

AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF HILLSBORO AND TUALATIN VALLEY WATER DISTRICT REGARDING PREDESIGN, DESIGN, PUBLIC AFFAIRS AND PUBLIC OUTREACH IN FURTHERANCE OF THE WILLAMETTE WATER SUPPLY PROGRAM

THIS AGREEMENT is made and entered into this 11<sup>th</sup> day of Sept., 2013, between the City of Hillsboro, Oregon, a municipal corporation of the State of Oregon, ("Hillsboro"), and the Tualatin Valley Water District, a domestic water supply district of the State of Oregon ("TVWD").

RECITALS

The parties agree upon the following recitals:

A. WHEREAS, it is critical to plan and implement long-term water supply needs for public health, safety and welfare and to enable the continued economic viability of Washington County; and

B. WHEREAS, TVWD and Hillsboro have selected the Willamette River as their preferred option to meet long-term water supply needs; and

C. WHEREAS, TVWD, the City of Sherwood, the City of Tualatin and the City of Tigard are members of the Willamette River Water Coalition (WRWC) and through WRWC, each has pursued use of the Willamette River as a water source under Water Permit No. 49240; and Tigard and Tualatin may wish to participate in the further development of the Willamette Water Supply Program and

D. WHEREAS, Washington County (County) has begun its process to acquire right of way, permits, design and construct an extension of its road system known as the S.W. 124<sup>th</sup> Avenue Project (Road Project) that will connect S.W. Tualatin Sherwood Road with S.W. Grahams Ferry Road. The County has offered to allow TVWD and Hillsboro to locate water facilities within the County right of way as part of the Road Project through an Intergovernmental Agreement to be negotiated and executed in the future ("the 124<sup>th</sup> Avenue Pipeline Project"). To qualify for inclusion in the Road Project, design plans and specifications must be provided to the County by January, 2014. Initial cost estimates have shown that construction of the SW 124<sup>th</sup> Avenue Pipeline Project in coordination with the Road Project could result in savings to TVWD and Hillsboro of about \$30 million to \$75 million as compared to not participating in the Road Project at this time; and

E. WHEREAS, Hillsboro and TVWD desire to construct water supply facilities to

supply and distribute water from the Willamette River Water Treatment Plant ("WRWTP") located in Wilsonville, Oregon, to their respective service areas. These water supply facilities collectively will be referred to herein as the "Willamette Water Supply Program" or "Program". This Agreement provides for the Parties to share the cost of the following elements of the Program identified more fully in Section 3, Scope of Work, to facilitate the planned development of the facilities needed to serve the Parties: design of the initial segment of the pipeline identified as the SW 124<sup>th</sup> Avenue Pipeline Project; public outreach; public affairs and intergovernmental coordination; right of way and property acquisition services, surveying, geotechnical and environmental studies; preliminary design of the entire water supply system, permitting and final design of a large-diameter pipe segment along and under the general route as it is finally determined on Exhibit A, attached hereto and incorporated by reference, which alignment is subject to modification when final road alignment is determined by the County.; and

F. WHEREAS, the SW 124<sup>th</sup> Avenue Pipeline Project will be part of the overall Willamette Water Supply Program, and as such Hillsboro and TVWD wish to construct the SW 124<sup>th</sup> Avenue Pipeline Project as part of the Road Project. The SW 124<sup>th</sup> Avenue Pipeline Project would consist of a large diameter pipeline (approximately 72-inch diameter) within the 124<sup>th</sup> Street roadway as determined by the County between S.W. Tualatin Sherwood Road and S.W. Grahams Ferry Road and as depicted on Ex. A, subject to modification when final alignment is determined by the County; and

G. WHEREAS, the parties desire to share the cost of defined elements of the work necessary to plan and construct the Program and the SW 124<sup>th</sup> Avenue Pipeline Project described in this Agreement, task order or addenda to be attached hereto and incorporated herein in the future; and

H. WHEREAS, the parties not only desire to enter into this Agreement for the purpose of supplying water to their current and future water system users but also potentially to other municipal water providers.; and

I. WHEREAS, it is recognized by the parties that it is necessary to enter into this intergovernmental cooperative agreement through ORS Chapter 190 and the parties have the authority to enter into this Agreement pursuant to their applicable charter, principal acts, and Oregon Revised Statutes Sections 190.003 through 190.030; and

J. WHEREAS, the Parties desire to enter into this Agreement and recognize that future separate Agreements will be negotiated regarding design, construction, operation and governance of those Willamette Water Supply Program facilities; and being fully advised,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. INCORPORATION OF RECITALS

The Recitals above are hereby made part of this Agreement.

2. TERM

This Agreement shall continue in effect until the scope of work is completed and all costs pertaining thereto have been apportioned to the Parties, and payment therefore has been made, unless otherwise agreed to in writing by the Parties.

3. SCOPE OF WORK

3.1 Project. The scope of the Willamette Water Supply Program (Program) is generally described to include a water treatment plant in Wilsonville, a large-diameter (approximately 72-inch) water transmission pipeline from Wilsonville to the TVWD and Hillsboro water distribution systems, and terminal storage. This Agreement addresses only limited work (Project) in furtherance of the Program. The Parties agree that the Scope of Work of the Project under this Agreement is:

3.1.1 Public Outreach to those interested persons or communities who may be impacted by the Program.

3.1.2 Public Affairs and Intergovernmental Coordination with Federal, State and local governments and agencies who may be impacted or have an interest in the Program or the SW 124<sup>th</sup> Pipeline Project or otherwise have a permitting or regulatory role.

3.1.3 Identification of property ownership, areas of need, development of negotiation and acquisition strategies and services in support of acquisition of right of way or property ownership for the Program.

3.1.4 The conduct of surveys, geotechnical investigations and all other studies necessary to determine routing of the pipeline and other Program matters.

3.1.5 The completion of a Preliminary Engineering study for the Program in its entirety including treatment, transmission and storage components.

3.1.6 The completion of a final design for the SW 124<sup>th</sup> Avenue Pipeline Project to be included in the Road Project.

3.1.7 The retention of such consultants as the Parties deem appropriate to achieve the tasks generally described above.

3.1.8 In furtherance of the general descriptions above, the Parties will agree on a detailed scope of the specific task, budgets and cost share participation which will be

memorialized by task order or addenda to this Agreement.

3.2 Sufficient Funds. It is understood and agreed that based upon the final task scope, budget and cost share participation for the Project Components in Section 3.1 above, the allocation of costs will be agreed upon and each party will budget sufficient funds for its respective share in the Program and the SW 124<sup>th</sup> Avenue Pipeline Project as identified herein.

#### 4. PROGRAM AND PROJECT COSTS

4.1 Cost Share. Cost share is the percentage of Program cost allocated to a party as determined by this Agreement, a task order or addenda, or as modified by execution of a Joinder Agreement. The Program is intended to have an actual peak design capacity of 85 million gallons per day (mgd). A Party's election of planned capacity share in the Program or the S.W. 124<sup>th</sup> Avenue Pipeline Project will determine that Party's share of the costs to complete the Scope of Work identified in this Agreement. Until amended, Hillsboro shall have a cost share and capacity share interest of 30/85<sup>th</sup> and TVWD will have a cost share and capacity share interest of 55/85<sup>th</sup>. No other party shall have any interest therein unless mutually agreed upon and by execution of a Joinder Agreement. A form of Joinder Agreement is attached as Ex. B.

4.2 Project Cost. Project cost includes all direct and indirect costs of the Project as determined by the Project Manager. The direct and indirect direct costs of the Scope of Work (Section 3.1) shall be shared by the Parties in proportion to their cost share amount as reflected in the specific addendum for that component. Costs will also include reimbursement to TVWD or another Party providing administration services delegated by task order or addenda at then current hourly rates for staff time. TVWD will invoice each Party monthly for the Project costs for the previous 30 days with such detail as the Party reasonably requires verifying the amount to be paid. Each Party shall pay its share within 30 days after receipt of invoice. In the event of a dispute, the Party shall pay the undisputed portion and notify TVWD in writing of its reasons for disputing the full payment amount. Any amount not paid within 30 days from the date of the original invoice will bear interest at the State of Oregon Local Government Investment Pool rate.

4.3 Subsequent Agreements. The Parties agree that construction, ownership, governance, operation, maintenance, repair and replacement, expansion of facilities and other matters of the Program will be determined by subsequent Agreement. No Party shall be obligated to enter into or contribute financially to any construction contract or property acquisition for the SW 124<sup>th</sup> Avenue Pipeline Project until such time as the Parties have entered into the future separate agreements to address ownership, management and governance with respect to the Program.

4.4 Budget. Annually, , TVWD shall prepare and distribute to each party by January 31<sup>st</sup> a forecast of anticipated costs for the Willamette Water Supply Program for that ensuing fiscal year beginning July 1<sup>st</sup>. Each Party shall be responsible to budget and appropriate its share for the upcoming fiscal year.

## 5. PROJECT MANAGEMENT

5.1 **Project Manager.** TVWD is designated as the Project Manager for the Scope of Work and the duration of this agreement.

5.2 **Project Management Team.** The Project Management Team shall consist of the TVWD Chief Executive Officer and the Hillsboro Water Department Director, or their designees. TVWD, as the Project Manager, will report, as often as necessary considering the task at hand, to the Project Management team for decisions. Except as required under a Party's charter, statutes, ordinances, or governing body policies, the designated member of the Project Management Team or their designee shall have authority to make decisions required to carry out their obligations under this Agreement.

5.3 **Committees.** The Project Management Team shall have the power to appoint other committees to advise it on issues determined to be necessary. The Project Management Team may develop an Engineering Design Technical Advisory Committee, a Public Outreach and Affairs Technical Advisory Committee, a Finance Technical Advisory Committee and such other committees as it deems appropriate.

5.4 **Approval of Expenditures.** The budget allocation for each Party and appropriation shall be approved pursuant to each Party's applicable legal requirements. During the management of the Scope of Work in this Agreement, any change order that will increase an approved contract will require approval by the respective Parties pursuant to their contracting processes within 30 days. All other decisions may be made by the Project Management Team.

### 5.5 **Project Management Authority**

TVWD is the Project Manager liaison with the County under the Road Project and the other elements identified in the Scope of Work under this Agreement. TVWD shall oversee the execution of each task identified in the Scope of Work, and shall have the following powers:

5.5.1 To enter into contracts for services for each element of the Scope of Work, subject to Section 5.4;

5.5.2 To retain such agents, officers and employees as it deems necessary and to contract services; and

5.5.3 To make decisions related to the SW 124<sup>th</sup> Avenue Pipeline Project within the Road Project as necessary in case of an emergency requiring immediate action. In such cases, TVWD shall inform Hillsboro of the action(s) taken within one business day. The parties acknowledge that the construction of the Road

Project has not been commenced and final decisions on construction of the Road Project belong to the County.

5.6 Road Project Design Process. As Project Manager, TVWD shall have authority on behalf of the parties to coordinate and be the point of contact with the County in the solicitation of bids and award of contracts for the SW 124<sup>th</sup> Avenue Pipeline Project. The Parties must approve the design and construction documents for inclusion in the Road Project and the bid and award of the SW 124<sup>th</sup> Avenue Pipeline Project portion of the contract.

## 6. DEFAULTS

6.1 Event of Default. The failure of a Party to perform any duty imposed upon it by this Agreement shall constitute a default.

6.2 Notice of Default. The non-defaulting Party shall have the right to give the defaulting Party a written notice of default, which shall describe the default in reasonable detail and state the date by which the default must be cured, which date shall be at least 60 days after receipt of the notice of default, except in the case of a failure to make full payment, in which case the date shall be 30 days after receipt of the notice of default.

6.3 Opportunity to Cure. If within the applicable period described in Section 7.2 the defaulting Party cures the default, or if the failure is one (other than the failure to make full payments) that cannot in good faith be corrected within such period and the defaulting Party begins to correct the default within the applicable period and continues corrective efforts with reasonable diligence until a cure is effected, the notice of default shall be inoperative, and the defaulting Party shall lose no rights under this Agreement. If, within the specified period, the defaulting Party does not cure the default or begin to cure the default as provided above, the non-defaulting Party at the expiration of the applicable period shall have the rights specified in Section 6.4.

6.4 Rights Upon Default. If the defaulting Party has not cured the default as provided in Section 7.3, it shall have no rights under this Agreement until the default has been cured. In addition, the non-defaulting Party may pursue any other remedy available at law or in equity against the defaulting Party subject to the dispute resolution procedures of Section 7.17.

6.5 Reallocation. If a Party is terminated for default, the remaining parties shall undertake to share proportionately in the amount the terminated party was obligated to pay and cost share shall be reallocated accordingly, unless the remaining Parties otherwise agree.

## 7. GENERAL PROVISIONS

7.1 Future Agreements. The Parties acknowledge that the terms and conditions of this Agreement may be superseded or replaced by a subsequent agreement to provide for construction, ownership, governance, operation, maintenance repair, replacement and expansion of the Program to connect the Willamette WTP with their respective service areas.

7.2 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 consistent with its terms.

7.3 Terminology. The captions beside the section numbers of this Agreement are for reference only and shall not modify or affect this Agreement in any manner whatsoever. Wherever required by the context, any gender shall include any other gender, the singular shall include the plural, and the plural shall include the singular. Further, Party or Parties shall mean TVWD, Hillsboro or a local government entity who enters into this Agreement by execution of a Joinder Agreement.

7.4 Assignment. No Party shall have the right to assign its interest in this Agreement (or any portion thereof), without the prior written consent of the other Party .

7.5 Severability. In case anyone or more of the provisions contained in this Agreement shall 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.

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

7.7 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, first class postage prepaid, addressed to the parties as follows:

If to Hillsboro:

City of Hillsboro  
Water Department Director  
150 E. Main  
Hillsboro, OR 97123

If to TVWD:

Tualatin Valley Water District  
Chief Executive Officer  
1850 SW 170th Avenue  
Beaverton, OR 97006

7.8 Amendment. This Agreement may be amended only if both parties concur in the proposed amendment by a written agreement, signed by authorized representatives of each party.

7.9 Books Reports & Accounting. TVWD shall maintain books and records which shall show all income, receipts, expenses and costs in connection with its rights and duties under this Agreement. All such books of account or other records may be examined and copies of books and records made by TVWD staff at reasonable times upon reasonable notice.

7.10 Waiver. The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision of this Agreement shall not constitute a waiver of any provision of this Agreement or limit the Party's right thereafter to enforce any provision or exercise any right.

7.11 Force Majeure. The obligations of a Party, other than the payment of money, shall be suspended to the extent and for the period that performance is prevented by any cause, whether foreseen, foreseeable or unforeseeable, beyond the Party's reasonable control if the Party is making a good faith effort to resolve or avoid the cause, including without limitation labor disputes (however arising and whether or not employee demands are reasonable or within the power of the Party to grant); acts of God, laws, regulations, orders, proclamations, instructions or requests of any non-party government or governmental entity; judgments or orders of any court; inability to obtain on reasonably acceptable terms any public or private license, permit or other authorization; curtailment or suspension of activities to remedy or avoid an actual or alleged, present or prospective violation of federal, state, or local environmental standards; acts of war or condition arising out of or attributable to war, whether declared or undeclared; riot, civil strife, insurrection or rebellion, fire, explosion, earthquake, storm, flood, sinkholes, drought or other adverse weather conditions; delay or failure by suppliers or transporters of materials, parts, supplies, services or equipment or by contractors' or subcontractors' shortage of, or inability to obtain, labor, transportation, materials, machinery equipment, supplies, utilities or services; accidents, breakdown of equipment, machinery or facilities, or any other cause whether similar or dissimilar to the foregoing, provided that the affected Party shall give notice to the other Party within 10 business days of the suspension of performance, stating in such notice the nature of the suspension, the reasons for the suspension and the expected duration of the suspension. The affected Party shall resume performance as soon as reasonably possible.

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

7.13 Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Oregon.

7.14 Remedies Not Exclusive. Each and every power and remedy specifically given to the non-defaulting Parties shall be in addition to every other power and remedy now or hereafter available at law or in equity (including the right to specific performance), and each and every power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission in the exercise of any such power or remedy and no renewal or extension of any payments due under this Agreement shall impair any such power or remedy or shall be construed to be a waiver of any default.

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

7.16 Time is of the Essence. A material consideration of the Parties entering into this Agreement is that the Parties will make all payments as and when due and will perform all other obligations under this Agreement in a timely manner. Time is of the essence of each and every provision of this Agreement.

7.17 Dispute Resolution. The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Agreement or interpretation thereof shall follow a prescribed process beginning with negotiation and subsequently moving to mediation, provided the dispute remains unresolved. If a dispute arises between the parties regarding this Agreement, the parties shall follow the dispute resolution provisions below:

7.17.1 Written Notice. A written notice regarding the dispute (Dispute Notice) shall be sent to the other party. If additional Parties join this Agreement, the references to account for multiple parties shall be adjusted per Section 8.3.

7.17.2 Negotiations. Within thirty (30) days following receipt of the Dispute Notice, the parties to the dispute ("Disputing Parties") shall assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days after appointment of the representatives.

7.17.3 Mediation. If after the sixty (60) day period of negotiation (or a period not to exceed ninety (90) days following the receipt date of the Dispute Notice), the dispute(s) cannot be resolved, the Disputing Parties agree to submit the matter to non-binding mediation. The Disputing Parties shall attempt to agree on a mediator in a period not to exceed one hundred twenty (120) days following the receipt date of the Dispute Notice and proceed accordingly.

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7.17.4 Litigation. If the Parties cannot agree on a mediator within the allocated time, or if the mediator cannot resolve the dispute(s) within one hundred eighty (180) days following the receipt date of the Dispute Notice, either of the Disputing Parties may initiate litigation in the Circuit Court of the State of Oregon for Washington County and seek all available remedies. Moreover, each of the Disputing Parties shall bear its own legal and expert witness fees at all stages of the dispute resolution process, including at trial or on any appeals. In addition, nothing shall prevent the Disputing Parties from waiving any of the dispute resolution steps by mutual consent.

7.18 New Member. Upon approval by the then Parties to this Agreement, new local government entities may join so long as they execute a Joinder Agreement (Exhibit B) pursuant to which they agree to be bound by the terms of this Agreement and additional terms and conditions set forth in the Joinder Agreement.

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 instrument on their behalf.

**CITY OF HILLSBORO**  
An Oregon municipal corporation

**TUALATIN VALLEY WATER DISTRICT,**  
Domestic water supply district

Arion Carlsson  
Mayor ~~Council President~~  
~~Acting Mayor~~  
APPROVED AS TO FORM:

\_\_\_\_\_  
Chief Executive Officer  
  
APPROVED AS TO FORM:

Al St  
\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
District Counsel

Attest: Kimberly  
City Recorder

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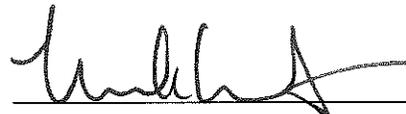
**CITY OF HILLSBORO**

An Oregon municipal corporation

**TUALATIN VALLEY WATER DISTRICT,**

Domestic water supply district

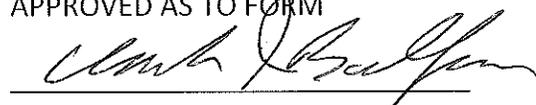
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Mark Knudson, Chief Executive Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED AS TO FORM

  
\_\_\_\_\_  
Clark I. Balfour, District Counsel

Attest: \_\_\_\_\_

City Recorder