



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2013-011

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE CITY OF WILSONVILLE REGARDING COST, CONSTRUCTION, OWNERSHIP, AND OPERATION OF WATERLINE SEGMENT 3B

WHEREAS, it has been recognized and agreed by the parties that the jointly owned transmission line between the plant and the meter vault will not be complete until the last approximate 2,400 feet of 48-inch transmission line (Segment 3) is completed; and

WHEREAS, the parties have authority to enter into this agreement pursuant to their applicable charters, principle acts, and ORS 190.003 – 190.030; and

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.

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

Section 1. The City Manager is authorized to enter in to an Intergovernmental Agreement, attached as Exhibit A, between the City of Sherwood and the City of Wilsonville regarding cost, construction, ownership, and operation of Segment 3B of a 48-inch diameter water transmission line from the terminus of Segment 3A and Kinsman Road to the beginning point of Segment 4 near the intersection of the proposed, as yet to be completed, Segment of Kinsman Road and Boeckman Road, the length of approximately 2,400 feet.

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

Duly passed by the City Council this 5th day of March 2013.



Bill Middleton, Mayor

Attest:



Sylvia Murphy, CMC, City Recorder

AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE CITY OF WILSONVILLE REGARDING COST, CONSTRUCTION, OWNERSHIP, AND OPERATION OF SEGMENT 3B OF A 48-INCH DIAMETER WATER TRANSMISSION LINE FROM THE TERMINUS OF SEGMENT 3A IN KINSMAN ROAD TO THE BEGINNING POINT OF SEGMENT 4 NEAR THE INTERSECTION OF THE PROPOSED, AS YET TO BE COMPLETED, SEGMENT OF KINSMAN ROAD AND BOECKMAN ROAD, A LENGTH OF APPROXIMATELY 2,400 FEET

This Agreement (“Agreement”) is made and entered into this ___ day of _____, 2013, 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 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 purchasing certain interests in the WRWTP Supply Facilities from TVWD, which included the purchase of TVWD’s 1/3 of the 15 mgd capacity (i.e., 5 mgd), while Wilsonville retained the remaining 2/3 of the 15 mgd capacity (i.e., 10 mgd), of the 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, 3A, 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 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 Segments 2 and 3A. Sherwood owns 2/3 of the capacity of Segments 4 and 5A, while Wilsonville owns the remaining 1/3 capacity of each. The design capacity of each of these segments of 48-inch diameter pipe is 40 mgd.

C. WHEREAS, Sherwood 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 the Snyder Park Reservoir, 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. Construction of these transmission segments was estimated to occur in the spring of 2011 by Emery & Sons Construction, Inc. (“Emery”), Sherwood’s General Contractor; however, actual completion occurred in December 2010. In order for Sherwood to accept these new transmission facilities, they needed to be pressure tested and flushed, then maintained and regularly refreshed with approximately 400 gpm of potable water. The source of this potable water is 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 also jointly provided for the construction of the Tooze Road Meter Vault facility and appurtenant 198-foot segment of 48-inch diameter transmission line (“Segment 5B”), collectively referred to as the Meter Vault Project. The Meter Vault Project links Transmission Segments 5A and 6, provides metering and flow control facilities for water flowing to Sherwood, and houses pressure reducing valves and transmission lines to serve existing and planned distribution and reservoir systems in Wilsonville. 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 24-inch diameter distribution line (previously

referenced as a transmission line in the 2011 Agreement) that is wholly owned by Wilsonville. These facilities are now operational.

E. WHEREAS, the unanticipated early completion of Segments 6-9 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 provided this temporary water supply through the advance construction by Sherwood of a 24-inch diameter distribution line extension to Wilsonville's future distribution system. This distribution line extension was a part of the Meter Vault Project, described in Recital D above, and is designed to serve Wilsonville permanently with potable water through the Tooze Road Meter Vault, but in the interim would be used to supply water from the Wilsonville distribution system to the vault for transmission to Sherwood. 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, as well as to front the cost of the Project subject to reimbursement by Wilsonville of its share through credits against future temporary and interim water sales to Sherwood. The terms of this arrangement 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 described in Recital F below.

F. WHEREAS, the Parties previously executed an Interim Water Supply Agreement, which provided for the temporary wheeling of up to 2.5 mgd of surplus water from WRWTP potable water to Sherwood through the jointly-owned Sherwood and Wilsonville transmission lines, and also partially through Wilsonville existing distribution lines, until such time as Segment 3 is completed and operational. The Parties commissioned Montgomery Watson Harza, Inc. ("MWH") to perform a hydraulic capacity analysis of current WRWTP and Wilsonville facility capacity to ensure that 2.5 mgd of surplus water is available through the Wilsonville distribution system in addition to Wilsonville's current and projected needs. MWH completed the analysis on February 22, 2011, and concluded that the surplus capacity is

available. The Parties also contracted with Galardi Rothstein Group to develop and recommend a methodology and estimated rate for water treatment and associated wheeling rates for production and delivery of the interim water to Sherwood following completion of the Meter Vault Project and continuing until Segment 3 of the 48-inch transmission line is operational. That methodology and interim water rate have been adopted by the Parties.

G. WHEREAS, it is recognized and acknowledged by the Parties that the 48-inch transmission linkage between the WRWTP and Sherwood will not be completed until the remaining 2,400 lf of Segment 3 (hereinafter referenced as “Segment 3B”) is constructed by Wilsonville. A map generally locating the 48-inch transmission line segments, including Segment 3B, is marked as **Exhibit A**, attached hereto and incorporated by reference herein. Wilsonville previously constructed Segment 3A and the Parties desired to convey to Sherwood a 1/2 capacity interest therein as well as reimbursement to Wilsonville of 1/2 of its costs incurred in constructing Segment 3A. The first phase of Segment 3B involves easement acquisition, environmental permitting, and pipeline design. In addition, Wilsonville advanced certain costs for preliminary work on Segment 3B through August 31, 2011, which needed to be repaid by Sherwood. In order to accomplish these objectives, the Parties entered 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, dated January 23, 2012 (hereinafter, the “Segment 3A Agreement”). The Parties acknowledge that payments and deposits have been paid in accordance with said Segment 3A Agreement, subject to any final cost true-up for Pacific Habitat, Westech Engineering, Inc., Wilsonville project management, and property acquisition.

H. WHEREAS, the environmental permits for the construction of Segment 3B have now been issued, DSL Permit No. 49456-RF, issued August 22, 2012 and expiring August 22, 2013 unless renewed, and U.S. Army Corp of Engineers “Verification” Permit No. NWP-2012-68, issued September 21, 2012 and expiring September 21, 2014. The permits were issued

to Wilsonville, which provided copies to Sherwood. In addition, a professional services agreement between Wilsonville and Westech Engineering, Inc., dated January 19, 2012, to provide Segment 3B water transmission preliminary and final design has been completed sufficient to establish the legal descriptions necessary to acquire property interests for the construction of Segment 3B. On December 3, 2012, the Wilsonville City Council authorized the acquisition of the property interests necessary to construct Segment 3B. Wilsonville has contracted for appraisal services, with appraisal reports scheduled for mid-February 2013 and offers to property owners by March 1, 2013. If necessary, condemnation and right of entry authorization will be sought. The Parties agree that Wilsonville will provide Sherwood copies of the Westech agreement and legal descriptions for the property acquired for Segment 3B.

I. WHEREAS, paragraph 13 of the Segment 3A Agreement described in Recital G above provided a computation method of the Parties' share of Segment 3B costs. Paragraph 15 of the Segment 3A Agreement includes an overview of this Segment 3B Agreement and the construction and financing process regarding Segment 3B, establishes a baseline for negotiating this Agreement and dealing with costs related to Segment 3B not otherwise covered, and describes the terms for advancing funds for the construction and draw accounts and coordinated periodic pay estimates by Sherwood and repayment by Wilsonville. Paragraph 13 also references paragraphs 9-12, which respectively outline the cost-sharing for the environmental permitting for Segment 3B, the pipeline design contract for Segment 3B, repayment of costs advanced by Wilsonville, and easement acquisition. It is the intent of the Parties to follow these provisions in the Segment 3A Agreement in this Agreement unless otherwise specifically set forth herein. For ease of reference, paragraphs 9-15 of the Segment 3A Agreement are marked as **Exhibit B**, attached hereto and incorporated herein by reference.

J. 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 becomes effective on the date of execution by the last signatory party and shall be perpetual unless otherwise agreed to by the Parties in writing.

4. Construction of Segment 3B.

4.1 *Sufficient Funds.* It is understood and agreed that each party will budget sufficient funds to perform their respective duties and obligations as contracted for herein.

4.2 *Wilsonville Responsibilities.* Subject to active involvement and coordination with Sherwood, Wilsonville shall oversee the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction, including inspection/project management, maintenance, and operation of the Segment 3B project. Both Wilsonville and Sherwood shall be joint owners of the Segment 3B construction project, unless Sherwood lawfully transfers its ownership in the project to the Willamette River Water Coalition (WRWC). Upon such transfer, the project shall be jointly owned by Wilsonville and the WRWC, but Wilsonville's responsibilities shall not change unless otherwise agreed to in writing by the Parties. No other party shall have interest therein unless mutually agreed to by the Parties.

4.3 *Cost of the Project.*

4.3.1 The Parties provided the cost and cost-sharing methodologies for permitting, engineering design, and easement acquisition for the Segment 3B Project in the Segment 3A Agreement, with the salient paragraphs 9-15 attached as **Exhibit B** for ease of reference. To the extent services for construction engineering, including but not limited to arborist services, and third-party inspection services were not specifically addressed in the Segment 3A Agreement, the Parties agree that these services shall be subject to the same cost-sharing methodology.

4.3.2 The estimated total construction cost for the Segment 3B Project is \$3,497,000.00. Based on this estimate and recognizing that pressure reducing valve facilities at Boeckman Road are being constructed solely for the benefit of Wilsonville, Sherwood shall be responsible for 46.2% of the cost of Segment 3B and Wilsonville shall be responsible for 53.8% of the cost to construct Segment 3B. The cost-sharing methodology and methodology for final true-up of project costs and percentages is set forth in the Segment 3A Agreement and recited as set forth in **Exhibit B** incorporated herein.

4.4 *Deposit and Draw Structure.*

4.4.1 Funds Budget. Sherwood represents and warrants that it has sufficient funds to advance the total construction cost of the Segment 3B Project, subject to repayment by Wilsonville of its share of the costs as set forth in Section 4.3.2 above.

4.4.2 Deposit of Construction Funds. After Wilsonville identifies the lowest responsible bidder as the contractor for the Segment 3B Project but before the Wilsonville City Council approves a construction contract, Sherwood will deposit with Wilsonville (1) a sum equal to the sum of the bid of the lowest responsible bidder plus 5% for construction cost contingency, and (2) a sum for construction engineering and third-party inspection services equal to the awarded contract for such services, subject to approval by the Sherwood City Council. The funds shall be placed in a separate account and any interest earned by the funds shall accrue to Sherwood. The funds shall be used to compensate the selected contractor(s) and to reimburse Wilsonville for costs attributable to construction of the Segment 3B Project consistent with the terms of the Segment 3A Agreement and the percentages described in Section 4.3.2 above.

4.4.3 Deposit for Pre-Purchase of Pipes. In the event Wilsonville purchases water transmission pipes for Segment 3B in advance of approving the construction contract, Sherwood shall deposit with Wilsonville an amount

sufficient to cover the cost of the pipes. The amount shall be based on a written estimate of the cost, and Wilsonville shall provide Sherwood with copies of the final invoice(s) that show the actual purchase cost(s). Any amount deposited with Wilsonville under this section shall be included in the payment obligation described in Section 4.4.2 above.

4.4.4 Contractor Draw Requests. Wilsonville shall cause the contractor to submit the contractor's draw request with at least one original to the designated party for Wilsonville, and Wilsonville shall promptly forward a copy to Sherwood's designated party. Each city will notify the other within five days of receipt of any concerns or objections. Thereafter, Wilsonville, in consultation with Sherwood, shall take the appropriate action, as may be determined by the Parties and/or the applicable circumstances, to pay the billing, in whole or in part, under reservation, or not at all.

4.5 *Construction Responsibilities and Financial Reports.* Wilsonville shall be responsible for the control and supervision of all activities of construction of the Segment 3B Project. Wilsonville shall prepare and submit to Sherwood financial activity reports of the Segment 3B Project upon request but not more than once per month. Wilsonville shall prepare such other reports and information as the Parties may require and mutually agree upon.

4.6 *Plan Review, Change Orders, and Site Access.* Wilsonville shall provide Sherwood with copies of the 75-percent and 90-percent engineering design submittals and of all final project plans and allow Sherwood to comment on the plans. Contractor change orders must be approved by both Wilsonville and Sherwood. Sherwood shall be allowed access to the construction site during regular business hours to monitor construction activities, provided such access does not unreasonably interfere with construction.

4.7 *Financial "True-Up" and Repayment by Wilsonville.*

4.7.1 "True-Up." Within 90 days of the date the Wilsonville City Engineer determines the project is substantially complete, Wilsonville shall provide Sherwood with a financial accounting of the project that shows the actual total construction cost, construction engineering, arborists, and third-party inspection services, together with the agreed upon percentage for Wilsonville's project management and administration. To the extent the deposit described in Section 4.4.2 above exceeds the actual costs identified herein, such excess amount shall be refunded to Sherwood, including any interest thereon. Sherwood shall notify Wilsonville within 10 days whether Sherwood has any concerns or objections regarding the accounting.

4.7.2 Repayment by Wilsonville. Within 180 days of the date of substantial completion described in Section 4.7.1 above, subject to Section 4.9, Wilsonville shall pay to Sherwood an amount equal to Wilsonville's trued-up percentage of the actual total costs for the Segment 3B Project.

4.8 *Construction Engineering and Inspection Services.* Wilsonville shall retain an independent contractor to conduct construction engineering, including but not limited to arborist services, and construction inspection of all project elements. Wilsonville may elect to extend the existing contract with Westech to provide these services or solicit or select an alternative contractor. In either case, Wilsonville shall make available for Sherwood to review all inspections reports and, upon Sherwood's request, provide Sherwood with copies of the reports.

4.9 *Mitigation Funding.* Following the date of substantial completion, the Parties agree to establish a mitigation fund in the amount of \$100,000.00 for the purpose of funding environmental mitigation, monitoring, and maintenance, as required by the Oregon Division of State Lands and the United States Army Corp of Engineers, including but not limited to landscaping and wetland mitigation. From the amounts reimbursable to Sherwood under Section 4.7 above, Wilsonville shall retain an amount equal to Sherwood's percentage obligation of \$100,000.00 calculated according to the cost-

sharing methodology set forth in the Segment 3A Agreement. Wilsonville shall retain these funds for a period of up to two years following the date of substantial completion. The funds shall be deposited in a separate account and used only for the purpose of mitigation, monitoring, and maintenance related to the Segment 3B Project. At the end of the retention period, Wilsonville shall return Sherwood's percentage portion of any unused funds, including interest thereon, to Sherwood. During the retention period, Wilsonville shall provide a financial accounting of the funds to Sherwood upon request but not more than quarterly.

5. Ownership, Maintenance, and Operation of the Segment 3B Project.

5.1 *Ownership.* The Segment 3B Project is intended to have a final design capacity of 40 million gallons per day (mgd). Sherwood shall be entitled to a 50% capacity share thereof, and Wilsonville the remaining 50% capacity share. Sherwood shall have an undivided 50% ownership share, and Wilsonville shall have the remaining undivided 50% ownership share, of Segment 3B, both as tenants in common. Ownership means the right of each party to use for its own benefit its portion of transmission line capacity. In the event that final design capacity or actual operating capacity exceeds 40 mgd, the supplemental capacity shall be owned by the Parties in proportion to the above-referenced capacity shares. The respective capacity use of the Parties will be determined by appropriate metering. The operational characteristics and operational metering protocol have been agreed to by the Parties.

5.2 *Easements.* Wilsonville agrees to execute and deliver to Sherwood a non-exclusive, permanent easement to maintain and operate Segment 3B for the purposes intended by this Agreement, notwithstanding the termination of this Agreement or the withdrawal of either party from this Agreement, for so long as Sherwood shall use Segment 3B for its intended purposes and if Wilsonville fails to fulfill its operation and maintenance responsibilities.

5.3 *Operation and Maintenance Responsibilities.* Unless otherwise agreed to by the Parties in writing, Wilsonville shall have the responsibility for operation and

maintenance of Segment 3B. The actual, direct, out-of-pocket expenses of post-construction operation and maintenance of Segment 3B (together with any allowance as the Parties may agree upon for general or administrative expenses) shall be billed to the Parties monthly in proportion to their ownership interests reflected in Section 5.1, exclusive of the pressure reducing valve facilities which are owned by Wilsonville and are Wilsonville's sole responsibility to maintain. Wilsonville shall exercise due diligence in effecting its operation and maintenance responsibilities under this Agreement. For any non-emergency maintenance project or event in excess of \$50,000 in total, individual costs require coordination with and the consent of Sherwood. Subject to shut-down emergencies, announced scheduled repairs, or precautionary shut-down to allow upstream spills in the Willamette River to flow past the WRWTP, Wilsonville shall operate the water system in a manner to not harm Sherwood and to provide Sherwood's ownership capacity share, in keeping with the prior daily notification by Sherwood to Wilsonville of capacity needs or such notification schedule as the Parties otherwise may agree, at an adequate hydraulic grade at the point of delivery to Sherwood. The point of delivery is defined as the revenue meter located in the meter vault approximately 400 feet west of the intersection of SW Grahams Ferry Road and Tooze Road. Unless otherwise agreed to by the Parties, the hydraulic grade line at the point of delivery to Sherwood shall be a minimum of 392 feet, sufficient to completely fill Sherwood's terminal Sunset Reservoirs, which have an overflow elevation of approximately 380 feet. Should temporary conditions exist beyond the operational control of Wilsonville of the WRWTP, that materially affect the ability of the WRWTP to produce sufficient water to meet the demands of both cities, the available supply capacity of the WRWTP shall be split in accordance with the respective ownership rights in capacity at the WRWTP. The aforementioned is not intended to alter the respective ownership of capacity in the pipeline. Neither city shall be responsible to meet the water demands of the other.

5.4 *Non-Emergency Major Repair or Replacement.* Wilsonville shall monitor the overall condition of the transmission line and facilities and shall schedule any non-emergency major repair or replacement three years in advance of such major repair or

replacement. At the same time, Wilsonville shall prepare an estimated projected annual expenditure report for the cost of the scheduled repair or replacement. Upon preparation of the schedule and annual costs report, Wilsonville shall provide Sherwood a copy of same.

6. Transmission of Water to Third Parties. Unless both Parties otherwise previously agree in writing, neither party shall permit use of the Segment 3B Project for the purpose of transmitting water to any person or party other than Wilsonville or Sherwood retail customers, save and except for a transfer by Sherwood of its ownership interest in the Segment 3B Project to the WRWC pursuant to Section 4.2 above. Subject to Sections 8 and 9 below, or as otherwise agreed to by the Parties in writing, transmission of water by a party shall not exceed that party's ownership share in the Willamette River Water Treatment Plant. Any revenues derived from transmission of water through the Segment 3B Project on behalf of entities other than Wilsonville or Sherwood customers shall be paid to the Parties in proportion to their ownership interest in capacity used by a third party in the Segment 3B Project, as reflected in Section 5.1.

7. Approvals. Unless otherwise directed by the respective City Councils, all approvals of either Wilsonville or Sherwood in this Agreement shall be made by the City Manager or the City Manager's authorized designee.

8. Leasing of Supply Capacity. Each party shall have the right to lease from the other party such unused capacity of its capacity share of the Segment 3B Project as the party with the unused capacity may determine to be reasonably available and prudent to be leased to the other party. The compensation to the leasing party shall be fairly and equitably agreed upon by the Parties.

9. Overuse of Supply Facility. Wilsonville and Sherwood shall each use the Segment 3B Project facilities in a manner consistent with prudent water utility practices and to minimize, insofar as is practicable, interference with each other's use of its respective share of capacity to meet its demand. Unless caused by system operation conditions not caused by the overusing party, any overuse of 10 percent or greater by either Wilsonville or Sherwood for two

consecutive years or for three out of five consecutive years, shall result in the overusing party compensating the other party at a lease rate that will be fairly and equitably agreed upon by the Parties.

10. Dispute/Attorney 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 after 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 attorney fees as shall be awarded by the arbitration panel.

11. 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.

12. 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

13. 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 attorney 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.

14. 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.

15. 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, shall refer specifically to this Agreement, and shall be executed by the Parties.

16. 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.

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

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

19. 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.

20. 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.

(signatures on following page)

IN WITNESS WHEREOF, the Parties have, pursuant to official action of their respective governing bodies duly authorizing the same, caused their respective officers to execute this Agreement on their behalf.

CITY OF SHERWOOD
an Oregon municipal corporation

CITY OF WILSONVILLE
an Oregon municipal corporation

City Manager

City Manager

Attested to:

Attested to:

City Recorder

City Recorder

Approved as to Form:

Approved as to Form:

City Attorney

City Attorney

sherwood water/iga re segment 3b of 48-inch water line

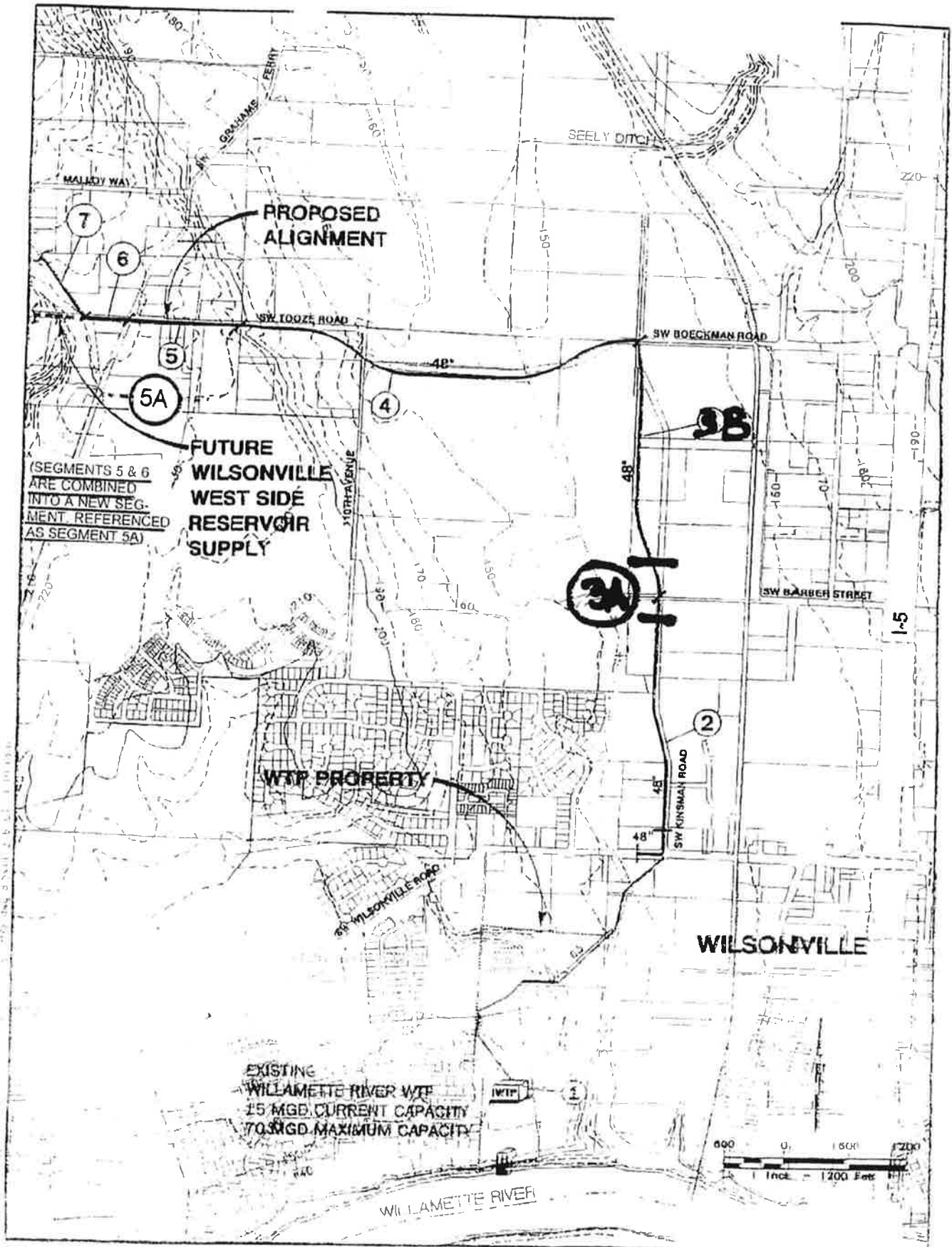


EXHIBIT A

~~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 Kánsman 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/Attorney 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 is