

**RESOLUTION NO. 2035**

**A RESOLUTION OF THE CITY OF WILSONVILLE WAIVING RIGHT OF FIRST OFFER FROM TUALATIN VALLEY WATER DISTRICT TO PURCHASE INTEREST IN WILLAMETTE WATER TREATMENT SUPPLY FACILITIES IN FAVOR OF THE PURCHASE BY THE CITY OF SHERWOOD**

WHEREAS, the City of Wilsonville ("Wilsonville") and Tualatin Valley Water District, an Oregon Domestic Water Supply District formed under ORS Chapter 264 ("TVWD") entered into an Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership, dated July 6, 2000, hereinafter referred to as "Master Agreement", the original of which is on file with the City Recorder; and

WHEREAS, pursuant to the Master Agreement between the parties dated July 6, 2000, TVWD purchased a 49% interest as Tenant in Common in certain real property from Wilsonville and Wilsonville retained a 51% interest in the property as Tenant in Common. The property is described in the Warranty Deed marked Exhibit 1 and attached to the Master Agreement and incorporated by reference as though fully set forth therein (the "Property").

WHEREAS, pursuant to the Master Agreement, Wilsonville and TVWD have obtained necessary permits from the applicable regulatory government agencies and have designed and built on the Property (i) an intake facility capable of drawing 120 million gallons per day (mgd); (ii) an intake line from the diversion point to the intake structure; (iii) a permanent, multi-barrier treatment plant with an initial capacity of 15 mgd and future, developed plant capacity of up to 70 mgd to treat water from the Willamette River so that it meets federal and state drinking water standards; (iv) transmission lines to Kinsman Road; and (v) access road bikeway and pedestrian pathway, collectively, the "Supply Facilities."

WHEREAS, pursuant to section 6.2.3 of the Master Agreement, Wilsonville and TVWD entered into an Operation and Maintenance Contract Between the City of Wilsonville, an Oregon Municipal Corporation, and Tualatin Valley Water District, an Oregon Domestic Water Supply District formed under ORS Chapter 264 ("Owners"), and U.S. Filter Operating Services, Inc., a Delaware Corporation (USFOS), dated February 6, 2001, whereby US Filter would furnish all labor and materials and the like to properly operate and maintain the water treatment facilities as set forth therein, an original of which is on file with the City Recorder; and

WHEREAS, USFOS has been succeeded in interest by Veolia Water North America Operating Services, Inc., a Delaware Corporation; and

WHEREAS, pursuant to section 5 of the Master Agreement, Wilsonville and TVWD agreed to reach an accord in regards to Leasing of Supply Capacity, Future Expansion, Transfer of Ownership Interests in Supply facilities, Right of First Offer, Future voting Rights, Cooperation in Financing for Future Expenses and Defaults Regarding the Subject Matters of this Section 5 of Future Agreements; and

WHEREAS, an Accord Agreement was entered into June 19, 2001, by and between Wilsonville and TVWD, an original of which is on file with the City Recorder; and

WHEREAS, TVWD and the City of Sherwood, an Oregon Municipal Corporation ("Sherwood"), advised Wilsonville of their mutual desire and intent for TVWD and Sherwood to enter into an Intergovernmental Agreement ("IGA") whereby TVWD would (1) provide Sherwood the right to occupy and use the Property in conjunction with Sherwood acquiring an interest from TVWD in the Supply Facilities inclusive of TVWD's 5 mgd first phase plant capacity; (2) sell to Sherwood and Sherwood would purchase from TVWD an interest in TVWD's interest in the Supply Facilities inclusive of TVWD's 5 mgd first phase plant capacity for \$6,962,630.00; (3) that any such provision for use and occupancy and transfer by sale of an interest of TVWD to Sherwood in the Supply Facilities was exclusive of any interest of Wilsonville's; (4) that all the above recited agreements (Master Agreement, Operation and Maintenance Agreement, and Accord Agreement) were to remain in full force and effect and Wilsonville's interests thereunder were not to be changed or modified in any manner ; and (5) Wilsonville would be provided a Right of First Offer; and

WHEREAS, in furtherance of the above, and after consultation with Wilsonville, TVWD provided to Wilsonville its formal notice of intent to transfer a portion of TVWD's ownership interests in the Supply Facilities to Sherwood and to provide Wilsonville a Right of First Offer by letter dated December 5, 2006, a copy of which is marked Exhibit A and incorporated by reference as if fully set forth herein;

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

1. Based on the recitals above, the representations set forth in the December 5, 2006, letter from TVWD, Exhibit A, the terms and conditions of the IGA authorized to be entered with TVWD by Sherwood for the consideration set forth therein, Exhibit B, and with the

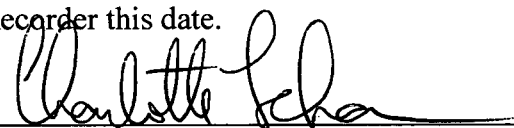
understanding the final IGA to be executed will be corrected as set forth in Exhibits C & D, the City Council of the City of Wilsonville finds the transfer of ownership interest from Supply Facilities from TVWD to the City of Sherwood is to another local government and is subject to Wilsonville's Right of First Offer; and

2. The City Council further finds that TVWD's stated intent is to provide Sherwood with a use and occupancy of the Property limited to that necessary to use and occupy the interest in the Supply Facilities to be transferred and not a transfer of ownership interest in or a partition of the Property;

3. Therefore, based on the above recitals and findings, the City of Wilsonville waives its right to exercise its Right of First Offer to acquire the ownership interest in the Supply Facilities that TVWD desires to transfer to Sherwood; provided, however, such waiver is not to be construed as a waiver of Wilsonville's Right of First Offer of any future interest intended to be transferred or transferred by TVWD of any of TVWD's interest in the Property or in the Supply Facilities under the Master Agreement and the Accord Agreement or as Wilsonville's Right of First Offer is additionally maintained in the IGA attached to Exhibit B.

4. The effective date of this Resolution is December 18, 2006.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18<sup>th</sup> day of December, 2006, and filed with the Wilsonville City Recorder this date.

  
\_\_\_\_\_  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Holt	Excused
Councilor Knapp	Yes
Councilor Ripple	Yes



1850 SW 170th Ave. · P.O. Box 745 · Beaverton, Oregon 97075 · 503/642-1511 · FAX: 503/649-2733

Gregory E. DiLoreto  
*General Manager*

Bernice Bagnall  
*Chief Financial Officer*

Todd Heidgerken  
*Manager, Community & Intergovernmental Relations*

Dale Fishback  
*Manager, Operations & Field Services*

Brenda Lennox  
*Manager, Customer & Support Services*

Gary Pippin  
*Manager, Engineering Services*

Debra Erickson  
*Human Resources Coordinator*

December 5, 2006

Arlene Loble, City Manager  
City of Wilsonville  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

Re: Tualatin Valley Water District/Sherwood  
Water Treatment Plant

Dear Arlene,

As you know, Tualatin Valley Water District (TVWD) has been working with Sherwood to allow them to purchase an interest in the TVWD portion of the Willamette Water Supply Facilities. A draft agreement between TVWD and Sherwood has been sent for Wilsonville's reference. The TVWD/Wilsonville Agreements require that Wilsonville be given an opportunity to purchase TVWD's interest prior to any transfer thereof. We understand you plan to bring this issue to your Council on December 18, 2006.

When TVWD and Wilsonville entered into the various agreements in 2001-2002, it was anticipated that Wilsonville's interest in the initial plant assets and up to 20 million gallons per day to match its water right would always remain intact, but that the TVWD portion (up to 120 mgd) would be ultimately transferred to the Willamette River Water Coalition (WRWC), of which Sherwood and TVWD are members. We understand that any transfer of the TVWD interest would not affect Wilsonville's ownership interest or change the two-party relationship between Wilsonville and TVWD (or Wilsonville and WRWC).

The proposed agreement between TVWD and Sherwood will:

1. Not change or impact in any way Wilsonville's proportionate ownership interest in the land and water supply facilities.
2. Not change the partnership agreements between TVWD and Wilsonville. The TVWD/Wilsonville Agreements are specifically incorporated by reference as exhibits to the TVWD/Sherwood Agreement and Sherwood agrees to be bound by all terms and conditions thereof. TVWD will still act as Wilsonville's partner under those Agreements.
3. Not change the Managing Agency status of Wilsonville. The original agreements contemplated that if Wilsonville's use of the plant was less than 50% of total plant production, then TVWD may elect to be Managing Agency. The TVWD/Sherwood Agreement provides for only TVWD to become the managing agency in accordance with the agreement between Wilsonville and TVWD.

Page 1 of 2

J:\Greg\Letter to Arlene Lobel, Wilsonville- TVWD, Sherwood Wtr Treatment Plant 12-05-06.doc/pattyr j/12/5/2006


**WATER** – not to be taken for granted

Rec'd 12/7/06  
JPS

We hope this answers your questions and enables Wilsonville to decline the purchase opportunity. That step will enable TVWD and Sherwood to complete their transaction. We ask that the City of Wilsonville provide a confirming letter. We understand Sherwood and Wilsonville are working directly on mutually agreeable transmission line agreements to convey water from the plant to Sherwood.

Arlene, please call me at 503-848-3032 or email [greg@tvwd.org](mailto:greg@tvwd.org) should you have any questions.

Sincerely,



Gregory E. DiLoreto  
General Manager

cc: Ross Schultz  
Jack Hammond  
Clark Balfour



**Resolution 2006-064**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH TUALATIN VALLEY WATER DISTRICT (TVWD) TO ACQUIRE AN UNDIVIDED OWNERSHIP INTEREST IN A PORTION OF TVWD'S OWNERSHIP INTEREST IN WATER TREATMENT PLANT (WTP) FACILITIES IN WILSONVILLE, OREGON**

**WHEREAS**, the City desires to purchase from the Tualatin Valley Water District (TVWD) an undivided interest as a tenant in common of Water Treatment and Supply Facilities owned by TVWD in Wilsonville, Oregon, including water intake, pumping, treatment, and transmission sufficient to treat and supply to the City potable water at the rate of five million gallons per day; and

**WHEREAS**, the Facility interests authorized by this Agreement are a part of an integrated water system supply expansion project for the City, the purpose of which is to develop a new source of potable water supply to the City from the Willamette River; and

**WHEREAS**, the City has negotiated with TVWD concerning the terms of this purchase which are incorporated in the intergovernmental agreement attached hereto as Exhibit "A" and which includes detailed operational and administrative protocols and procedures and a description and itemized breakdown of the facilities purchased and the consideration to be paid by the City; and

**WHEREAS**, the proposed consideration to TVWD for this purchase is the sum of \$6,962,630.00 representing TVWD's current out-of-pocket investment in the facilities purchased with that cost basis adjusted to October 2006 using a recognized Regional Construction Cost Index for assets and for other capital project costs, cost basis adjustments using the Local Government Investment Pool (LGIP) investment rate; and

**WHEREAS**, the Intergovernmental Agreement authorized by this Resolution will not be effective until the City of Wilsonville waives its contractual right to exercise its right of first offer regarding the facility interest to be purchased by the City.

**NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:**

**Section 1:** By approval of this Resolution, the City Manager is hereby authorized to execute an intergovernmental agreement with TVWD to purchase an undivided interest in the Water Treatment and Supply Facilities located in Wilsonville, Oregon. A

copy of the Intergovernmental Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

**Section 2:** This Resolution is and shall be effective from and after its passage by the Council.

Duly passed by the City Council this 21<sup>st</sup> day of November, 2006.

  
\_\_\_\_\_  
Keith S. Mays, Mayor

ATTEST:

  
\_\_\_\_\_  
Sylvia Murphy, City Recorder

# DRAFT

## AGREEMENT

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 2006 (the "Effective Date"), by and between CITY OF SHERWOOD, an Oregon municipal corporation ("Sherwood"), and the TUALATIN VALLEY WATER DISTRICT, an Oregon domestic water supply district formed under ORS Chapter 264 ("TVWD").

## RECITALS

A. The City of Wilsonville holds Permit No. 46319, which was issued on March 27, 1974, and authorizes Wilsonville to appropriate water from the Willamette River for municipal purposes at the rate of 30 cubic feet per second (19,389,450 gallons per day).

B. TVWD holds Permit No. 49240, which was issued on June 19, 1973, and authorizes TVWD to appropriate water from the Willamette River for municipal purposes at the rate of 202 cubic feet per second (130,555,630 gallons per day). TVWD may assign Permit No. 49240 to the Willamette Water Supply Agency ("WWSA"), now known as the Willamette River Water Coalition (WRWC). WRWC is a water supply entity formed under ORS Chapter 190 for the purpose of drinking water supply from the Willamette River. Sherwood is a member of WRWC.

C. Wilsonville and TVWD entered into an Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership, dated July 6, 2000, hereinafter referred to as "Master Agreement".

D. Pursuant to the Master Agreement between these parties dated July 6, 2000, TVWD purchased a forty-nine percent (49%) interest as Tenant in Common in certain real property from Wilsonville and Wilsonville retained a fifty-one percent (51%) interest in the property. The property is described in the Warranty Deed marked as Exhibit 1 and attached to



the Master Agreement and incorporated by reference as though fully set forth herein (the "Property").

E. Pursuant to the Master Agreement, Wilsonville and TVWD obtained necessary permits from the applicable regulatory government agencies and designed and built on the Property (i) an intake facility capable of drawing 120 million gallons per day (mgd); (ii) an intake line from the diversion point to the intake structure; (iii) a permanent, multi-barrier treatment plant with an initial capacity of 15 mgd and future, developed plant capacity of up to 70 mgd on the lower portion of the Property to treat water from the Willamette River so that it meets federal and state drinking water standards; (iv) transmission lines to Kinsman Road; and (v) access road bikeway and pedestrian pathway, collectively, the "Supply Facilities."

F. Pursuant to section 6.2.3 of the Master Agreement, Wilsonville and TVWD entered into an Operation and Maintenance Contract Between the City of Wilsonville, an Oregon Municipal Corporation, and Tualatin Valley Water District, an Oregon Domestic Water Supply District ORS Chapter 264 ("Owners"), and U.S. Filter Operating Services, Inc., a Delaware Corporation (USFOS), dated February 6, 2001, whereby US Filter would furnish all labor and materials and the like to properly operate and maintain the water treatment facilities as set forth therein, hereafter the "Operation and Maintenance Contract." US Filter Operating Services, Inc., has assigned its obligations under the Operations and Maintenance Contract to Veolia Water North America Operation Services, LLC ("Veolia").

G. Pursuant to Section 5 of the Master Agreement, Wilsonville and TVWD reached agreement regarding the leasing of Supply Capacity, Future Expansion, Transfer of Ownership Interests in Supply Facilities, Right of First Offer, Future Voting Rights, Cooperation in

Financing for Future Expenses and Defaults Regarding the Subject Matters of this Section 5 of Future Agreements and entered into an Accord Agreement dated June 19, 2001.

H. The Master Agreement, Operations & Maintenance Agreement and Accord Agreement contemplate and permit a transfer of TVWD's interests to WWSA, now WRWC and TVWD, and Sherwood intend to do so upon the satisfaction of certain conditions set forth below.

I. Sherwood wishes to purchase and TVWD wishes to sell an undivided interest to a portion of TVWD's ownership interest in the Supply Facilities on the terms and conditions below and Sherwood expressly agrees to be subject to all TVWD rights and obligations in the Master Agreement, the Operation & Maintenance Contract, and the Accord Agreement. The parties intend that Sherwood will have all rights and obligations of TVWD with respect to that portion of the Supply Facilities and reference in those applicable agreements to TVWD shall also mean Sherwood as though fully set forth.

J. By separate document, Wilsonville has declined to exercise its right of first offer and has consented to this transfer of ownership interest.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Agreement, the Parties agree as follows:

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1. DEFINITIONS

Except as expressly provided herein, the definitions set forth in the July 6, 2000, Master Agreement Regarding Water Treatment Plant Design, Construction, Operation and Property Ownership, the definitions of the Operation and Maintenance Contract dated February 6, 2001, and the definitions of the Accord Agreement dated June 19, 2001 are incorporated herein by reference.

2. SALE OF ASSETS

TVWD hereby sells, assigns and transfers to Sherwood an undivided interest as tenant in common in the Supply Assets set forth on Exhibit 1, attached hereto and incorporated by reference, sufficient to supply five (5) million gallons per day. The five million gallons per day of water treatment plant capacity shall be from the first phase of the Wilsonville Water Treatment Plant and a corresponding undivided interest in the Supply Facilities including water intake, pumping and transmission sufficient to that treat and carry five (5) million gallons per day. TVWD also grants Sherwood the right to use and occupy the Property under the Master Agreement. The resulting ownership of the Supply Facilities following payment hereunder shall be based upon the capital contribution of each party, all as set forth on Exhibit 2, attached hereto and incorporated by reference.

3. CONSIDERATION

TVWD and Sherwood agree that the consideration for sale and assignment of the TVWD Supply Facilities is Six Million Nine Hundred Sixty Two Thousand Six Hundred and Thirty Dollars (\$6,962,630.00)~~Seven Million Twenty One Thousand Fifty Nine Dollars (\$7,021,059.00)~~, which shall be paid upon execution of this Agreement. The calculation of the

purchase price and the resulting ownership interests of TVWD and Sherwood are set forth on Exhibit 2.

#### 4. OTHER AGREEMENTS

Sherwood specifically agrees to be bound by all the terms and conditions of the Master Agreement (Exhibit 3), Operation and Maintenance Contract (Exhibit 4), and the Accord Agreement (Exhibit 5) executed by Wilsonville and TVWD, and attached hereto and incorporated by reference. TVWD and Sherwood agree to execute such further documents as are reasonably necessary to enable Sherwood to fulfill the benefits and obligations of this Agreement and the Agreements referred to above. The Parties agree that Sections 2, 3, 4 and 5 of the Master Agreement do not apply. Except as provided in this Agreement, all provisions of the Agreements referred to above apply to Sherwood.

#### 5. FUTURE EXPANSION

##### 5.1 Purpose

The purpose of this section is to provide a notification procedure by which either Sherwood or TVWD can provide the other with a Notice of Requested Expansion, a reasonable basis to establish the justification for the expansion request and justification to determine acceptance, acceptance with modification, or rejection, and reasonable time frames to accomplish the above. The original agreements between Wilsonville and TVWD state that first phase capacity should be sufficient to serve the demand needs through the initial 10-year planning forecast. Those agreements established a simple procedure to respond to an increase in anticipated demand whenever it may occur. Sherwood agrees to be bound by those processes.

## 5.2 Condition precedent to requested expansion

If leasing is not reasonably available and prudent to meet respective demand needs and provided that Sherwood or TVWD holds permits to surface water rights as recited above or in addition to or in lieu thereof, Sherwood or TVWD shall have the right to expansion as set forth in this section or as they may otherwise agree.

## 5.3 Notice of Requested Expansion

Based on the planning forecast submittal as required under the Accord Agreement, Section 5.4 (Exhibit 5), if either Sherwood or TVWD desires to expand the Supply Facilities, then that party shall give to the other a Notice of Requested Expansion in writing, which notice shall provide the size of the expansion, the estimated time frame in which the expansion will need to be designed, constructed and on line, the estimated costs, the percent of the participating interest of the requestor and the acceptor, and the basis in the planning forecast upon which the request is being made. Notice shall also be given to Wilsonville pursuant to the Accord Agreement.

## 5.4 Standards for Request and Acceptance, Modification or Rejection of Requested Expansion

Sherwood and TVWD agree to apply standards of reasonableness and prudence to determine whether or not to request or to accept, modify, or reject the requested expansion set forth in the Notice of Requested Expansion. Such standards shall be applied to the accuracy of the information and/or any estimate provided in the Notice of Requested Expansion and the planning forecast. Such standards shall include, but not be limited to, taking into consideration the demand requested, the capacity of the treatment facilities as currently constructed or under construction, the available share of capacity owned or capable of being leased, financing

considerations, generally accepted principles for utility planning in the municipal and domestic water utility industry, and that the initial participating interests in the project elements of the Supply Facility were permitted, designed, constructed, and paid for to accommodate expansion as set forth in the Master Agreement. If TVWD and Sherwood elect to proceed together, then Agreements for the Project will be executed. If one party declines, then the other party may proceed.

#### 5.5 Sherwood Only Improvements

If TVWD does not participate, it shall inform Sherwood. TVWD will exercise voting rights to preserve Sherwood's ability to proceed on its own so long as TVWD is held harmless from any cost or obligation by Sherwood.

### 6. RIGHT OF FIRST OFFER

6.1 Except as may be otherwise provided for in section 2.1.3 of the Master Agreement for TVWD to convey its real property interest to WRWC, Sherwood agrees not to sell, transfer, exchange, grant an option to purchase, lease, or otherwise dispose of its undivided interest in the Property, or any part of, or interest in, or its ownership interest in the Supply Facilities, or any part, or interest in, without first offering to TVWD in writing ("Notice of Intent to Transfer") on the terms and conditions set forth in this Section. This right of first offer shall be perpetual unless it expires by its terms, or the parties mutually agree to its termination. This right of first offer shall run with and burden Sherwood's undivided interest in the Supply Facilities and Property, and shall run with and benefit TVWD and its successors and assigns.

6.1.1 When TVWD receives the Notice of Intent to Transfer, it shall have the prior and preferential right to purchase the ownership interest in the Supply Facilities for cash. The notice shall disclose the terms and

conditions Sherwood has been offered by any third party to sell to it in order to give the other owner fair opportunity to purchase. Such disclosure may be provided as confidential information as allowed by law. The purchase price for each shall be the agreed or appraised fair market value of the undivided interest in the Property or ownership interest in the Supply Facilities as the case may be.

6.1.2 TVWD shall give notice of whether it wishes to exercise the right to purchase within 60 days after receipt of the written Notice of Intent to Transfer from Sherwood offering to sell to TVWD. If TVWD fails to timely give written notice to Sherwood of the exercise of its right to purchase the offered, ownership interest in the Supply Facilities pursuant to the terms of this Section, then Sherwood shall be entitled to sell, transfer or assign the ownership interest in the Supply Facilities to Wilsonville via this same process and if Wilsonville refuses to purchase then a third-party, subject to Sections 2.1.3 and 2.1.4 of the Master Agreement, at such price, and on such terms and conditions acceptable to it, provided such terms and conditions are not inconsistent with the aforementioned fair opportunity to purchase.

6.2 Closing.

6.2.1 If TVWD exercises the right of first offer by electing to purchase the interest in the Supply Facilities, then the closing of the transaction contemplated by the Offer shall take place no later than one year after

written notice of exercise of the right to purchase subject to receipt of appraisal and negotiation of the purchase price.

- 6.2.2 At closing, Sherwood shall deliver a bill of sale of its ownership interest in the Supply Facilities and warranties regarding being free and clear of liens, any encumbrances, financing statements and other such warranties as are customarily provided under the circumstances or as may be agreed upon.
- 6.2.3 Taxes, utilities and premiums for existing policies of insurance, and the current portion of assessments for governmental or quasi-governmental improvements, contractual payments, either due and owing or having been paid, for a time period which closing divides, shall be prorated between the parties as of the date of closing.
- 6.2.4 The transaction shall be closed when a mutually agreeable escrow company has performed a records search for liens, encumbrances or financing statements against the ownership interest in the Supply Facilities to establish free and clear title. The costs of escrow shall be shared equally by the parties.
- 6.2.5 Default. If Sherwood shall fail or refuse to carry out any provision of this right of first offer, then TVWD shall be entitled to such remedy or remedies for breach of contract as may be available under applicable law, including without limitation the remedy of specific performance, if TVWD has fully performed all of its obligations hereunder. Time is of the essence hereof.



7. OPERATION AND MANAGEMENT OF THE SUPPLY FACILITIES

7.1 Managing Owner, Duties, Annual Budget, Expenses and Owners

Sherwood and TVWD agree that operation and management of the supply facilities shall be in accord with Section 6 of the Master Agreement (Exhibit 3). If TVWD is taking water from the Supply Facilities and the usage of TVWD and parties other than Wilsonville exceeds fifty percent (50%) of the water treatment plant production, then TVWD shall have the right to become the Managing Owner under the terms set forth in Section 6.1 of the Master Agreement.

8. FUTURE VOTING RIGHTS

8.1 The purpose of this section is to provide that Sherwood and TVWD are in accord that as Owners they may have to reach future agreements, but understand that those agreements, as a practical matter, are based on existing contractual terms and conditions and standards for determinations between the two parties and Wilsonville. The parties acknowledge that a section on voting procedures and rights was in contemplation of both owners joining a separate intergovernmental entity, which was the WRWC, which is presently not the case. If the Supply Facilities are transferred to WRWC, then the voting provisions of WRWC will apply

8.2 Until transfer to WRWC, Sherwood agrees that Wilsonville and TVWD shall have an equal right and obligation to manage, use, and operate the property in accord with the original agreements referenced herein. To the extent that decisions regarding the existing treatment arise while TVWD is not taking water from the Supply Facilities, Sherwood shall have all rights and obligations as if it was TVWD. Other decisions requiring a vote will be in proportion to the ownership interests in the Supply Facilities.

9. COOPERATION IN FINANCING FOR FUTURE EXPENSES

9.1 Sherwood acknowledges that Wilsonville and TVWD have jointly and separately

benefited from cooperation to date as Owners of the Property and the Supply Facilities and that Sherwood intends in good faith to cooperate with TVWD and Wilsonville in reaching accord in the future including, but not limited to, financing for future costs and expenses.

## 10. INDEMNITY AND INSURANCE

10.1 In addition to insurance which is obtained under Section 6.2.5 of the Master Agreement, each Party may maintain liability insurance insuring their respective operations on the Property or Supply Facilities.

10.2 Each Party shall, within the limits of the Oregon Tort Claims Act, ORS 30.260-30.300, save, defend and hold harmless the other Party or Parties from any claim for damages or injury arising from or alleged to have arisen from the sole negligence or willful act of the Party in the performance of this Agreement. Each Party shall be solely liable for any fine or penalties attributable to its performance of its duties under this Agreement and that are caused by its willful conduct or gross negligence. Sherwood shall be responsible for all costs of operations and maintenance attributable to its ownership interest in the Supply Facilities and hold TVWD harmless therefrom.

## 11. GENERAL

### 11.1 Notices

All notices, payments and other communications to the Parties under this Agreement must be in writing, and shall be addressed respectively as follows:

Wilsonville:           City of Wilsonville  
                              Attention: City Manager  
                              30000 SW Town Center Loop E  
                              Wilsonville, OR 97070  
                              503-682-1015

TVWD:                   Tualatin Valley Water District  
                              Attention: General Manager

PO Box 745  
Beaverton, OR 97075  
503-649-2733

Sherwood                      City of Sherwood  
   Attention: City Manager  
   22569 SW Pine Street  
   Sherwood, OR 97140  
   503-625-5522

All notices shall be given by (i) personal delivery to the Party, (ii) certified or registered mail, return receipt requested, or (iii) electronic communication followed immediately by registered or certified mail return receipt requested. All notices shall be effective and shall be deemed delivered (a) if by personal delivery, on the date of delivery, (b) if by certified or registered mail on the date delivered to the United States Postal Service as shown on the receipts; and (c) if by electronic communication, on the date the confirmation is delivered to the United States Postal Service as shown on the actual receipt. Upon a change in ownership, a new Party shall, upon entering into this Agreement, notify the other Party or Parties of their contact person, address and facsimile number. Any Party may change its address from time to time by notice to the other Parties.

#### 11.2    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.

#### 11.3    Modification

No Modification of this Agreement shall be valid unless made in writing and duly executed by the Parties. As the context may require, reference to the singular shall mean the plural and the plural shall mean the singular.

#### 11.4 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 riot 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 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 out of the ordinary; material delay or failure by suppliers or transporters of materials, parts, supplies, services or equipment or by contractors' or subcontractors' shortage of. or material 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 30 days of the suspension of performance or as soon as reasonably possible, 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.

### 11.5 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.

### 11.6 Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon. Venue shall lie in the Circuit Court of the State of Oregon for Clackamas County if Wilsonville is a party to the proceedings. Venue for any dispute under this Agreement between TVWD and Sherwood shall be in Washington County.

### 11.7 Remedies Not Exclusive

Each and every power and remedy specifically given to the Non-Defaulting Party 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.

### 11.8 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.

### 11.9 Successors and Assigns

This Agreement shall bind and inure to the benefit of the Parties and their successors and assigns.

#### 11.10 Time is of the Essence

A material consideration of the Parties for entering into this Agreement is that each Party 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.

#### 11.11 Counterparts

This Agreement may be executed in counterparts, all of which taken together shall constitute a single Agreement.

#### 11.12 Limitations

This Agreement shall not be construed to create a partnership between the Parties or to authorize any Party to act as agent for any other Party or Parties except as expressly provided in this Agreement.

#### 11.13 Attorneys' Fees

If any suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party such sums as a court may adjudge reasonable as attorneys' fees at trial, on appeal, or on any petition for review, and in any proceedings in bankruptcy or arbitration, in addition to all other sums provided by law.

#### 11.14 Dispute Resolution

If a dispute arises between the parties regarding this Agreement, the parties shall attempt to resolve the dispute through the following steps:

Step One - Negotiation: The Managers or such other persons designated by each disputing Party will negotiate on behalf of the entity they represent. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by

each Manager or designated person and ratified by their respective governing body, which shall be binding.

Step Two - Mediation. If the dispute cannot be resolved within 30 days of commencing Step One, the parties shall submit the matter to non-binding mediation before the United States Arbitration and Mediation Service of Portland, Oregon. The disputing Parties shall attempt to agree on a mediator. If they cannot agree, then the disputing Parties shall request a panel according to the USA&M Rules. The cost of mediation shall be borne equally between the disputing Parties. Each disputing Party shall be responsible for its own costs and fees therefore. The Parties agree to mediate in good faith. If the issues are resolved at this Step, a written determination of such resolution shall be signed by each Manager and ratified by their respective governing body.

Step Three — Litigation. If the disputing Parties are unsuccessful at Steps One and Two, then the Parties shall resolve disputes as provided in Section 11. 6.

TVWD and Sherwood stipulate that the remedies at law in the event of any default or threatened default by either hereto are not and will not be adequate, that such terms may be specifically enforced by a decree for the specific performance thereof or by an injunction against a violation thereof or otherwise, and that the remedies of specific performance and injunction will not impose undue hardship upon either Party. The Parties agree that any if they mutually agree to an arbitrator, the arbitrator shall have the authority to order specific performance or to issue an injunction as provided for herein.

#### 11.15 Term

The term of this Agreement shall commence on the Effective Date and shall be perpetual, unless the Parties otherwise agree in writing.

11.16 Entire Agreement

This Agreement, including all attached exhibits, and the referenced Agreements contains the entire and final understanding of the Parties and supersedes all prior Agreements and understandings between the Parties related to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date hereinabove mentioned.

TUALATIN VALLEY WATER DISTRICT

CITY OF SHERWOOD

By: \_\_\_\_\_  
Gregory E. DiLoreto, General Manager

By: \_\_\_\_\_  
Ross Schultz, City Manager

APPROVED AS TO FORM

APPROVED AS TO FORM

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

\_\_\_\_\_  
John H. Hammond, City Attorney



EXHIBIT 1

Tualatin Valley Water District and City of Sherwood WTP Facilities

PROJECT ELEMENT	TOTAL	TVWD closeout COST 5/11/05	TVWD	Sherwood 5 MGD Purchase	TVWD Adjusted MGD	Sherwood Cost Basis	Adjustment to Cost Basis
6/15/2005	CAPACITY in MGD		CAPACITY in MGD	CAPACITY in MGD	CAPACITY in MGD		LGIP rate*
<b>RAW WATER INTAKE AND PUMP STATION</b>							4.27%
Screening	70	\$517,868	50.0	5.0	45.0	\$51,787	\$53,997
Intake Pipe	120	\$1,140,146	100.0	5.0	95.0	\$57,007	\$59,440
Wetwell	120	\$1,824,233	100.0	5.0	95.0	\$91,212	\$95,105
Pump Station Building	120	\$1,169,168	100.0	5.0	95.0	\$58,458	\$59,953
Pumps	15	\$199,007	5.0	5.0	0.0	\$199,007	\$207,501
Electrical - wire & conduit	70	\$39,801	14.0	5.0	9.0	\$14,216	\$14,822
Electrical - equipment	15	\$132,658	5.0	5.0	0.0	\$132,671	\$138,334
Raw Water Pipeline	70	\$437,105	50.0	5.0	45.0	\$43,711	\$45,576
<b>SUBTOTAL</b>		<b>\$5,459,986</b>				<b>\$648,068</b>	<b>\$675,729</b>
<b>WATER TREATMENT PLANT</b>							
Clarification-Actiflo	15	\$1,188,881	5.0	5.0	0.0	\$1,188,881	\$1,239,624
Ozone building & piping	70	\$165,839	23.3	5.0	18.3	\$35,537	\$37,054
Ozone Contactor	15	\$513,111	5.0	5.0	0.0	\$513,111	\$538,011
Ozone Generators	15	\$266,706	5.0	5.0	0.0	\$266,706	\$267,663
Ozone destruct units	15	\$49,752	5.0	5.0	0.0	\$49,752	\$51,875
Filters	15	\$1,127,846	5.0	5.0	0.0	\$1,127,846	\$1,175,985
Filter to Waste	70	\$16,584	23.3	5.0	18.3	\$3,554	\$3,705
Chemical building	70	\$119,404	14.0	5.0	9.0	\$42,644	\$44,465
Chemical Feed Systems	35	\$243,541	5.0	5.0	0.0	\$243,541	\$253,936
Backwash System	70	\$85,373	5.0	5.0	0.0	\$85,373	\$89,016
Sludge Handling	35	\$235,416	5.0	5.0	0.0	\$235,416	\$245,484
Clearwell	70	\$216,274	5.0	5.0	0.0	\$216,274	\$225,605
FW Pump Station Building	70	\$83,399	5.0	5.0	0.0	\$83,399	\$86,958
FW Transmission Pumps	15	\$125,709	5.0	5.0	0.0	\$125,709	\$131,074
FW Wire & Conduit	70	\$14,897	5.0	5.0	0.0	\$14,897	\$15,533
Electrical - equipment	15	\$166,908	5.0	5.0	0.0	\$166,908	\$174,032
Administration Bldg-WTP reqts	70	\$87,801	5.0	5.0	0.0	\$87,801	\$91,549
Landscaping & irrigation	70	\$17,857	5.0	5.0	0.0	\$17,857	\$18,619
Landscaping & irrigation- City	70	\$0	0.0	0.0	0.0	\$0	\$0
Water feature	70	\$0	0.0	0.0	0.0	\$0	\$0
Roads and Bridge	70	\$332,014	15.0	5.0	10.0	\$110,671	\$115,395
Storm drainage	70	\$143,538	50.0	5.0	45.0	\$14,354	\$14,966
Overflow and yard piping	70	\$1,426,205	50.0	5.0	45.0	\$142,620	\$148,708
Electrical Service	30	\$1,059,713	9.0	5.0	4.0	\$588,730	\$613,888
Backup Power	4	\$0	0.0	0.0	0.0	\$0	\$0
Instrumentation & telemetry	70	\$480,425	23.3	5.0	18.3	\$105,092	\$109,578
Barge removal	70	\$99,504	50.0	5.0	45.0	\$9,950	\$10,375
<b>SUBTOTAL</b>		<b>\$8,266,696</b>				<b>\$5,466,623</b>	<b>\$5,699,949</b>
<b>FINISHED WATER PIPELINE</b>							
Meter/PRV to Wilsonville	10	\$0	0.0	0.0	0.0	\$0	\$0
WTP to Kinsman Rd.	70	\$1,988,836	50.0	5.0	45.0	\$198,884	\$207,372
<b>SUBTOTAL</b>		<b>\$1,988,836</b>				<b>\$198,884</b>	<b>\$207,372</b>
<b>TOTAL GMP</b>		<b>\$15,715,519</b>				<b>\$6,313,574</b>	<b>\$6,583,050</b>
							LGIP rate*
							4.27%
<b>Other Capitalized Project Costs</b>		<b>\$990,905</b>				<b>\$364,042</b>	<b>\$379,580</b>
<b>TOTAL PROJECT COSTS</b>		<b>\$16,706,424</b>				<b>\$6,677,616</b>	<b>\$6,962,630</b>

\*Cost basis for project costs inflated from June, 2005 to October, 2006 using the Local Gov't Investment Pool (LGIP) interest rate.

**EXHIBIT 2**

**Tualatin Valley Water District (TVWD)**

Water Treatment Plant Capital Asset Outlay:		\$15,715,519
Other Capitalized Project Costs: (as of June 11, 2005)	\$	990,905
	<b>Total:</b>	<b>\$16,706,424</b>

Adjustments\* to yield October 2006 dollars:

LGIP Interest Earnings Rate July 2005-October 2006:		
	% change:	4.27%

Adjusted Value of TVWD Capital Assets:	\$	16,386,288
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Adjustments\* to yield October 2006 dollars:

LGIP Interest Earnings Rate July 2005-October 2006:	4.27%	
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Adjusted Value of TVWD Other Capitalized Project Costs:	\$	1,033,199
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<b>Adjusted TVWD Total:</b>	<b>\$</b>	<b>17,419,488</b>
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**City of Sherwood 5 MGD Purchase Price:**

Water Treatment Plant Capital Asset Outlay:	\$	6,313,574
Other Capitalized Project Costs: (as of June 11, 2005)	\$	364,042
	<b>Total:</b>	<b>\$6,677,616</b>

Adjustments\* to yield October 2006 dollars:

ENR Seattle CCI for July 2005:	8203.64	
ENR Seattle CCI for October, 2006:	8630.03	
	% change:	5.20%

Adjusted Value of Sherwood Capital Assets:	\$	6,583,050
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Adjustments\*\* to yield October 2006 dollars:

LGIP Interest Earnings Rate July 2005-October 2006:	4.27%	
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Adjusted Value of Sherwood Other Capitalized Project Costs:	\$	379,580
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<b>Adjusted Sherwood Total:</b>	<b>\$</b>	<b>6,962,630</b>
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City of Sherwood % Ownership of TVWD Water Treatment Plant Assets:	40.0%
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*\*Cost basis for project costs inflated from June, 2005 to October, 2006 using the Local Gov't Investment Pool (LGIP) interest rate.*

**Kohlhoff, Mike**

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**From:** Malinda Senger [mjs@chbh.com] on behalf of Clark Balfour [cbalfour@chbh.com]  
**Sent:** Tuesday, December 12, 2006 3:56 PM  
**To:** jack@gov-law.com; Kohlhoff, Mike  
**Cc:** Bernice Bagnall; Greg@tvwd.org; toddh@tvwd.org; Patty Rupp  
**Subject:** tvwd-Sherwood Agrmt 12-12-06.doc  
**Attachments:** tvwd-Sherwood Agrmt 12-12-06.doc

In response to Mike's comments, I have amended Section 6.1 and 6.1.1 to delete reference to "undivided interest in the property" and replace it with the right to occupy and use the property. The other change is in 6.1.2. Mike wanted it clear that as between Wilsonville and TVWD, Sherwood cannot sell or transfer to a non-local government buyer without consent of Tualatin Valley and Wilsonville through the Master Agreement, which is incorporated as an exhibit. I added language at the end of 6.1.2, which brings in the Master Agreement provision of 2.1.3 to reflect this. Please review and call with your comments. Also, I would ask Jack if he believes that this is a scrivener's correction or if this is something that needs to return to the Sherwood City Council for review and approval. Assuming Jack states it does not need to go back to the Sherwood Council, is Wilsonville comfortable in approving this revised form based upon Jack's opinion as City Attorney that it need not go back. Obviously, if it has to go back to the Council in Jack's view, then that question is moot.

**Kohlhoff, Mike**

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**From:** Jack Hammond [Jack@gov-law.com]  
**Sent:** Wednesday, December 13, 2006 9:03 AM  
**To:** Clark Balfour; Kohlhoff, Mike  
**Cc:** Bernice Bagnall; Greg@tvwd.org; toddh@tvwd.org; Patty Rupp; Ross Schultz; Craig Sheldon; Gene Thomas; Pam Beery; Chris Uber; Linda Kinman  
**Subject:** RE: twd-Sherwood Agrmt 12-12-06.doc

Hello Clark and Mike,

I don't have any problems with the revisions you have drafted Clark. They are consistent with the terms of the Master Agreement and Accord aAgreement which were already incorporated by reference as exhibits. What you have done is to high light and affirm that those provisions are applicable to and binding on Sherwood. That is just fine.

Also in my opinion as this language does not add to the IGA but merely clarifies what it already said, these changes are merely scrivener's changes and would not require further action by the Sherwood City Council . Thanks for taking care of this Clark. Also thanks to you Mike for clarifying this issue so that Wilsonville is comfortable with the agreement . As this agreement will be the foundation of our long term working relationship with Wilsonville it is critical that it meets the concerns of all parties. Jack

John H. Hammond, Jr.  
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1750 SW Harbor Way, Suite 380  
Portland, OR 97201

Phone (503) 226-7191  
Facsimile (503) 226-2348  
[www.gov-law.com](http://www.gov-law.com)

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**From:** Malinda Senger [mailto:mjs@chbh.com] **On Behalf Of** Clark Balfour  
**Sent:** Tuesday, December 12, 2006 3:56 PM  
**To:** Jack Hammond; kohlhoff@ci.wilsonville.or.us  
**Cc:** Bernice Bagnall; Greg@tvwd.org; toddh@tvwd.org; Patty Rupp  
**Subject:** twd-Sherwood Agrmt 12-12-06.doc

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