wilsonville will repay Sherwood for costs advanced on its behalf by Sherwood no later than 180 days after completion of the Segment 3B Project. To the extent that monies are available to Wilsonville to repay all or a portion of the funds advanced in its behalf prior to 180 days, Wilsonville will exercise its best efforts to do so. Wilsonville Project overhead will be limited to 14% of Total Project Costs and Sherwood will accept that amount as an appropriate Wilsonville overhead charge without the need for further itemization by Wilsonville.

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 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 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 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 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.

15. Breach. If a Party defaults under the terms of this Agreement, then upon 20 days written notice, the defaulting Party shall undertake steps to commence cure of the breach within a reasonable time, depending on the circumstances. In the event there is a dispute over the amount to be paid, the undisputed amount shall be paid immediately and the Agreement shall not be in default while the solution to the disputed payment portion is resolved under Section 7. 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.

16. 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

17. 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 or intentional acts of that Party, including any attorneys fees or other costs of defense. Further, independent of the indemnity obligation, and as may be allowed under law, 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.

18. 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. No transfer to a private, nonpublic entity is permissible without the consent of both parties.

19. 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.

20. 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.

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

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

23. 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.

24. 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

CITY OF WILSONVILLE

An Oregon municipal corporation

An Oregon municipal corporation

City Manager

City Manager

City Recorder

City Recorder

APPROVED AS TO FORM

APPROVED AS TO FORM

City Attorney

City Attorney