

**RESOLUTION NO. 2121**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF SHERWOOD AND WILSONVILLE REGARDING CONSTRUCTION, OWNERSHIP AND OPERATION OF THE BOECKMAN ROAD WATER TRANSMISSION LINE SEGMENT (SEGMENT 4) FROM THE FUTURE INTERSECTION OF BOECKMAN AND KINSMAN ROADS TO WEST OF THE INTERSECTION OF TOOZE ROAD AND 110<sup>TH</sup> AVENUE; AND RESCINDING RESOLUTION NO. 2101**

WHEREAS, Wilsonville and Sherwood each desire to construct transmission line facilities to supply water from the Willamette River Water Treatment Plant in Wilsonville, Oregon ("WRWTP") to their respective service areas and to provide water redundancy for their respective systems; and

WHEREAS, the City of Wilsonville and the City of Sherwood desire to enter into an Intergovernmental Agreement for the construction by Wilsonville and the acquisition by Sherwood of an ownership interest and the subsequent shared operation and maintenance of a segment of the Wilsonville-Sherwood Water Transmission Line, the Boeckman Road Water Transmission Line Segment (Segment 4) from the future intersection of Boeckman and Kinsman Roads to west of the intersection of Tooze Road and 110<sup>th</sup> Avenue for the purpose of supplying water to current and future customers of the parties; and

WHEREAS, the Wilsonville-Sherwood Water Transmission Line is being constructed in segments and the parties intend to enter segment-by-segment agreements, and a map illustrating the general location of Segment 4 in relation to other intended segments of the Wilsonville-Sherwood Water Transmission Line is provided as Exhibit A to the Intergovernmental Agreement, Exhibit 1, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, it is necessary to enter into this intergovernmental cooperative agreement through ORS Chapter 190 to provide for the purchase of an undivided interest in segment 4 and for the maintenance and operation of this segment; and

WHEREAS, the City of Wilsonville and the City of Sherwood 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

WHEREAS, the City Manager was previously authorized by City of Wilsonville Resolution No. 2101 to enter into the aforementioned Intergovernmental Agreement with the City of Sherwood on behalf of the City of Wilsonville provided the City of Sherwood pay the agreed upon consideration of \$3,224,313.34 by April 18, 2008; and

WHEREAS, the City of Sherwood adopted the aforesaid Intergovernmental Agreement on May 20, 2008 and paid the sum of \$3,224,313.34 on May 22, 2008 to the City of Wilsonville; therefore, Resolution No. 2101 should be rescinded and replaced by this authorizing Resolution; and

WHEREAS, this Resolution authorizes the City Manager to execute the Intergovernmental Agreement between Wilsonville and Sherwood for the Boeckman Road Water Transmission Line Segment, Segment 4 of the Wilsonville-Sherwood Water Transmission Line from the future intersection of Boeckman and Kinsman Roads to the West of the intersection of Tooze Road and 110<sup>th</sup> Avenue.

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

1. That the City Council does hereby approve, authorize, and ratify the City Manager's execution of the Intergovernmental Agreement between Wilsonville and Sherwood for Segment 4 of the Wilsonville-Sherwood Water Transmission Line from the future intersection of Boeckman and Kinsman Roads to the West of the intersection of Tooze Road and 110<sup>th</sup> Avenue, a copy of which is marked Exhibit "1", attached hereto and incorporated as if fully set forth herein;
2. On May 22, 2008, the City of Sherwood paid to the City of Wilsonville the sum of \$3,224,313.34 for an undivided sixty-seven percent (67%) interest in the aforementioned Segment 4 of the Wilsonville-Sherwood Water Transmission Line, the receipt of which the City acknowledges;
3. Resolution No. 2101 is rescinded;
4. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 2nd day of June, 2008, and filed with the Wilsonville City Recorder this date.

  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Councilor Kirk	<u>Yes</u>
Councilor Knapp	<u>Yes</u>
Councilor Ripple	<u>Yes</u>
Councilor Núñez	<u>Yes</u>

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF SHERWOOD AND WILSONVILLE REGARDING CONSTRUCTION, OWNERSHIP AND OPERATION OF THE BOECKMAN ROAD WATER TRANSMISSION LINE (SEGMENT 4) FROM THE FUTURE INTERSECTION OF BOECKMAN AND KINSMAN ROADS TO WEST OF THE INTERSECTION OF TOOZE ROAD AND 110<sup>TH</sup> AVENUE**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the City of Sherwood, Oregon, a municipal corporation of the State of Oregon ("Sherwood"), and the City of Wilsonville, also a municipal corporation of the State of Oregon ("Wilsonville").

**RECITALS**

The parties agree upon the following recitals:

A. Sherwood and Wilsonville each desire to construct transmission line facilities to supply and distribute water from the Willamette River Water Treatment Plant ("WRWTP") in Wilsonville, Oregon on the Willamette River to their respective service areas and to provide water system redundancy for their respective systems. This Agreement is intended to provide for the property acquisition, surveying, geotechnical/environmental studies, permitting, design, construction, mitigation work, inspection/project management, ownership, maintenance, and operation of approximately 4,185 LF of 48-inch diameter pipe, routed along Boeckman Road from Kinsman Road to west of the intersection of SW Tooze Road and 110<sup>th</sup> Avenue. The transmission line project is more particularly described in Exhibit A, identified therein as Segment 4, attached hereto and incorporated by reference as if fully set forth herein, and is hereinafter referred to as "the Boeckman Road Project." The parties will contemporaneously execute a similar agreement of jointly-owned transmission line and facilities for Segment 5 along Tooze Road to Grahams Ferry Road. The parties intend to enter other similar agreements for other segments of the jointly owned transmission line and facilities.

B. The parties desire to enter into this Agreement for the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, construction, mitigation work, inspection/project management, ownership, maintenance, and operation of the Boeckman Road Project for the purpose of supplying water to the current and future customers of the parties.

C. The parties desire to share in proportion to their respective ownership shares, as set forth in Section 3.1 of this Agreement, the cost of the Boeckman Road Project which the parties agree is \$4,657,328.22. The agreed project costs are more specifically set forth in Exhibit B attached hereto and incorporated by reference as if fully set forth herein.

D. It is recognized by the parties that it is necessary to enter into this intergovernmental cooperative agreement through ORS Chapter 190 to provide for the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction including inspection/project management, ownership, maintenance, and operation of the Boeckman Road Project.

E. 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.

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

1. DURATION

The duration of this Agreement shall be perpetual unless otherwise agreed to by the parties.

2. CONSTRUCTION OF THE BOECKMAN ROAD PROJECT

2.1 *Transmission Line Route.* The transmission line route of the Boeckman Road Project is more particularly described in Exhibit "A", attached hereto and incorporated by reference as if fully set forth herein.

2.1.1 Notwithstanding any other provision of this Agreement to the contrary, if the route is materially altered so that it is not generally constructed as described, either party may, by written notice, decline to share the expense of the Boeckman Road Project as the route is designed and terminate participation in the Boeckman Road Project. In the event that such notice is given, the parties may alter the route to conform to the original design, mutually agree on an alternate route or elect that the extension shall become the sole property of the non-withdrawing party.

2.2 *Sufficient Funds.* It is understood and agreed that each party has budgeted and will budget annually sufficient funds for its respective ownership interest in the Boeckman Road Project as reflected in paragraph 3.1 for the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, construction, mitigation work, inspection/project management, ownership, maintenance, and operation of the Boeckman Road Project.

2.3 *Wilsonville Responsibilities.* Wilsonville shall oversee the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction including inspection/project management, ownership, maintenance, and operation of the Boeckman Road Project. The Boeckman Road Project shall be jointly owned, by Wilsonville and Sherwood, unless Sherwood lawfully transfers their ownership interest to the Willamette River Water Coalition (WRWC). Upon such transfer, the project shall be jointly owned by

Wilsonville and the WRWC. No other party shall have any interest therein unless mutually agreed upon by the parties.

2.3.1 To the extent necessary, as deemed by either party, Wilsonville shall execute documents to vest joint ownership of the completed Boeckman Road Project in Wilsonville and Sherwood.

2.3.2 During the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction including inspection/project management, ownership, maintenance, and operation of the Boeckman Road Project, Wilsonville shall have the following powers:

2.3.2.1 To purchase, own, hold and appropriate land, facilities, and right-of-way, either in its own name, the name of the Urban Renewal Agency of the City of Wilsonville, or in the name of the individual parties hereto;

2.3.2.2 To purchase, construct, or acquire water works, water pipelines/valves, water rights or any interest therein or in any of them;

2.3.2.3 To provide the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction including inspection/project management, ownership, maintenance, and operation and control of matters referred to herein;

2.3.2.4 To adopt with the consent of Sherwood such bylaws, rules, regulations, and policies as it deems necessary in furtherance of the purposes of this Agreement;

2.3.2.5 To retain such agents, officers and employees as it deems necessary and to contract for the purchase of property and services; and

2.3.2.6 The parties acknowledge that the construction of the project has been substantially completed and that the project costs set forth in Exhibit B represent Final Project Costs agreed to by the parties subject only to the exceptions otherwise set forth below.

2.4 *Cost of Project.* The direct cost of the property easement acquisition, surveying, geotechnical/environmental studies, permitting, design, and construction including inspection/project management, ownership, maintenance, and operation of the Boeckman Road Project shall be shared by the parties in proportion to their ownership interest as reflected in paragraph 3.1. The parties agree that all costs of the Project set forth in Exhibit B exclude future maintenance and operation costs and exclude any resulting change orders as the project has been substantially completed, but has not been finally approved. This transmission line project is part of a greater Boeckman Road Extension project, which is scheduled for completion in June, 2008. Exhibit B reflects a Sherwood 67% share of the project as thereafter negotiated of \$3,101,780.60. All these costs reflected on Exhibit B have been agreed to by the parties. Provided further, these

costs do not reflect contractor change orders. The approval process for the change orders involve several layers of review, including an ODOT review. To facilitate execution of this agreement, the parties agree to cap the change order costs for Sherwood's 67% share at \$122,532.74 for a total cost of \$3,224,313.34 as Sherwood's share. A summary of the change orders and adjustments is attached as Exhibit C.

### 3. OWNERSHIP, MAINTENANCE, AND OPERATION OF THE BOECKMAN ROAD PROJECT

3.1 *Ownership.* The Boeckman Road Project is intended to have an actual final peak design capacity of 30 million gallons per day (mgd). Sherwood shall be entitled to a 67% capacity share thereof, and Wilsonville the remaining 33% share. Sherwood shall have an undivided 67% ownership share of the Boeckman Road Project and Wilsonville shall have the remaining undivided 33% ownership share of the Boeckman Road Project, both as tenants in common. Ownership means the right of each party to use for its own benefit its portion of transmission line capacity. In the event that actual final design capacity exceeds 30 mgd, the supplemental capacity shall be owned by the parties in proportion to the above-referenced capacity shares. The respective capacity use of the parties will be metered by appropriate metering facilities. The physical location of meters, their operational characteristics, and an operational metering protocol shall be agreed to by the parties.

3.2 *Easements.* Wilsonville agrees to execute and deliver to Sherwood a non exclusive, permanent easement to use the Boeckman Road Project for the purposes intended by this Agreement, notwithstanding the termination of this Agreement or the withdrawal of either party from this Agreement for so long as Sherwood shall use the Boeckman Road Project for its intended purposes.

3.3 *Operation and Maintenance Responsibilities.* Unless otherwise agreed to by the parties in writing, Wilsonville shall have the responsibility for operation and maintenance of the Boeckman Road Project. The actual, direct, out-of-pocket expenses of post construction operation and maintenance of the Boeckman Road Project (together with any allowance as the parties may agree upon for general or administrative expenses) shall be billed to the parties monthly in proportion to their ownership interests reflected in paragraph 3.1. Wilsonville shall exercise due diligence in effecting its operation and maintenance responsibilities under this Agreement. Any non-emergency maintenance project or event in excess of \$50,000.00 in total, individual costs will require the coordination and consent of Sherwood. Wilsonville shall insure that all flow meters are maintained properly and calibrated at least annually. Wilsonville shall be responsible for the reading of meters subject to the terms of the metering protocol referenced in Section 3.1 of this Agreement. Subject to shut-down for emergencies, announced scheduled repairs, or precautionary shut-down to allow upstream spills in the Willamette River to flow past the WRWTP, Wilsonville shall operate the water system in a manner to not harm Sherwood and to provide Sherwood's ownership capacity share in keeping with the prior daily notification by Sherwood to Wilsonville of capacity needs at an adequate hydraulic grade the point of delivery to Sherwood. The point of delivery is defined as the revenue meter approximately 400 feet west of the intersection of SW Grahams Ferry Road and Tooze Road. Unless otherwise agreed to by

the parties, an adequate hydraulic grade at the point of delivery to Sherwood shall be at a level sufficient to completely fill Sherwood's terminal Sunset Reservoirs which have an overflow elevations of approximately 380 feet. Should temporary conditions exist beyond the operational control of Wilsonville of the WRWTP which materially impact the ability of the WRWTP to produce sufficient water to meet the demands of both cities, the available supply capacity of the WRWTP shall be split in accordance with the respective ownership rights in capacity at the WRWTP. The aforementioned is not intended to alter the respective ownership of capacity in the pipeline. Neither City shall be responsible to meet the water demands of the other.

3.3.1 Wilsonville shall be responsible for the control and supervision of all activities of the Boeckman Road Project and shall prepare and submit to Sherwood financial activity reports of the Boeckman Road Project not less than annually and prepare such other reports and information as the parties may require and mutually agree upon.

3.4 *Transmission of Water to Third Parties.* Unless both parties otherwise previously agree in writing, neither party shall permit use of the Boeckman Road Project for the purpose of transmitting water to any person other than Wilsonville or Sherwood customers, save and except a transfer by Sherwood of its ownership interest in the Boeckman Road Project to the WRWC pursuant to Section 2.3 above. Subject to Section 3.8 and 3.9 below or as otherwise agreed to by the parties in writing, transmission of water by a party shall not exceed that party's ownership share in the Willamette River Water Treatment Plant. Any revenues derived from transmission of water through the Boeckman Road Project on behalf of entities other than Wilsonville or Sherwood customers shall be paid to the parties in proportion to their ownership interest in capacity used by a third party in the Boeckman Road Project as reflected in paragraph 3.1.

3.5 *Budget.* Annually, and 150 days prior to the commencement of each party's fiscal year, Wilsonville shall prepare and distribute to each party a forecast of anticipated costs for the Boeckman Road Project for that ensuing fiscal year, and each party shall contribute its share of this amount in proportion to its ownership interest in the Boeckman Road Project as reflected in paragraph 3.1.

3.6 *Non-Emergency Major Repair or Replacement.* Wilsonville shall monitor the overall condition of the transmission line and facilities and shall schedule any non-emergency major repair or replacement three years in advance of such major repair or replacement. At the same time, Wilsonville shall prepare an estimated projected annual expenditure for the cost of the scheduled repair or replacement. Upon preparation of the schedule and annual costs Wilsonville shall provide Sherwood a copy of same.

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

3.8 *Leasing of Supply Capacity.* Each party shall have the right to lease from the other party such unused capacity of its capacity share of the Boeckman Road Project as the party with the unused capacity may determine to be reasonably available and prudent to be leased to



the other party. The compensation to the leasing party shall be fairly and equitably agreed upon by the parties.

3.9 *Overuse of Supply Facility.* Wilsonville and Sherwood shall each use the Boeckman Road Project facilities in a manner consistent with prudent water utility practices and to minimize insofar as is practicable interference with each other's use of its respective share of capacity to meet its demand. Unless caused by system operation conditions not caused by the overusing party, any overuse of 10 percent or greater by either Wilsonville or Sherwood for two consecutive years or for three out of five consecutive years, shall result in the overusing party compensating the other party at a lease rate that will be fairly and equitably agreed upon by the parties.

#### 4. AMENDMENT

This Agreement may be amended if both parties concur in the proposed amendment by an agreement, signed by authorized representatives of each party.

#### 5. GENERAL PROVISIONS

5.1 *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.

5.2 *Merger Clause.* This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the Boeckman Road Project and supersedes all previous agreements and understandings relating to the Boeckman Road Project.

5.3 *Assignment.* Neither 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.

5.4 *Severability.* In case any one 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.

5.5 *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.

5.6 *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 Sherwood: Ross Schultz, City Manager, or successor  
City of Sherwood  
22560 SW Pine  
Sherwood, OR 97140-7851

If to Wilsonville: Arlene Loble, City Manager, or successor  
City of Wilsonville  
29799 SW Town Center Loop E.  
Wilsonville, OR 97070

5.7 *Mutual Indemnification.* Wilsonville shall indemnify Sherwood as may be allowed under law, for any and all claims by third parties against Sherwood arising out of the negligence or intentional acts of Wilsonville, its officials, employees, agents, contractors or assigns. Sherwood shall indemnify Wilsonville as may be allowed under law, for any and all claims by third parties arising out of the negligence or intentional acts of Sherwood, its officials, employees, agents, contractors or assigns.

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 SHERWOOD**  
an Oregon municipal corporation

**CITY OF WILSONVILLE**  
an Oregon municipal corporation

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

By \_\_\_\_\_  
Arlene Loble, City Manager

By: \_\_\_\_\_  
City Recorder

By \_\_\_\_\_  
City Recorder

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Attest: \_\_\_\_\_  
City Attorney

Attest: \_\_\_\_\_  
City Attorney

Attachments:

- Exhibit A – Map indicating location of Segment 5A
- Exhibit B - #4 Revised Wilsonville w/o Street Imp, with Restoration
- Exhibit C – Construction Change Orders Segment 4 IGA Boeckman Road Waterline