

RESOLUTION NO. 2265

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING TEMPORARY WATER SUPPLY AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND THE CITY OF SHERWOOD FOR PRESSURE TESTING, FLUSHING, AND PROVISION FOR REFRESH WATER FOR A NEWLY CONSTRUCTED SHERWOOD 48 INCH DIAMETER TRANSMISSION LINE (SEGMENTS 6-9 – 18,000 LF)

WHEREAS, the City of Wilsonville and the City of Sherwood desire to enter into a Temporary Water Supply Agreement Between The City Of Wilsonville And The City Of Sherwood For Pressure Testing, Flushing, And Provision For Refresh Water For A Newly Constructed Sherwood 48 Inch Diameter Transmission Line (Segments 6-9 – 18,000 LF), hereinafter referred to as "Temporary Water Supply Agreement," a copy of which is marked Exhibit A, attached hereto and incorporated by reference as if fully set forth herein, in accordance with the recitals and the provisions of the agreement.

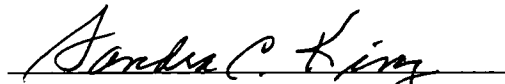
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council authorizes the City Manager Pro Tem to enter on behalf of the City of Wilsonville into the Temporary Water Supply Agreement, Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.
2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 3rd day of January, 2011, and filed with the Wilsonville City Recorder this date.


TIM KNAPP, MAYOR

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor Núñez	Yes
Councilor Hurst	Yes

Councilor Goddard Yes

Councilor Starr Yes

Attachments:

Exhibit A – Temporary Water Supply Agreement

**TEMPORARY WATER SUPPLY AGREEMENT BETWEEN THE CITY OF
WILSONVILLE AND THE CITY OF SHERWOOD FOR PRESSURE
TESTING, FLUSHING AND PROVISION FOR REFRESH WATER FOR A
NEWLY CONSTRUCTED SHERWOOD 48 INCH DIAMETER
TRANSMISSION LINE (SEGMENTS 6-9- 18,000 LF)**

This Temporary Water Supply Agreement ("Agreement") is effective this ___ day of _____, 2011, by and between the City of Sherwood, an Oregon Municipal Corporation ("Sherwood"), and the City of Wilsonville, an Oregon Municipal Corporation ("Wilsonville"), referred to collectively as ("the Parties").

RECITALS

A. WHEREAS Tualatin Valley Water District (TVWD), Sherwood and Wilsonville each own undivided ownership shares in the Willamette River Water Treatment Plant ("WRWTP") and appurtenances thereto from raw water intake through Segment 1 of finished water transmission. The WRWTP has a current designed capacity of 15 mgd. Sherwood, through a capacity purchase from TVWD, owns 1/3 or 5 mgd of that capacity, while Wilsonville owns 2/3 or 10 mgd of WRWTP capacity in addition to larger capacity interests in other appurtenant facilities.

B. WHEREAS Sherwood and Wilsonville have heretofore entered into joint ownership of supply capacity in constructed Segments 2, 4, and 5A of 48 inch diameter water transmission lines within Wilsonville, which in conjunction with the WRWTP and other facilities will jointly serve both cities with a permanent potable water supply. Together these already constructed transmission facilities are approximately 8,183 lf in length and represent a present joint investment of \$8,183,000. Sherwood and Wilsonville each own 1/2 of the capacity of Segment 2. Sherwood owns 2/3 of the capacity of Segments 4 and 5A, while Wilsonville owns the remaining 1/3 capacity of each.

C. WHEREAS Sherwood has constructed and owns approximately 18,000 lf of 48 inch diameter transmission (Segments 6-9) from a point near the terminus of Transmission Segment 5A and continuing to a newly constructed Sherwood Reservoir (Snyder Park- 4 mgd capacity). The cost of the construction of these Sherwood transmission facilities is estimated to be in excess of \$11,630,000. Construction of these transmission facilities has just been completed in December 2010 by Emery and Sons ("Emery"), Sherwood's General Contractor. Emery was also the General Contractor for Sherwood for the Snyder Park Reservoir. Completion of construction of these transmission segments had been estimated to occur in the spring of 2011. In order for Sherwood to accept these facilities from Emery they need to be hydrologically and biologically tested and flushed, and then maintained and refreshed with an estimated maximum amount of potable water (400 gpm). The source of this water is from the WRWTP and through the Water Distribution System of the City of Wilsonville.

D. WHEREAS it has been long recognized and agreed to by the Parties that the collectively owned transmission linkage between the WRWTP and the City of Sherwood will not occur until the approximately 2500 lf of Segment 3 48 inch diameter transmission is constructed

by Wilsonville. This transmission project is a part of a significantly larger project involving the extension of Kinsman Road from Barber Road to Boeckman Road, and the allied construction of sanitary and storm lines. This Project requires substantial Environmental Permitting because it traverses wetlands, a FEMA established Floodway/Flood Plain, and Bonneville Power Administration (BPA) transmission lines. Presently completion is estimated in 2013 or 2014. This Project is now proceeding through Preliminary Design and Engineering. The Parties are presently negotiating terms of an Agreement wherein Sherwood would front the costs relating to the water transmission portion, Segment 3, of this Project subject to Wilsonville reimbursement of its share of water transmission project costs. The Parties are also presently negotiating an Interim Water Supply Agreement, which will involve temporary wheeling of surplus water to Sherwood of up to 2.5 mgd of WRWTP potable water through Wilsonville distribution lines until such time as Segment 3 is completed and on line. The Parties have commissioned Montgomery Watson Harza, Inc. ("MWH") to perform a hydraulic capacity analysis of current facility capacity to ensure the 2.5 mgd is in fact surplus to Wilsonville's ongoing and projected needs. These Projects will be the subject of subsequent Agreements between the Parties.

E. WHEREAS the Parties have also negotiated successfully, in principal, the design and proposed construction of a Meter Vault facility which will link Transmission Segments 5A and 6, provide required metering facilities for surplus water flowing to Sherwood, and house pressure reducing valves and transmission lines to serve Wilsonville's distribution and reservoir systems. Wilsonville will issue bid notices for this project on or before January 15, 2011. The Parties will consider adoption of this Project in an Agreement which will be available for consideration by the Parties in January 2011. Completion of that Project is anticipated in June 2011. Sherwood has tentatively agreed, subject to successful negotiation of contract terms, to advance funding of that Project for Sherwood's proportionate share of the Project costs, subject to true-up of costs at project completion.

F. WHEREAS the unanticipated early completion of Segments 6-9 of 48 inch diameter transmission by Sherwood in December 2010 and the estimated completion of the Meter Vault in June 2011, leaves a short but very important period when temporary water supply to Sherwood in an amount not to exceed 400 gpm will be required as explained in Recital C above. The Parties have developed a way to provide temporary water supply during this period by the advance construction by Sherwood of a 24 inch diameter transmission line extension. This transmission line extension previously was a part of the Meter Vault Project referenced in Recital E above, to serve Wilsonville permanently with potable water through the meter vault. All required real property has been acquired by Wilsonville for the construction of this line extension and its connection to Sherwood's Segment 6 transmission line. Sherwood has proposed to pay for the redesign and to front costs for this Project subject to reimbursement by Wilsonville of Wilsonville's share through credits against future temporary and interim water sales to Sherwood. The terms of this Project are the subject of this Agreement.

G. WHEREAS Wilsonville agrees to provide up to 400 gpm capacity in its distribution system to serve Sherwood with temporary water supply under the terms and conditions of this agreement.

H. WHEREAS Sherwood agrees to purchase temporary water from Wilsonville under the terms and conditions of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Recitals.** The recitals set forth above are incorporated by reference and made a part of this Agreement. Wilsonville will supply to Sherwood up to 400 gpm of potable water supply for purposes of hydraulic and biological testing, flushing, and refresh of the approximately 18,000 lf of Sherwood Transmission Segments 6-9. This temporary water supply will be made available under the terms and conditions of this Agreement through Wilsonville's distribution system to the point of connection to Sherwood's 48 inch diameter Segment 6 Transmission line as more particularly described herein.

2. **Consideration.** In consideration of the terms and conditions set forth below, the Parties enter into this Agreement to provide temporary water supply to Sherwood.

3. **Term.** The term of this Agreement shall be for the period beginning with the execution of this Agreement by the Parties and continuing to the time when Wilsonville provides Interim Water to Sherwood sufficient to satisfy an estimated peak water demand of 2.5 mgd, subject to the aforementioned MWH capacity modeling.

4. **Wheeling Assets.** Wilsonville facilities required to wheel and supply this temporary water supply are deemed to be:

a. Approximately 8600 lf of 18 inch diameter waterline extending from Segment 2 in Kinsman Road to the west through the Villebois development and then running north along Grahams Ferry Road to the intersection of Grahams Ferry and Tooze Road.

b. Approximately 400 lf of 24 inch diameter waterline extending from the intersection of Grahams Ferry Road and Tooze Road to about 150 feet east of the location of the proposed meter vault.

5. **Covenants of Wilsonville.** The Parties agree that existing facilities and capacity of Wilsonville are adequate to provide Sherwood with the quantity of water purchased hereunder.

6. **Connection.** Sherwood's connection to the Wilsonville System shall be metered at the connection of Wilsonville's 24 inch diameter transmission line and Sherwood's 48 inch diameter Segment 6 transmission line, or at another location mutually agreed to by the Parties. Costs of meter repairs resulting from this Agreement shall be those of Sherwood. The meter shall be used to determine Sherwood's daily flow information. The Parties at all times shall have access to the meter and may review and inspect water usage records upon reasonable notice.

7. **Rates and Billings.** Sherwood agrees to purchase temporary water from Wilsonville as herein provided for the negotiated sum of \$1.45 per CCF, plus a wheeling charge of \$0.15 per CCF for using Wilsonville's 18 inch water distribution system. The Parties agree because of the short term of this Agreement and the small amount of the water to be provided, that more complex rate methodologies are not necessary or appropriate. Sherwood water payments to Wilsonville shall be credited against costs incurred by Sherwood as described in Section 8 below.

8. Sherwood Extension of Wilsonville 24 Inch Diameter Transmission Line and Crediting of Costs Incurred. The Parties agree that Sherwood shall be responsible for the extension of the Wilsonville 24 inch diameter transmission line from the existing 2 inch diameter temporary blow off device on SW Tooze Road to the point of connection with Sherwood's Segment 6 Transmission Line as more particularly described in the Engineering Design Plans, a set of which have been provided to each party and incorporated herein by reference. Sherwood, by change order with Emery, its general contractor, shall contract for the construction of these facilities. Sherwood shall coordinate the contract change order with Wilsonville prior to its execution. The Parties will cooperate to the greatest extent reasonably possible to construct and place these facilities in operational status as soon as possible. The Parties acknowledge that time is of the essence. Title in the extended 24 inch diameter line will be that of Wilsonville. Except for the redesign to provide for the temporary supply and to the extent some of the costs are for tying into Sherwood's Segment 6 transmission line rather than connecting to the meter vault, all costs incurred by Sherwood in extending the 24 inch diameter transmission line to the point of connection with Sherwood's Segment 6 Transmission Line shall be the responsibility of Wilsonville, but payment to Sherwood shall be by means of credits against future temporary and interim water sales from Wilsonville to Sherwood, unless those sales are not sufficient to pay off those incurred Sherwood costs. In the event there is any remaining balance, it shall be the responsibility of Wilsonville and that balance shall be remitted within 30 days of cessation of temporary and interim water sales from Wilsonville to Sherwood.

9. Dispute/Attorneys Fees. If a dispute arises between the Parties regarding breach of this Agreement or interpretation of any term of this Agreement, the Parties shall first attempt to resolve the dispute by negotiation, followed by mediation and arbitration.

Step One: The respective City Managers of the Parties or their designees are designated to negotiate on behalf of the Party each represents. If the dispute is resolved at this Step One, there shall be a written determination of such resolution, signed by each Party's Manager and ratified by each governing body, if required by the governing body, which shall be binding upon the Parties. Step One will be deemed complete when a Party delivers notice in writing to the other Parties that the Party desires to proceed to Step Two.

Step Two: If the dispute cannot be resolved within 10 days at Step One, or earlier after written notice given by a party, the Parties shall submit the matter to non-binding mediation by a professional engineer with demonstrated substantial experience in the design, construction and operation of complex municipal treatment, transmission, distribution, and storage systems. The Parties shall attempt to agree on a mediator. If they cannot agree, the Parties shall request a list of five mediators from an entity or firm experienced in providing engineering mediation services who do not have an existing professional relationship with either Party. The Parties will mutually agree upon a mediator from the list provided. Any common costs of mediation shall be borne equally by the Parties who shall each bear their own costs and fees. If the issue(s) is resolved at this Step Two, a written determination of such resolution shall be signed by each Manager and approved by their respective governing bodies, if necessary.

Step Three: If mediation does not resolve the issue within 45 days of submission of the issue to mediation, the matter will be referred to binding arbitration by a panel of three arbitrators who are professional engineers with demonstrated substantial experience in the design, construction and operation of complex municipal treatment, transmission, distribution,

and storage systems. One arbitrator will be chosen by each Party and those two arbitrators chosen will choose a third arbitrator. No panel member may have an on-going professional relationship to either Party. The arbitration panel will reasonably endeavor to reach a decision on the dispute within 60 days of its submission to the panel. The decision shall be binding on both Parties and there shall be no right of further appeal. The prevailing Party shall be entitled to its reasonable attorneys fees as shall be awarded by the arbitration panel.

10. Breach. If a Party defaults under the terms of this Agreement, then upon 20 days written notice, the defaulting Party shall undertake steps to commence cure of the breach within a reasonable time, depending on the circumstances. In the event there is a dispute over the amount to be paid, the undisputed amount shall be paid immediately and the Agreement shall not be in default while the solution to the disputed payment portion is resolved under Section 9. The Parties understand and agree that water service is critical to each Party's customers and that monetary damages may be an insufficient remedy considering the infrastructure involved. Therefore, the Parties expressly agree that equitable remedies such as injunction or specific performance are specifically contemplated and allowed by this Agreement.

11. Notices. Notices regarding operation, maintenance, repair, replacement, breach, termination, renewal or other issues shall be deemed sufficient if deposited in the United States Mail, First Class, postage prepaid, addressed to the Parties as follows:

City Manager
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

City Manager
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

12. Insurance and Indemnity. To the full extent permitted by law, each Party agrees to indemnify and hold harmless the other, its counsel, officers, employees, and agents from any and all claims, demands, damages, actions, or other harm caused by the sole negligence of that Party, including any attorneys fees or other costs of defense. Further, independent of the indemnity obligation, each Party agrees to maintain general liability insurance in an amount not less than Oregon Tort Claim limits applicable to public agencies as set forth in ORS 30.260 – 30.300.

13. Succession. This Agreement shall be binding upon any successors to the respective Parties, which through merger, consolidation or other means, including a lawful transfer by Sherwood to the Willamette River Water Coalition (WRWC), succeeds to the water supply treatment and distribution and transmission functions of that Party.

14. Amendment. The terms of this Agreement may be amended or supplemented by mutual agreement of the Parties. Any amendment or supplement shall be in writing and shall refer specifically to this Agreement, and which shall be executed by the Parties.

15. Good Faith and Cooperation. The Parties agree and represent to each other good faith, cooperation, and due diligence in the performance in all obligations of the Parties pursuant to this Agreement.

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

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

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above-mentioned.

CITY OF SHERWOOD

CITY OF WILSONVILLE

City Manager

City Manager

City Recorder

City Recorder

APPROVED AS TO FORM

APPROVED AS TO FORM

City Attorney

City Attorney

CITY COUNCIL MEETING STAFF REPORT / REQUEST FOR ACTION

Resolution Authorizing Temporary Water Supply Agreement

Meeting Date: January 3, 2011
Report Date: December 23, 2010
Source of Item: Legal Department

Contact: Michael Kohlhoff, City Attorney
Contact Telephone Number: 503-570-1508
Contact E-Mail: kohlhoff@ci.wilsonville.or.us

ISSUE STATEMENT

Resolution by Council to authorize temporary water supply agreement between the City of Wilsonville and the City of Sherwood.

BACKGROUND

The Willamette River Water Treatment Plant was constructed by Tualatin Valley Water District (TVWD) and the City of Wilsonville (Wilsonville) to initially serve the City of Wilsonville with up to a 10 mgd supply of municipal water and TVWD, or a water consortium to be formed by TVWD and nearby cities, with up to a 5 mgd supply, with future expansion of another 10 mgd for Wilsonville and another 45 mgd for TVWD/TVWD Water Consortium. With Wilsonville's permission, Sherwood as an intended city in the water consortium, acquired from TVWD TVWD's interest in the 5 mgd of supply. To transmit Sherwood its supply and to accommodate Wilsonville's transmission needs, agreements between Wilsonville and Sherwood were entered into on a segment basis for construction of and interest in supply capacity of segments of the transmission line. There are three basic agreements needed to complete the construction portion; namely, the construction of the meter vault (which is being proposed for adoption contemporaneously with the resolution for temporary water), the design and construction of the Kinsman Road extension segment (Segment 3), and a potential plant upgrade contract. There are two additional agreements for delivery of water; namely, an interim water supply agreement upon construction of the meter vault for approximately 2.5 mgd of water, and then for the delivery of the full 5 mgd of water.

RELATED POLICIES/BUDGET CONSIDERATIONS

- (1) Sherwood is paying for the redesign to allow for early construction of a 24-inch pipe and for the 24-inch pipe construction to provide the necessary connecting piping to Sherwood's line for testing and refreshing prior to the meter vault construction. Most of this 24-inch piping had been intended to connect to future piping for Wilsonville to a future reservoir location for Wilsonville as part of Wilsonville's share of the meter vault construction.
- (2) Sherwood's payment for the temporary water supply will be credited against Wilsonville's cost for its portion of the 24-inch line.

- (3) The cost of the water (\$1.45) and the wheeling charge (\$0.15) were calculated by the Finance Department, with the majority of the production cost being operation and maintenance under the Veolia contract and electrical costs. Note: debt payment is not included, as Sherwood purchased its supply interest from TVWD. It will be the first time Wilsonville ratepayers will not fully bear the operation and maintenance and electricity costs.

COUNCIL OPTIONS

The Council has the authority to authorize, modify, or reject the resolution and the agreement. The agreement, if not authorized, or if substantially modified, could subject Sherwood to excessive contractor costs for delay and, in turn, raise serious issues of our prior commitments to deal fairly and cooperatively in good faith with each other, plus create the potential for litigation against the City of Wilsonville. By authorizing the IGA, Wilsonville and Sherwood continue to cooperatively move forward in completing its course of action in this regard.

STAFF'S RECOMMENDATION

Authorize agreement as a fair arm's length agreement to mutually assist the City of Sherwood and provide for piping ultimately needed by Wilsonville.

SUGGESTED MOTION

I move to adopt Resolution No. 2265: A Resolution Of The City Of Wilsonville Authorizing Temporary Water Supply Agreement Between The City Of Wilsonville And The City Of Sherwood For Pressure Testing, Flushing, And Provision For Refresh Water For A Newly Constructed Sherwood 48 Inch Diameter Transmission Line (Segments 6-9 – 18,000 LF)