

MEMORANDUM OF UNDERSTANDING

WATER MASTER PLAN

This Memorandum of Understanding (MOU) is effective this ____ day of September, 2014 by and between Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264 (TVWD) and the City of Tigard, an Oregon municipal corporation, (Tigard).

RECITALS

TVWD, the City of Wilsonville (Wilsonville) and the City of Sherwood (Sherwood) own varied interests in land, water rights, water system assets and capacity in water system assets as part of the existing Willamette River Water Treatment Plant (WRWTP) in Wilsonville.

The existing WRWTP (Lower Plant) was designed to be expanded from its current capacity to produce not less than 70 million gallons per day. The real property owned by TVWD and Wilsonville upon which the Lower Plant is situated could accommodate a second water treatment plant (Upper Plant) but it would be at a higher outlet Mean Sea Level elevation than the Lower Plant. The quantity of finished drinking water that could be produced by the Upper Plant is not less than an additional 50 million gallons per day.

TVWD, Wilsonville and Sherwood have been engaged in discussions with the Cities of Beaverton, Hillsboro, Tigard and Tualatin regarding planning and evaluation of use of the Willamette River to meet future water supply demands, evaluation of existing water system assets including the Lower Plant and future water system assets such as the Upper Plant, and discussion concerning ownership, governance and operation of the Lower and Upper Plants in the event that one or more of the Parties determine it is appropriate to enter into an agreement or agreements to share the water supply system assets. Whether an entity would obtain finished water from the Lower Plant or Upper Plant is determined primarily by elevation and water pressure.

A Master Plan for the WRWTP was completed in December, 2006. In order to facilitate the evaluation of existing and planning for future water system facilities, and to assist in future decision making by the above named entities, TVWD is prepared to solicit and negotiate a contract with a Consultant to update the Master Plan for the Lower Plant and develop a Master Plan for the proposed Upper Plant (collectively referenced hereinafter as the “Master Plan”).

Tigard recognizes value in participating in the Master Plan process and has participated in development of a mutually agreeable work scope with TVWD for inclusion in the work scope with the selected Consultant.

The Parties desire to enter into this MOU regarding development of the Master Plan and sharing of costs.

Based upon the foregoing, the Parties agree as follows:

AGREEMENT

1. RECITALS

The Recitals above are incorporated into and made part of this MOU.

2. WATER TREATMENT PLANT MASTER PLAN

Using its standard purchasing processes, TVWD will undertake a Request for Qualification process to select a Consultant to prepare a Master Plan to complete the tasks set forth on Ex A attached hereto and incorporated herein by reference.

3. COMMITMENT OF TIGARD

The City of Tigard desires to participate in the cost of developing the Master Plan to assist in determining options for firm, interruptible or emergency water supply, evaluating existing, expanded and future facilities, and developing data for use in Tigard's separate water system planning, Water Management and Conservation Plans and capital improvement plans. With respect to developing the Master Plan, Tigard agrees its participation may be assumed for the sole purpose of allocating the cost of the tasks set forth on Exhibit A, attached hereto and incorporated by reference as if fully set forth herein, subject to the limitations of this paragraph and paragraph 8 below.

4. MASTER PLAN SHARE CALCULATION

TVWD and Tigard agree that the estimated Master Plan Share Calculation, set forth in percentage amounts on Exhibit B attached hereto and incorporated herewith by reference as if fully set forth is based on existing participation in the WRWTP and assumptions regarding potential participation in the expansion of Lower Site Assets, creation and expansion of Upper Site Assets and Other Assets that may be necessary to allow the Lower Site and Upper Site to operate as an integrated facility for the benefit of all as ultimately determined under separate Agreements currently under negotiation. Upon selection of the consultant and negotiation of a final scope of work and budget, Tigard and TVWD agree to revise Exhibit B to show the final proportionate cost shares of TVWD and Tigard. Tigard agrees to pay TVWD for Tigard's proportionate share of the Master Plan cost according to the final shares assigned on amended Exhibit B, subject to Tigard's option to withdraw as provided in Section 8 below.

5. PAYMENT

5.1 Upon receipt of an invoice from Consultant, TVWD will review and determine whether the amount claimed is justified. TVWD will make payment to Consultant of all undisputed amounts. If an amount is disputed, TVWD will follow procedures in the contract with the Consultant to resolve the issue. Upon receiving the invoice, TVWD will forward a copy to Tigard and consult with Tigard regarding any disputed amounts.

5.2 For all amounts paid by TVWD to Consultant, TVWD will create an invoice to Tigard that allocates the proportionate share of the work performed by Consultant according to the Tasks and percentage participation set forth on Exhibits A and B. Tigard will pay TVWD within 30 days following receipt of invoice.

6. COOPERATION

Tigard agrees to provide information reasonably requested by TVWD or Consultant in a timely manner to enable the Consultant to perform the Tasks and Work Scope. The agreement between TVWD and the Consultant will include a non-disclosure and confidentially provision(s) that requires TVWD and Consultant to prevent the disclosure of information provided by Tigard if Tigard reasonably believes that the information is exempt from disclosure under the Oregon Public Records Law. Tigard shall also designate a Project Representative to respond to requests for information.

7. PROJECT MANAGER AND PROJECT REPRESENTATIVES

TVWD designates Todd Perimon as Project Manager for the Master Plan who will be the point of contact with Consultant. Tigard designates John Goodrich as its Project Representative to be the point of contact for the Project Manager and Consultant. Other entities who sign an MOU with TVWD to share in the cost Master Plan will also each appoint a Project Representative. Project Manager shall convene meetings of all Project Representatives at mutually agreed times and places and at intervals appropriate to keep Project Representative informed of the status of consultant selection, negotiations of the scope of work and budget, and to allow the Project Manager to direct the Consultant in performance of the work. Tigard may change its Project Representative at any time upon notice to the Project Manager.

8. SELECTION OF CONSULTANT

8.1 Following receipt of responses to the Request for Qualification issued as described in Paragraph 3, the Project Manager and the Project Representatives from each participating entity shall constitute the Evaluation Committee for purposes of evaluating the Consultant Qualifications and recommending the Consultant for contract award.

8.2 When the recommended consultant has been approved based upon the evaluation and scoring criteria, the Project Manager shall negotiate a proposed final scope of work and budget for preparation of the Master Plan.

8.3.1 At least ten working days prior to award and execution of the contract, the Project Manager shall provide the proposed final scope of work and budget, as negotiated with the selected Consultant, and the final cost share to the Project Representative's for approval.

8.3.2 Each Project Representative will have seven working days from receipt of the final scope of work and budget to take whatever steps are needed to determine whether to authorize continued participation in the cost of the Master Plan. The Project Representative will advise the Project Manager whether Tigard will participate as set forth in the final scope of work and cost share, or will withdraw from this MOU.

8.3.3 Exhibits A and B to this MOU may be modified, as necessary, to account for the final decision by Tigard. The Project Manager and Project Representatives will jointly review and may approve revised Exhibits A and B without further action by the governing body of either.

9. DISCLAIMER

The Parties agree that nothing herein or the Tasks or allocation of cost participation as set forth on Exhibits A and B create a binding obligation or commitment by Tigard to participate in the acquisition, design, construction or use of the subject water system assets. The tasks and cost allocations are set forth only for development of a Master Plan to provide preliminary information for evaluation by the Parties as they analyze future water supply options.

10. DEFAULT

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

10.2. 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.

10.3. Opportunity to Cure. If 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 of Section 11.2 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 MOU. 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 11.4

- 10.4. Rights Upon Default. If the defaulting Party has not cured the default, it shall have no rights under this MOU 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 11.16.
- 10.5. Reallocation. If another entity enters into an MOU with TVWD for the tasks described in Exhibit A and the cost shares described in Exhibit B and the MOU is terminated for default, TVWD and Tigard agree that each party's proportionate cost shares may need to be adjusted address the amount the terminated entity was obligated to pay, unless TVWD and Tigard otherwise agree. In such event, TVWD shall convene all Project Representatives to discuss and agree upon reallocation of costs and/or reduction in the Consultant's Work Scope.

11. GENERAL PROVISIONS

- 11.1. Future Agreements. The Parties acknowledge that the terms and conditions of this MOU may be superseded or replaced by subsequent agreement. Separate Agreement(s) will be negotiated to provide for construction, ownership, governance, operation, maintenance, repair, replacement and expansion of the WRWTP with respect to their respective service areas. Nothing in this MOU commits a Party to participate in other Agreements.
- 11.2. 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.
- 11.3. Assignment. Neither Party to this MOU may assign its interest in this MOU (or any portion thereof) without the prior written consent of the other Party.

or limit the Party's right thereafter to enforce any provision or exercise any right.

- 11.10. 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.
- 11.11. Implied Covenants. The Parties agree that in construing this MOU, no covenants shall be implied between the Parties except the covenants of good faith and fair dealing.
- 11.12. Governing Law. This MOU shall be governed by and interpreted in accordance with the internal laws of the State of Oregon.
- 11.13. 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 MOU shall impair any such power or remedy or shall be construed to be a waiver of any default.

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

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

11.16. Dispute Resolution. The Parties hereby agree that resolution of any and all disputes arising out of the terms of this MOU 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:

11.16.1. Written Notice. A written notice regarding the dispute (Dispute Notice) shall be sent to the other party.

11.16.2. 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.

11.16.3. 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.

11.16.4. 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 avail itself of the remedies provided for herein. 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.

11.17. Term. This MOU shall be in effect until the latter of completion of the Master Plan by Consultant and acceptance by TVWD and Tigard or June 30, 2016.

THE UNDERSIGNED, PURSUANT TO AUTHORIZATION FROM THE GOVERNING BODY, HEREBY EXECUTES THIS MEMORANDUM OF UNDERSTANDING ON BEHALF OF HIS/HER RESPECTIVE ENTITY.

CITY OF TIGARD

TUALATIN VALLEY WATER DISTRICT

An Oregon Municipal Corporation

A Domestic Water Supply District

Its _____

Chief Executive Officer

APPROVED AS TO FORM

APPROVED AS TO FORM

City Attorney

District Counsel