

**ORDINANCE NO. 813**

**AN ORDINANCE APPROVING THE WILLAMETTE INTAKE FACILITIES INTERGOVERNMENTAL AGREEMENT TO FORM THE WILLAMETTE INTAKE FACILITIES COMMISSION, AN INTERGOVERNMENTAL ENTITY FORMED UNDER ORS CHAPTER 190 BETWEEN THE CITIES OF WILSONVILLE, HILLSBORO, SHERWOOD, BEAVERTON, AND TIGARD AND TUALATIN VALLEY WATER DISTRICT**

WHEREAS, in 2000 the City of Wilsonville (Wilsonville) and Tualatin Valley Water District (TVWD) entered into an Agreement Regarding the Water Treatment Plant Design, Construction, Operation and Property Ownership for the Willamette River Water Treatment Plant (WRWTP) located in Wilsonville; and

WHEREAS, the WRWTP was constructed by Wilsonville and TVWD, and those parties owned the real property and assets in varying percentages until TVWD sold part of its capacity in the WRWTP facility, but not the plant assets or land, to the City of Sherwood (Sherwood) so that these three entities now own various interests in the WRWTP; and

WHEREAS, TVWD and the City of Hillsboro (Hillsboro) have entered into an agreement to design, construct, own, operate, maintain, repair, and replace a new water treatment plant to be known as the Willamette Water Supply System (WWSS), which will consist of raw water transmission, pumps, water treatment plant, finished water pipelines and terminal storage to deliver water to their respective service boundaries, and it is anticipated that the City of Beaverton (Beaverton) will join TVWD and Hillsboro in the WWSS; and

WHEREAS, TVWD, Wilsonville, Sherwood, Hillsboro, Beaverton, and Tigard have agreed that the existing Willamette Intake Facilities (WIF), located at the WRWTP property, should be upgraded and expanded from current capacity of 120 million gallons per day to 150 million gallons per day to accommodate the additional users and potential additional users and that the upgraded and expanded WIF should be owned, operated, and managed for the use and benefit of the WRWTP and the planned WWSS Water Treatment Plant (WWSS WTP) by an intergovernmental entity formed under ORS 190.003 to 190.265; and

WHEREAS, Wilsonville, TVWD, Sherwood, Hillsboro, Beaverton, and Tigard have agreed to execute the Willamette Intake Facilities Intergovernmental Agreement (WIF IGA) to form the Willamette Intake Facilities Commission (WIF Commission), an intergovernmental

entity under the authorities cited above, vested with the powers and authorities as set forth in the WIF IGA, which is attached hereto as **Exhibit A** and incorporated by reference herein; and

WHEREAS, the Wilsonville City Council finds that it is in the best interest of the City of Wilsonville and in support of the other municipalities to enter into the WIF IGA and to become a member of the WIF Commission; and

WHEREAS, ORS 190.085 requires the City of Wilsonville and the other parties to enact an ordinance approving the WIF IGA and creation of the WIF Commission, and being advised;

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

1. Pursuant to ORS 190.085, the Wilsonville City Council approves the Willamette Intake Facilities Intergovernmental Agreement and joins the Willamette Intake Facilities Commission with the following parties: the cities of Hillsboro, Beaverton, Sherwood, and Tigard, and with TVWD. The Willamette Intake Facilities Intergovernmental Agreement is attached hereto as **Exhibit A** and incorporated by reference herein.
2. The Effective Date of the WIF IGA will be at the time all parties have passed their required ordinance and signed the IGA.
3. To carry out its public purposes, the WIF Commission shall have the powers, duties, and functions set forth therein.
4. This Ordinance has been included in the published notice of the meeting where it was adopted. The published notice did state the time, date, and place of the meeting and gave a brief description of the Ordinance to be considered at the meeting and that copies of the Ordinance are available at the office of the City Recorder.
5. The Mayor is authorized to execute the WIF IGA on behalf of the City of Wilsonville.
6. This Ordinance shall be effective from and after 30 days following its passage on second reading and signature by the Mayor, or when the outstanding design construction issue is resolved, whichever is later, and signature by the Mayor.
7. The City will, by resolution, appoint one City Council Member and an alternate to serve as a member of the WIF Commission.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 5<sup>th</sup> day of February 2018, and a second reading at a regular meeting of the City Council on February 22, 2018, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

  
\_\_\_\_\_  
Kimberly Veliz, City Recorder

ENACTED by the City Council on the 22<sup>nd</sup> day of February, 2018, by the following votes:  
Yes: 4 No: 0

  
\_\_\_\_\_  
Kimberly Veliz, City Recorder

DATED and signed by the Mayor the 19<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

Attachments:

Exhibit A - Willamette Intake Facilities Intergovernmental Agreement

# **Willamette Intake Facilities Intergovernmental Agreement**

**EFFECTIVE DATE  
APRIL 6, 2018**

**BY AND AMONG  
TUALATIN VALLEY WATER DISTRICT  
CITY OF WILSONVILLE  
CITY OF SHERWOOD  
CITY OF HILLSBORO  
CITY OF TIGARD AND  
CITY OF BEAVERTON**

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## EXHIBIT LIST

<b>Exhibit No.</b>	<b>Title</b>
1	Willamette Intake Facilities Easement Agreement (“Easement”)
2	Willamette Intake Facilities Preliminary Design Drawings and Layout
3	Willamette Intake Facilities Capacity Ownership Allocations
4	Real Property
5	Water Rights Authorized for Use at the Willamette Intake Facilities (“Water Rights”)
6	Willamette Intake Facilities Organizational Structure
7	Willamette Intake Facilities Initial Management Plan
8	Willamette Intake Facilities Budget Calendar
9	Willamette Intake Facilities Interim Financials Procedures
10	Willamette Intake Facilities Lease Formulas and Sample Lease
11	Willamette Intake Facilities Improvements Cost Allocation Summary
12	Willamette Intake Facilities Insurance Requirements and Limits
13	Existing Agreements

WHEREAS, the Parties are authorized under ORS 190 to enter into an agreement for the performance of any or all functions and activities that the Parties, their officers, employees or agents have authority to perform, and to create this intergovernmental entity.

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

### **AGREEMENT**

Based on the foregoing Recitals and the mutual promises and obligations as set forth herein, and other good and fair consideration, the sufficiency of which is hereby acknowledged, the Parties agree to the following.

#### **1. Effective Date**

This Agreement is effective as of the 6<sup>th</sup> day of April, 2018.

#### **2. Definitions**

As used in this Agreement, the following terms when capitalized shall have the following meanings:

- 2.1. **Agreement** means this Willamette Intake Facilities Intergovernmental Agreement.
- 2.2. **Board** means the Board of Commissioners of the Willamette Intake Facilities Commission created by this Agreement, consisting of one elected or appointed official from each Party. Each Party will appoint one Board member and each Board member will have one equal vote.
- 2.3. **Capacity** means the instantaneous ability of various components of the Intake Facilities to deliver available water that does not exceed a Party's allocation, measured in million gallons per day, gallons per minute, cubic feet per second or

other comparable measurement as set forth in the Operations Plan and consistent with generally accepted engineering and prudent utility operating practices.

- 2.4. **Capacity Expansion** means the expansion of the Intake Facilities through a capital improvement project.
- 2.5. **Commission** means the Willamette Intake Facilities Commission, an ORS 190 entity formed under this Agreement whose Parties are TVWD, Wilsonville, Sherwood, Hillsboro, Tigard, and Beaverton.
- 2.6. **Curtailment Plan** means a plan developed and approved by the Board for curtailment of water service in accordance with OAR Chapter 690 Division 86 rules.
- 2.7. **Demand** means the amount of water used or projected to be used by a Party and imposed on the Intake Facilities to deliver water to be treated at a Water Treatment Plant where the Party owns capacity. The instantaneous measurement of Demand shall be defined in the Operations Plan as million gallons per day, gallons per minute, cubic feet per second, or other agreed measurement for the Intake Facilities.
- 2.8. **Easement** means the Intake Facilities Easement, attached as **Exhibit 1**.
- 2.9. **Emergency Response Plan** means a plan that outlines emergency procedures that are recommended for implementation by the Federal Emergency Management Agency and are consistent with the National Incident Management System in order to respond quickly and appropriately to an emergency event.
- 2.10. **Effective Date** means the date specified in Section 1.



- 2.11. **Facilities Modification** means a capital improvement to meet operational changes or upgrades in response to requirements of regulatory agencies, but that does not result in a Capacity Expansion.
- 2.12. **Finance Committee** means the committee with a representative appointed by each Party to act as provided in Section 6.3.
- 2.13. **Fiscal Year** means the time period July 1 through June 30.
- 2.14. **Intake Facilities** means existing, expanded, or upgraded Intake Facilities - used to withdraw and transmit water to the Parties at the agreed System Separation Point between the Willamette River Water Treatment Plant System and the Willamette Water Supply System Water Treatment Plant. The Intake Facilities include the fish screens, intake pipe, caisson, pump station building, and other jointly owned equipment leading up to the System Separation Point described in **Exhibit 2**, and the Intake Facilities Easement described in **Exhibit 1**.
- 2.15. **Lease** means the lease of Capacity in the Intake Facilities according to the terms and conditions of Section 14.
- 2.16. **Management Committee** means the committee with a representative appointed by each Party to act as provided in Section 6.1.
- 2.17. **Managing Agency** means the Party designated under Section 5 to manage the business affairs of the Commission and act in accordance with Section 5 and other provisions of this Agreement.
- 2.18. **Master Plan** means a plan that analyzes the performance, documents recommended upgrades, estimates water demand projections from the Parties, and updates the capital improvement plan of the Intake Facilities.

- 2.19. **Member** means a person appointed by a Party to serve on the Board.
- 2.20. **MGD** is an acronym for million gallons per day.
- 2.21. **Municipal Water Provider** means a city or special district, as defined by ORS 174.116, that supplies drinking water to the public.
- 2.22. **Non-Peak Season** means the period from November 1<sup>st</sup> through April 30<sup>th</sup> of any given year.
- 2.23. **Operations Committee** means the committee with a representative appointed by each Party to act as provided in Section 6.2.
- 2.24. **Operations Plan** means the plan that describes the operational protocols, communications, and coordination for the Intake Facilities with the Water Treatment Plants.
- 2.25. **Ownership** means the Capacity interest of a Party in the Intake Facilities, established following a financial investment in the Intake Facilities. The anticipated Capacity of each Party is set forth in **Exhibit 3**.
- 2.26. **Party or Parties** means the Municipal Water Providers that have Capacity ownership interest in the Intake Facilities and that comprise the Commission.
- 2.27. **Peak Season** means the period from May 1<sup>st</sup> through October 31<sup>st</sup> of any given year.
- 2.28. **Point of Diversion** means the geographic location from which water is diverted from the Willamette River using the Intake Facilities and put to beneficial use through the Water Treatment Plants and associated water systems.

- 2.29. **Real Property** means the real property upon which the Intake Facilities are located. The Real Property is described in **Exhibit 4** and is owned by TVWD and Wilsonville.
- 2.30. **Supermajority** means an affirmative vote from all except one of the Members of the Board eligible to vote.
- 2.31. **System Separation Point** means that point designated on **Exhibit 2** where the Intake Facilities terminate and the water from the caisson of the Intake Facilities is separated by the pumps into untreated water pipes conveying water to either the WRWTP or WWSS WTP.
- 2.32. **Users** means any water system users or customers of a Party's water system including but not limited to residential, commercial and industrial uses as well as other units of local government with whom the Party has agreed to sell water.
- 2.33. **Water Rights** means those surface water registrations, permits (including storage and secondary), or certificates held by a Party, the WRWC, or the Commission as registered with the State of Oregon Water Resources Department, which allow for diversion of water from the Willamette River at the existing Intake Facilities Point of Diversion to deliver water to the Party's respective Water Treatment Plant. The Water Rights are more fully described in **Exhibit 5**.
- 2.34. **Water Treatment Plant** refers to either the WRWTP or the WWSS WTP.
- 2.35. **Willamette River Water Coalition ("WRWC")** means the ORS 190 entity currently consisting of TVWD and Sherwood, Tigard, and Tualatin.

- 2.36. **Willamette River Water Treatment Plant** (“WRWTP”) means the Water Treatment Plant located near the Intake Facilities currently serving potable water to Wilsonville, Sherwood, and other potential Parties.
- 2.37. **Willamette Water Supply System** (“WWSS”) means the water supply system infrastructure facilities including the raw water pipeline, water treatment plant, finished water pipeline(s), finished water storage, and related facilities that serve potable water to TVWD, Hillsboro, and other potential Parties.
- 2.38. **Willamette Water Supply System Water Treatment Plant** (“WWSS WTP”) means the Water Treatment Plant to be located in Washington County outside of Wilsonville to be designed, constructed, and serve potable water to TVWD, Hillsboro, and other potential Parties.

### **3. Commission**

There is hereby created, pursuant to ORS 190, the Willamette Intake Facilities Commission (“Commission”) governed by the Board of Commissioners according to this Agreement and the laws of Oregon. The Commission is created under this Agreement to own and manage the Intake Facilities in order to enable the Parties to this Agreement to draw water through the Intake Facilities to the System Separation Point and convey water to each Water Treatment Plant. The Board is served by appointed Management, Finance, and Operations Committees and the affairs of the Board are administered by an appointed Managing Agency with an organization structure illustrated in **Exhibit 6**.

### **4. Board of Commissioners**

#### **4.1. Appointment**

The Commission shall be governed by a six-Member Board consisting of one person and one alternate person appointed by each Party pursuant to the laws and

regulations of the Party's governing body. A Member serves at the pleasure of the Member's governing body. The name of the Board is the Willamette Intake Facilities Board ("Board").

4.2. **General Powers and Duties**

The Board shall manage the business and affairs of the Commission for the mutual benefit of all of the Parties. The Board shall adopt such bylaws, rules, regulations and policies as it deems necessary in furtherance of the purposes of this Agreement. Subject to the approval of expenditures by the Parties, as set forth in Section 7, the Board shall have the power to hire employees as it deems necessary and to contract for the purchase of property and services. The Board shall perform such further duties as may be required by this Agreement and shall have all powers necessary and incidental to the execution of its specific duties. Except for the provision of liability of debt obligations as provided for under ORS 190.080, the Board may perform its activities in any manner permitted under ORS 190.030 to 190.150.

4.3. **Duration**

Subject to the dissolution provisions in Section 26, this Agreement is perpetual.

4.4. **Meetings; Manner of Acting**

Board meetings shall be conducted in accordance with the provisions of the Oregon Public Meeting Law, ORS 192.610 to 192.710. The Board shall hold meetings as needed, generally on a quarterly basis, but in no event less than twice a year. Special meetings may be called by the Chair or by any two Members. The Board shall adopt rules governing the conduct of its proceedings.

4.5. **Quorum and Voting**

- 4.5.1. If a unanimous vote of all Members is required, then all Members must be present to constitute a quorum. In all other cases, five of six Members of the Board shall constitute a quorum for the conduct of business.
- 4.5.2. Except where a unanimous vote is required, an affirmative vote of five Members (Supermajority) is required to decide any issue before the Board.
- 4.5.3. If the Member and the alternate attend the same meeting, the Member shall be the voting representative for the Party. The Member shall inform the Chair in advance of any meeting if he or she cannot attend and whether the alternate member will attend and will be authorized to vote.

4.6. **Officers**

The Board shall annually elect from its Members a chair and a vice chair, who shall be officers of the Board. The elections shall occur at the first meeting of the Board in each calendar year, unless otherwise agreed. The chair shall serve as the presiding officer. In the absence of the chair, the vice chair shall serve as presiding officer. Officers shall serve at the pleasure of the Board or until a successor is appointed.

4.7. **Powers and Duties**

The Board shall, among other things:

- 4.7.1. Appoint a Managing Agency, as provided in Section 5, including approval and entry into any agreement(s) with the Managing Agency as described in Section 5.2.
- 4.7.2. Approve an operations and management contract(s) as needed.
- 4.7.3. Annually adopt a budget, as described in Section 7.4.
- 4.7.4. Annually adopt a work plan in association with the budget.

- 4.7.5. Annually approve a five year capital improvement plan that includes the current fiscal year.
- 4.7.6. Adopt contracting rules and serve as the local contract review board under ORS 279A.
- 4.7.7. Approve and periodically update a Master Plan and Operations Plan for the Intake Facilities.
- 4.7.8. Approve the addition of a new Party, as provided in Section 20, subject to unanimous approval of the Board.
- 4.7.9. Approve modifications or amendments to the Exhibits to this Agreement.
- 4.7.10. Approve and periodically update an emergency response and management plan, and related policies and practices, to govern the operation of the Assets in an emergency.
- 4.7.11. Approve and periodically update a Curtailment Plan based on a recommendation from the Management Committee.
- 4.7.12. Consider for approval any Lease that has a term less than one year or longer than five years, as provided in Section 14.
- 4.7.13. Approve and periodically update overuse plans developed under Section 15.
- 4.7.14. Cause an annual financial audit to be conducted.
- 4.7.15. Obtain appropriate insurance and fidelity coverages.
- 4.7.16. Oversee the management and operation of the Managing Agency.
- 4.7.17. Approve contracts; acquire real property by negotiation, sale or condemnation; and dispose of surplus personal property.
- 4.7.18. Take other actions necessary and proper to manage, operate and maintain the Intake Facilities.

## **5. Managing Agency**

### **5.1. Initial Appointment of Managing Agency**

TVWD is appointed the Managing Agency for an initial term beginning on the Effective Date through June 30, 2032 (“Initial Term”) with formal performance review in 2029 by the Board.

### **5.2. Subsequent Terms**

Once the Initial Term expires or is terminated, the Board may continue with the initial Managing Agency or appoint a successor Managing Agency to manage the business affairs of the Commission. The Board may elect to enter into a written Managing Agency agreement between the designated Managing Agency and the Board. The designated Managing Agency’s subsequent term will be a six year term, effective on July 1, 2032, or other date as agreed to by the Parties. At the end of the fourth year of the term, the full Board shall either re-appoint the Managing Agency for an additional six year term to commence at the end of the current term or direct the Management Committee to obtain proposals for the selection of a Managing Agency. If the Board elects to obtain proposals rather than reappoint the Managing Agency, the Managing Agency may submit a proposal to continue on as Managing Agency. A proposal process will be required for selection of a Managing Agency at a minimum every twelve years. If the Board initiates a proposal process for the selection of the Managing Agency, at the end of the fifth year of the term, the Management Committee shall submit to the Board a recommendation for a Managing Agency. A Party who submits a proposal to be Managing Agency cannot participate in the selection process. Upon designation of a new Managing Agency, the current and new Managing Agency will be required to create a one year transition plan unless a different period is approved by the Board. The components



of the transition plan shall be reviewed and approved by the Management Committee prior to implementation.

5.3. **Contracted Services**

The Board may elect to contract the management of the business affairs of the Commission to a non-Party. In such case, the Board will direct the Management Committee to obtain proposals and provide a recommendation for the award of a contract by the Board. The Board will designate a Party to manage the contract and will adopt an annual work plan. Upon Board approval of the contract, the current Managing Agency will be required to create a one year transition plan unless a different period is approved by the Board. The components of the transition plan shall be reviewed and approved by the Management Committee prior to implementation. The Board may terminate the contract at its sole discretion and appoint a new Managing Agency.

5.4. **Annual Review**

The Management Committee will conduct an annual performance review of the Managing Agency and submit a report to the Board.

5.5. **Termination or Resignation**

The Managing Agency may be terminated at any time at the Board's discretion, or may withdraw at its own discretion. The Board will provide a reasonable notice to the Managing Agency and Parties if the termination is for convenience and not due to a default. The Managing Agency will provide a notice to the Board if withdrawal is desired. A notice to terminate may specify an effective date for termination or withdrawal. A transition plan with a reasonable period for transfer of duties to the new Managing Agency will be developed by the Board. Termination related to default is covered in Section 24.

5.6. **Powers and Duties of Managing Agency**

TVWD's initial management of the Intake Facilities and Capacity Expansion projects are described in **Exhibit 7** and those terms are only applicable during TVWD's Initial Term. With respect to all other roles and responsibilities of the Managing Agency, the Board may delegate powers to the Managing Agency to provide the management functions required to administer the Commission. The Managing Agency is responsible for administering the business affairs of the Commission. This Section does not prevent the Board, upon a finding that it is in the best interest of the Commission, from modifying the duties of the Managing Agency. The Managing Agency shall act for the mutual benefit of all Parties at all times in the performance of all Managing Agency duties. The Managing Agency duties shall include but are not necessarily limited to the following:

- 5.6.1. Prepare an annual work plan in conjunction with the annual budget.
- 5.6.2. Perform such duties as established in an annual work plan and any other duties as directed by the Board.
- 5.6.3. Provide administration of the Board meetings and required public meeting notices and duties.
- 5.6.4. Maintain records consistent with public records laws.
- 5.6.5. Provide administration of the infrastructure operations and maintenance of the Intake Facilities and associated contract approvals.
- 5.6.6. Perform financial planning and management including payment of invoices, accounting, reporting, and budgeting in accordance with Oregon law.

- 5.6.7. Develop and coordinate capital improvements plans, including the timing of any improvements or expansions as relate to the Intake Facilities. Each Party will participate in planning projects, such as a Master Plan or facilities plan, and will provide good-faith estimates for future Demand.
- 5.6.8. Provide capital project management, unless otherwise directed by the Board.
- 5.6.9. Provide administration and staffing for the Board and committees such as the Management Committee, Operations Committee, and Finance Committee.
- 5.6.10. Prepare an Operations Plan in coordination with the Parties. The Operations Plan must be approved by the Operations Committee prior to submitting it to the Board for adoption.
- 5.6.11. Coordinate with WRWTP and WWSS to support and facilitate the orderly and effective operations, maintenance and construction activities of the Intake Facilities, WRWTP and WWSS.
- 5.6.12. Take prompt action, as necessary, in response to a Curtailment Plan or an Emergency Response Plan and report to the Parties and the Board as soon as reasonably possible. In the case of an emergency, an after-action report including the nature of the emergency, the effect(s) on the Intake Facilities, and the steps taken by the Managing Agency in response will be provided to the Board.

5.6.13. Procure and manage appropriate insurance coverages and fidelity coverages, in accordance with the insurance requirements set forth in Section 27.3, or as the Board may otherwise direct.

5.6.14. Approve and execute contracts, subject to the contracting rules and direction of the Board.

5.6.15. Other duties as may be assigned by the Board.

## **6. Management, Operations, Finance, and Other Committees**

### **6.1. Management Committee**

Each Party shall appoint its Chief Executive Officer, City Manager, or its designee to serve on the Management Committee. The Managing Agency shall meet with the Management Committee to receive recommendations on policies, planning, operations, capital projects, contract awards, etc., to be forwarded to the Board. The Management Committee members will also serve as the liaison to each of their respective governing bodies and shall be charged with authority to act on behalf of the Party's governing body, except as otherwise provided herein.

### **6.2. Operations Committee**

Each Party shall appoint one person technically knowledgeable in water system operations or engineering to the Operations Committee. A Party may allow other attendees, but in no event will a Party have more than one vote in making a recommendation to the Management Committee. The Managing Agency will advise and consult with the Operations Committee on matters including but not limited to Intake Facilities operations, capital improvements and planning, and contract management. The Operations Committee shall, as required by this

Agreement or requested by the Management Committee, report on or provide recommendations to the Management Committee on any such matter.

6.3. **Finance Committee**

Each Party shall appoint one person, knowledgeable in municipal finance laws and practices, to the Finance Committee. A Party may allow other attendees, but in no event will a Party have more than one vote in making a recommendation to the Management Committee. The Finance Committee shall provide recommendations to the Management Committee on the proposed annual budget, capital improvement plan including resource availability and timing, and other financial policies. The Finance Committee will also provide comment and recommendations on the financial procedures to be developed and implemented by the Managing Agency.

6.4. **Other Committees**

Other Committees may be formed as needed to support and provide guidance to the Commission.

**7. Financial Management**

7.1. **Budget Process and Calendar**

The Board shall adopt a budget for its operations and capital improvements for each Fiscal Year. The Managing Agency shall annually prepare a budget for administration, operations, and capital improvements in coordination with the appropriate committees representing the Parties as described in this Section. The budget review process shall follow the schedule described in **Exhibit 8** unless a modified schedule is approved by the Board.

7.2. **Operations and Finance Committees Budget Review**

An initial draft budget shall be prepared and distributed by the Managing Agency to the Operations and Finance Committees. The initial draft budget shall include

estimates for full-time equivalents, associated benefits, materials and services, a listing of contracts in effect and contemplated for future periods, capital outlay, and any other necessary expenditures. The initial draft budget shall also include supporting detail and assumptions for the Committee's consideration. Joint meeting(s) of the Operations and Finance Committees will be held as needed to refine the initial draft budget. The Operations and Finance Committees will review the initial draft budget, and will provide its recommendation, after any requested revisions are incorporated by the Managing Agency, to the Management Committee. The Managing Agency will incorporate such revisions and prepare a revised draft budget for consideration by the Management Committee.

**7.3. Management Committee Budget Review**

The revised draft budget shall be distributed to the Management Committee as described in **Exhibit 8**, but not later than March 15<sup>th</sup> of each year. The Management Committee will review the revised draft budget, and will either provide a recommendation to the Board for adoption or provide requested revision(s) to the Managing Agency. Following Management Committee review and revisions, the Managing Agency shall prepare a proposed budget and distribute it to the Board.

**7.4. Budget Adoption**

The Board will consider the proposed budget consistent with the schedule presented in **Exhibit 8**. Furthermore, the Board will strive to adopt the budget by resolution in April of each year to enable the Parties to adequately reflect necessary commitments in their own respective budgets, but in no case will the Board adopt the annual budget later than June 1<sup>st</sup> of each year. The adopted budget shall include estimated subtotals for the categories of personnel services, materials and services, capital outlay, and all other appropriation categories used in the adopted budget. The adopted budget shall also include a narrative describing the supporting detail

and assumptions summarized for the Board's consideration, including personnel counts stated as full-time equivalents. Each Party's proportionate share of expenses of operations and maintenance of the Intake Facilities, including reserves and replacements, debt services, payments to the Managing Agency, and all other expenses as may be incurred by the Commission, shall be estimated by the Managing Agency and set forth in the Commission's adopted budget.

7.5. **Capital Improvement Plan Budget**

The Managing Agency shall maintain capital improvement plan budget projections for at least the subsequent four Fiscal Years following the fiscal year budgeted, which shall be updated annually and submitted with the initial draft budget and the proposed budget. The Operations and Finance Committees will review the proposed capital improvement plan, and will provide a recommendation to the Management Committee for review or provide requested revision(s) to the Managing Agency for incorporation. The Management Committee will review the proposed capital improvement plan, as may have been revised by the two committees, and will provide a recommendation to the Board for adoption or provide requested revision(s) to the Managing Agency for incorporation. The Managing Agency will include the capital improvement plan budget, as reviewed and revised by the Management Committee, in the proposed budget and submit it to the Board. The Board will consider the capital improvement plan for adoption on an annual basis on the same timeline as the annual budget. The capital outlay category includes routine purchases as well as major improvements or expansions as may be outlined under the provisions of Section 17.

7.6. **Accounting**

The Managing Agency shall comply with government accounting standards, maintain independent budget and accounting control procedures, and provide

budget financial status reports at least quarterly to the Board and to each of the Parties not later than 30 days after the end of each quarter. The report shall show expenditures and receipts consistent with the requirements of the financial procedures described in Section 7.9. The Managing Agency shall maintain all fiscal records relating to the Intake Facilities and associated capital improvement projects in accordance with generally accepted accounting principles. In addition, the Managing Agency shall maintain any other records pertinent to the Intake Facilities and associated capital improvement projects in such a manner as to clearly document the Managing Agency's performance hereunder. All such fiscal records, books, documents, papers, plans, and writings shall be retained by the Managing Agency and kept accessible as required by law. The Managing Agency agrees that the other Parties and their authorized representatives shall have access to all books, documents, papers and records of the Managing Agency which are directly related to the Intake Facilities and associated capital improvement projects for the purpose of making any audit, examination, copies, excerpts and transcripts.

**7.7. Audit**

The Board shall cause an independent audit of the financial affairs of the Commission to be performed by a certified public accountant licensed and certified to do municipal auditing in the State of Oregon. The audit shall be performed in accordance with the provisions of the Oregon Municipal Audit Law, ORS Section 297.405 – 297.555. The audit shall be completed annually within six months following the end of each Fiscal Year. The Board shall review, accept the annual audit, and direct the Managing Agency to complete correction actions as needed. A copy of the annual audit shall be provided to each Party upon acceptance by the Board.



7.8. **Issuance of Debt**

When authorized by a unanimous vote of the Board and an affirmative vote by the governing body of each Party, the Board may issue debt under ORS 287A, as allowed under ORS 190.080, as the Board deems necessary to finance capital improvements. Upon receipt of an affirmative vote of each of the governing bodies, the Board shall approve the order or resolution authorizing the issuance of debt, which shall specify the joint and severable liabilities and obligations of the Parties as set forth in ORS 190.080 (3).

7.9. **Financial Procedures**

Interim financial procedures are included as **Exhibit 9**, and will be used until the long-term financial procedures are developed and approved by the Board. The Managing Agency shall propose financial procedures consistent with the requirements of this Section. The Finance Committee will review the proposed financial procedures, and will provide a recommendation to the Management Committee for review or provide requested revision(s) to the Managing Agency to incorporate and forward to the Management Committee. The Management Committee will review the proposed financial procedures, and will provide a recommendation to the Board for adoption or provide requested revision(s) to the Managing Agency to incorporate and forward to the Board. The Board will consider the recommended financial procedures for adoption or send back to the Management Committee for modification. The financial procedures will be reviewed and updated on at least a ten-year basis or as requested by the Finance Committee, Managing Agency, or the Board. The Board approved long-term

financial procedures will be included as an amended **Exhibit 9** to this Agreement subsequent to the effective date of this Agreement.

## **8. Intake Facilities Ownership and Easement**

### **8.1. Capacity Ownership**

The Parties each own various shares of Capacity in the Intake Facilities. The ownership of each Party is a percentage share of the Intake Facilities that is equal to the Party's Capacity in MGD compared to the total Capacity of the Intake Facilities. The Parties' respective shares of the anticipated design Capacity of the Intake Facilities are set forth in **Exhibit 3**. Upon completion of construction, the Board shall determine ownership of Capacity based on actual Capacity achieved of the Intake Facilities to the System Separation Point. If the actual Capacity achieved is more or less than the design Capacity anticipated in **Exhibit 3**, the **Exhibit** will be revised to reflect the ownership based on the actual Capacity achieved. The Capacity shares shall be proportionately increased or reduced. If the actual Capacity achieved is less than the design Capacity anticipated, in no event will the Capacities of TVWD, Wilsonville and Sherwood be less than 56.5 MGD, 20 MGD and 5 MGD, respectively.

### **8.2. Easement**

The Intake Facilities have been granted an Easement described in **Exhibit 1** and are located on the Real Property described in **Exhibit 4**.

## **9. Water Rights**

### **9.1. Existing Water Rights**

A Party shall continue to hold its Water Rights in its individual name, except that TVWD, Sherwood, Tigard and Tualatin jointly hold their Water Right through the WRWC. **Exhibit 5** identifies the Water Rights held by each Party and the WRWC for use at the Intake Facilities Point of Diversion and as described in this Section.

9.2. **Restriction on Use**

If surface water withdrawal rights are partially or fully restricted and unavailable, then each Party will be subjected to the restrictions and conditions applicable to its own Water Rights. The available Water Rights will be used for the benefit of the Party(ies) that own(s) the Water Rights. To the extent that the non-restricted or partially restricted Water Rights are greater than that required by the Party owning the Water Rights, then the unused portion of the Water Rights may be leased to the other Parties, as set forth in the leasing provisions. In times of emergency or curtailment, the Board may allow Parties to use the Water Rights of other Parties without a leasing requirement, subject to the agreement of those Parties. Those Water Rights held jointly through WRWC shall be allocated for use by the WRWC Parties as described in the WRWC agreement.

9.3. **Supplemental Water Rights**

A Party or the Commission may obtain additional Water Rights from the Oregon Water Resources Department or a federal agency that initiates a municipal contracting program in the United States Army Corps of Engineers storage facilities in the Willamette Basin (“Willamette Basin Project”) as the Demand and need is identified. The Board will establish Capacity ownerships of any jointly held Water Right by the Commission at the time of application. **Exhibit 5** identifies the Water Rights authorized for use at the Intake Facilities Point of Diversion held by individual Parties and those jointly held by the WRWC or by the Commission. **Exhibit 5** will be updated by the Board as additional Water Right transactions occur.

9.4. **Obligations of Each Party**

Each Party is responsible for obtaining its own Water Rights with a point of diversion at the Intake Facilities sufficient to meet its Capacity.

#### 9.5. **Perfection and Certification**

A Party's certification or perfection of its individual Water Right through the Intake Facilities cannot exceed the Party's owned Intake Facilities Capacity unless the Board approves otherwise and such approval is not to the detriment to the other Parties' Water Rights.

#### **10. Use of the Intake Facilities by the Parties**

Each Party shall use the Intake Facilities in a manner consistent with prudent water utility operating practices and in a manner that minimizes the impact of use on the other Parties. The Managing Agency shall manage the Intake Facilities for the mutual benefit of all Parties. Each Party shall obtain sufficient Capacity in the Intake Facilities to serve the Demand imposed on the Intake Facilities by the Party.

#### **11. Operations Plan**

Prior to the date the Willamette Water Supply System commences delivery of potable water to its respective Users, an Operations Plan shall be developed by the Operations Committee with support from the Managing Agency, and submitted to the Management Committee. The Management Committee will review the proposed Operations Plan, will work with the Managing Agency on modifications, and will provide a recommendation to the Board for adoption or will send back to the Operations Committee for modification. The Operations Plan for the Intake Facilities will include, but is not limited to, agreed protocols and a methodology to provide for the equitable, effective and efficient operation of the Intake Facilities in accordance with generally accepted utility practices regarding the operation, management, capital improvements, and expansion of all aspects of the Intake Facilities. The Operations Plan will provide that the Parties will use best efforts and good faith in the operation of the Intake Facilities for the mutual benefit of all Parties. The Operations Plan will be updated as

needed. The agency responsible for operating the Intake Facilities shall follow the Board-adopted Operations Plan.

## **12. Curtailment Plan and Emergency Response Plan**

### **12.1. Curtailment Plan**

The Board shall adopt a Curtailment Plan that establishes policies and procedures for when and how reductions in Demand shall be made. The Managing Agency shall develop a proposed Curtailment Plan for review by the Operations Committee. The Operations Committee will review the proposed Curtailment Plan, and will provide any requested revision(s) to the Managing Agency before presentation to the Management Committee. The Management Committee will review the proposed Curtailment Plan, and will either provide a recommendation to the Board for adoption or will send back to the Operations Committee for further review and modification. The Management Committee will provide a recommendation to the Board for its consideration and adoption. When reductions in Demand become necessary, the reduction shall be in accordance with the Curtailment Plan. Any Curtailment Plan must treat all Parties fairly and equitably.

### **12.2. Emergency Response Plan**

The Managing Agency shall prepare an Emergency Response Plan to be reviewed by the Operations Committee and the Management Committee. Procedures and protocols will be included in the proposed Emergency Response Plan. The Operations Committee and Management Committee will review the proposed Emergency Response Plan, and will either provide a recommendation to the Board for adoption or will provide requested revision(s) to the Managing Agency.

## **13. Right of First Offer**

Wilsonville and TVWD entered into the 2000 Master Agreement, Accord, First Amendment and the Willamette Intake Facilities Agreement regarding the construction, joint ownership,

and continuing operations of the WRWTP, which all remain and will remain in full force and effect, except as otherwise amended, in writing, by TVWD and Wilsonville. The Accord Agreement, dated June 19, 2001, expressly provides a Right of First Offer be made between Wilsonville and TVWD with respect to any sale, transfer, exchange, grant of option to purchase, lease, or other disposal of their respective interests in the Property, or any part of, or interest in, or ownership interest in the Supply Facilities (which include the Intake Facilities). Wilsonville has been offered and declined the first right to purchase the Intake Facility capacity held by TVWD and consented to sale, purchase and transfer of 62.3 MGD of existing and expanded capacity between TVWD and the other Parties to this Agreement and waived further application of the Accord Agreement thereto. In accordance with the Accord Agreement, the reciprocal Right of First Offer with respect to Intake Facilities remains in full force and effect with respect to 56.5 MGD of TVWD's retained interest in the Intake Facilities and Wilsonville's 25.0 MGD retained interest in the Intake Facilities, notwithstanding anything to be construed to the contrary in this Agreement. Additional terms with respect to the Right of First Offer continue to apply and are detailed in the Accord Agreement. If TVWD or Wilsonville declines to lease or purchase all or a portion of the amount offered, then the declined amount may be offered to the Parties for lease or for purchase, as provided in Sections 14 and 19. Notwithstanding the terms of the Right of First Offer, Wilsonville and TVWD do hereby agree to waive their Right of First Offer for leases of five years or shorter duration offered by Wilsonville or TVWD to the other Parties ("Short Term Waiver"). A lease to which this Short Term Waiver applies may be renewed for one additional term and the Short Term Waiver is applicable for that one time renewal.

#### **14. Leasing**

##### **14.1. Leasing**

The Parties recognize that options for leasing Capacity in the Intake Facilities or Water Rights are important to maintain the cost effective and efficient use of the

Intake Facilities and associated infrastructure. Only Parties to this Agreement are eligible to engage in leasing. Leasing options will include firm, interruptible, and surplus water pool. A Party will not be forced to lease its Capacity in the Intake Facilities or Water Rights to other Parties. Each Party retains sole discretion as to how much, if any, Capacity of the Intake Facilities or Water Rights to make available for leasing. Prior to expanding or adding new infrastructure to the Intake Facilities above 150 MGD, the Parties will determine if leasing options are a reasonable approach as a method to defer capital expansion. The following provisions regarding Leasing are subject to the Right of First Offer, including the Short Term Waiver between TVWD and Wilsonville, as set forth in Section 13.

14.2. **Leasing Procedures**

The Managing Agency will coordinate and manage the annual leasing process, including associated agreements and approval requirements, on a schedule that accommodates the Commission and the Parties' budget processes. The Managing Agency will request available Capacity or Water Rights for leasing options from all Parties who are interested in leasing on an annual Fiscal Year basis prior to the Peak Season. Each interested Party will estimate the amount of Capacity, duration, and type of Lease (interruptible or firm) or Water Rights it wishes to make available to lease to, or the amount of Capacity, duration, and type of Lease (interruptible or firm) it seeks to lease from, the other Parties. The Managing Agency will develop forms and protocols for managing the leasing process including the leasing requests and annual surplus Capacity designated by each Party. A rate methodology for each of the leasing options will be developed by the Managing Agency, reviewed and recommended by the Management Committee and the Finance Committee, and adopted by the Board. A sample Lease form and methodology are attached in **Exhibit 10**, which may be modified and/or updated by the Board. In those years

when Water Rights are limited and if requested by the Parties, the Board may adopt an equitable methodology for leasing of the Water Rights.

14.3. **Firm and Interruptible Lease Terms**

The length of time for firm and interruptible leases will be a minimum of one year and a maximum of five years, unless otherwise approved by the Board and subject to the Right of First Offer provisions. The Capacity acquired from a firm Lease will be considered transferred Capacity from the lessor to the lessee for the quantity and the duration of the Lease agreement for use and overuse purposes. The Capacity acquired from an interruptible Lease will be considered the lessee's Capacity for use and overuse purposes until the lessor calls back the Capacity from the lessee pursuant to the terms of the Lease. The Managing Agency will develop recommended protocols and the terms to be approved by the Board for firm and interruptible Leases, the latter of which will include the terms under which a lessor may call back the "interruptible" leased Capacity, such as when curtailment or loss of Capacity occurs.

14.4. **Surplus Capacity Pool Terms**

When excess Capacity is made available for leasing that is not dedicated to a firm or interruptible Lease, that excess Capacity shall be included in the Surplus Capacity Pool to be made available for a period not to exceed one year from the date of placement in the Surplus for lease for less than one year by the Parties in coordination with the Managing Agency. The premium short term lease rate is included in **Exhibit 10**, and may be amended by the Board. The Managing Agency will develop for approval by the Board the terms, costs, and protocols for the



management and use of the Surplus Capacity Pool, taking into account the best interests of the Parties while maintaining the integrity of the system.

14.5. **Lease Approval**

A Lease that is within the terms of this Section will be reviewed and approved by the Management Committee and administered by the Managing Agency. Status reports regarding the Lease agreements will be provided to the Board by the Managing Agency. A Lease that is not consistent with the terms of this Section must be approved by the Board.

14.6. **Lease Distribution and Payments**

Lease requests and associated Lease revenues will be divided among the lessors based on the percent of Capacity or Water Rights leased, if more than one lessor and one lessee are involved unless otherwise approved by the Board. A Lease approved between two Parties may provide for payment made directly from the lessee to the lessor. When Lease requests exceed the amount of Capacity or Water Rights made available, available Lease Capacity or Water Rights will be divided amongst the lessees based on the percent of Capacity or Water Rights requested unless otherwise approved by the Board.

**15. Overuse**

15.1. **Notification**

A Party will manage its Demand on the Intake Facilities within the Party's respective ownership and Capacity share of the Intake Facilities as may be augmented by firm, interruptible or surplus Capacity pool Lease sources. Overuse terms are included in the Agreement in order to discourage use that may result in adverse impacts to the operational integrity of the Intake Facilities and to promote prudent planning of needed expansions. The Managing Agency shall notify a Party when the Party's instantaneous Demand has exceeded its Capacity ownership as

augmented by any leased Capacity, including any short term lease from the Surplus Capacity Pool of the Intake Facilities. A Party should notify the Managing Agency if the Party exceeds or anticipates exceeding its Capacity share as augmented by any leased Capacity and short term lease from the Surplus Capacity Pool. A Party will be required to take appropriate corrective action to decrease the Party's Demand on the Intake Facilities to be within its Capacity ownership as augmented by any leased Capacity and the surplus Capacity pool. A Party shall be deemed to have overused the Intake Facilities if the Party's Demand on the Intake Facilities exceeds the Party's Capacity as described in Sections 8 and 10. Overuse is subject to remedies described in Section 16.

**15.2. Overuse Terms**

If a Party has been notified by the Managing Agency that their instantaneous Demand on the Intake Facilities has exceeded their ownership Capacity as augmented by any leased Capacity and the surplus Capacity pool, and corrective action was not taken to decrease the Demand within their ownership Capacity as augmented by any leased Capacity and the surplus Capacity pool, then the following Overuse Terms shall apply. A Party shall be deemed to have overused the Intake Facilities if the Party's Demand on the Intake Facilities exceeds the Party's Capacity as augmented by any leased Capacity and the surplus Capacity pool by 5% continuously over a 12 hour period for: i) three consecutive days in two consecutive years or ii) three consecutive days in any three years out of a five year period. Overuse also includes a Party's use exceeding its Water Right ownership regardless of the extent of overuse during times of regulation or curtailment per

Section 12, unless otherwise approved by the Board. If overuse occurs, then the Party shall be subject to the remedies for overuse terms set forth in Section 16.

## **16. Remedies for Overuse**

### **16.1. Remedies Considered by the Board**

To the extent that a Party overuses the Capacity or Water Rights of the Intake Facilities as defined in Section 15 of this Agreement, the Party shall compensate the other Parties as set forth in Section 16.2. When overuse occurs, the Board may require the Party to lease Capacity or Water Rights in the Intake Facilities, reduce Demand on the Intake Facilities, or purchase Capacity in the Intake Facilities, if made available by another Party such that the overuse will cease to occur. Compensation for overuse is described in Section 16.2. The Party that overused the Intake Facilities shall deliver to the Management Committee and the Board a plan to avoid overuse in the future. The plan must include a proposal for a Lease agreement, a Capacity purchase agreement, and/or other measures to eliminate overuse of the Intake Facilities. Nothing herein shall compel a Party to lease or sell Capacity or Water Rights to an overusing Party. The Board shall approve a plan to eliminate overuse by the Party, and the Managing Agency shall monitor the implementation of the plan and report back to the Board. Penalties for overuse may only be waived by the Board. A request for a waiver may be given to the Managing Agency, along with justification for the waiver, to be presented to the Board.

### **16.2. Compensation**

To the extent that a Party overuses the Capacity or Water Rights of the Intake Facilities as defined in Section 15 of this Agreement, the Party shall compensate the other Parties. Unless modified by the Board, compensation for overuse shall be five times the firm Lease rate for Capacity, which would have been in effect in the last period described above in which the overuse occurred for the entire period of

the overuse (i.e. two consecutive or three out of five years). The amount of Capacity overused for the determination of retroactive compensation shall be equal to the difference between the Party's Capacity as augmented by any leased Capacity or surplus Capacity pool and the Demand imposed by the Party during the overuse period. The compensation for overuse shall be distributed to the other Parties by their ownership Capacity percentage.

## **17. Expansion and Capital Improvements**

### **17.1. Current Expansion**

As described in the Recitals, the Parties have or will enter into separate agreements to design and construct upgrades for a Capacity Expansion of the Intake Facilities to achieve a design Capacity of 150 MGD. The preliminary concept and layout for the Intake Facilities improvements are shown in **Exhibit 2**. The preliminary cost allocations for the Intake Facilities improvements are described in **Exhibit 11**. The process set forth in Sections 17.2 and 17.3 shall not apply to this current Capacity Expansion.

### **17.2. Future Expansion or Improvement**

Capacity Expansion of the Intake Facilities refers to any capital improvement project not part of Section 17.1 that results in increased Intake Facilities Capacity. Capacity Expansion or Facilities Modification of the Intake Facilities, to the extent possible, shall be planned for through a Master Plan to be updated not less than every five years. The Managing Agency will lead and facilitate the development of the Master Plan, which will be reviewed and recommended for adoption by the Operations and Finance Committees to the Board. The Managing Agency will conduct the planning and implementation of the Intake Facilities Capacity Expansion, including provision for minimum operational impacts and cost impacts, to the other Parties using the Intake Facilities. A Party will notify the Managing

Agency of any proposed Capacity Expansion outside the planned Capacity Expansions including the proposed Capacity and schedule.

**17.3. Determination of Future Expansion**

The Managing Agency will provide notice to the Parties of any proposed Capacity Expansions to determine participation. Parties shall have 120 days from the date they receive notice, with an option for an additional 60 days if requested, in which to respond to the Managing Agency whether they wish to participate in the proposed Capacity Expansion and any proposed conditions for participation. Once participation in the proposed Capacity Expansion is fixed and the scope, budget, and schedule are established, then the non-participating Parties shall have no further opportunity to participate unless all participating Parties approve. Participating Parties will include their proportionate share of the estimated costs in their respective annual budgets. In the case of any proposed Capacity Expansion, a Supermajority of the Board must agree to the proposed Capacity Expansion. If the Board agrees to allow the Capacity Expansion, each Party will have the option to participate in the Capacity Expansion. If not all Parties agree to participate in the Capacity Expansion, then only those Parties electing to participate in the Capacity Expansion will be responsible for all costs related to the Capacity Expansion. The Managing Agency will strive to resolve objections to proposed Expansion prior to a final decision being made with respect to the Capacity Expansion.

**18. Sale of Water to Non-Party**

The Parties agree that sale of water to a non-party shall occur only through the associated Water Treatment Plant agreements. Parties that require Capacity for such sales shall lease Capacity from other Parties to this Agreement pursuant to Section 14 or purchase Capacity from other Parties pursuant to Section 19.

## **19. Sale of Interest**

### **19.1. Notification**

Subject to the notification requirements of the Right of First Offer described in Section 13, one or more Parties (“Selling Parties”) may sell all or a portion of their ownership Capacity in the Intake Facilities by providing written notice to the Managing Agency and the other Parties. Within 60 days of receipt of the notice, each Party with an interest in acquiring additional Capacity in the Intake Facilities shall respond in writing to the Managing Agency and the Selling Party indicating whether it wishes to purchase all or a portion of the interest in the Intake Facilities, the offer price, and the proposed terms and conditions of the purchase and sale (“Purchase Nomination”).

### **19.2. Purchase Nomination Recommendation**

The Managing Agency will review each Purchase Nomination and make a preliminary determination as to whether all Parties submitting a Purchase Nomination (“Purchasing Parties”) and Selling Parties can be accommodated in full. If the Managing Agency is a purchaser or seller, then the Management Committee will perform the tasks outlined in this Section. If all Purchasing and Selling Parties can be accommodated in full, the Managing Agency shall notify the Selling Parties and Purchasing Parties of how the reallocation of ownership will be calculated. If all Purchasing and Selling Parties cannot be satisfied in full, then the Managing Agency will confer with the Purchasing and Selling Parties individually or collectively and make a recommendation as to how the total interest designated for sale should be allocated among the Purchasing and Selling Parties. The Managing Agency shall allocate proportionately in order to achieve an equitable and fair solution for the Purchasing and Selling Parties. The Managing Agency will

make the recommendation to the Management Committee with respect to the proposed allocation within 30 days after receipt of Purchase Nominations.

19.3. **Purchase Negotiations**

Within 30 days after the Managing Agency makes the recommendation and provides written notice of the proposed allocation (as approved by the Management Committee), the Managing Agency will convene a meeting of the Selling Party and the Purchasing Party to reach final agreement on the allocation of Capacity, the purchase price to be paid and other terms of sale. The Purchasing Party and Selling Party will each designate a representative for negotiations. As a result of the negotiations, one price will be set that will apply to all Selling and Purchasing Parties.

19.4. **Purchase Term Sheet**

All Purchasing Parties and Selling Parties, with the Managing Agency as the facilitator, will have 60 days to negotiate a fair and equitable transaction through a process so that all Purchasing and Selling Parties are privy to all discussions of price and terms resulting in a mutually agreed final reallocation of Intake Facilities ownership and the terms of purchase and sale. The final terms will be reduced to a term sheet for tentative approval by the designated representatives of the Purchasing and Selling Parties. If the Managing Agency is a Purchasing Party or a Selling Party, the Management Committee will assume the facilitator role throughout the purchase and sale process.

19.5. **Acceptance or Rejection**

Within 45 days of approval of a term sheet, each Purchasing and Selling Party will conduct such internal review as it deems necessary and provide written notice of intent to proceed with or decline the transaction to the other Parties and the Managing Agency. If any Purchasing or Selling Party declines, then the Managing

Agency will convene the remaining Purchasing and Selling Parties who will then determine how to reallocate the Capacity and adjust their respective purchase price or terms. If there is excess Capacity available, the Managing Agency may also offer the excess Capacity to those Parties who had earlier declined to be a Purchasing Party. Those declining Parties shall have 15 days from notice by the Managing Agency to accept or decline the term sheet as is and without opportunity to vary its terms unless the Purchasing Party and Selling Party mutually agree.

19.6. **Purchase and Sale Agreement**

Once the terms of purchase and sale are determined, the Managing Agency shall notify all Parties of the pending transaction. Purchasing and Selling Parties will prepare the necessary documents for final approval by the governing bodies of the Selling and Purchasing Parties and the transaction will close within 30 days after approval, unless a longer period is agreed to by the Selling and Purchasing Parties. Upon closing of the transaction the Managing Agency will undertake to gather or prepare amended Exhibits and other documents necessary to memorialize the transaction and will enter the revised Capacity allocation and resulting equity interest on the books and records of the Commission. Board approval of the transaction is not required, but the Board will approve the amended Exhibits that reflect the revised Capacity allocations.

19.7. **Commission's Purchase Rights**

If all or a portion of the offered Capacity remains unsold after the exhaustion of the procedure in Sections 19.1 through 19.6 above, the Board will have the right to consider whether to purchase a Selling Party's interest on terms and conditions



agreed upon by the Board and the Selling Party. If so acquired, the Commission will hold the Capacity in trust for the benefit of all of the Parties.

19.8. **Sale to Municipal Non-Party**

If all or a portion of the offered Capacity remains unsold after the exhaustion of the procedure in Sections 19.1 through 19.7, then the Selling Parties may seek and obtain offer(s) from a non-Party so long as the non-Party is a Municipal Water Provider and becomes a Party to the Commission and this Agreement. Such offers will be reviewed in accordance with Section 20.

19.9. **Party Status**

If the interests of the Selling Party remain unsold, then the Selling Party will continue as a Party. Upon sale of all ownership interests, the Selling Party will cease to be a Party.

19.10. **Water Rights**

The process described in this Section does not govern the sale or purchase of Water Rights.

19.11. **Schedule**

Participating Parties in any proposed transaction may adjust the schedule provided in this Section as mutually agreed.

**20. Admission of New Municipal Parties**

20.1. **Eligibility**

Only a Municipal Water Provider is eligible to apply to become a Party and must make a written request to become a Party (“Applicant”).

20.2. **Applicant Request**

The Applicant’s written request shall state the proposed date of joinder, Demand and Capacity sought to be purchased, identify the quantity and status of Water

Rights the Applicant would provide, identify the existing Capacity necessary to serve the Applicant, identify any improvement(s) that would need to be built or expanded to accommodate the Applicant, and other supply sources available to Applicant.

20.3. **Consideration by Managing Agency and Board**

The Applicant shall deliver its request to the Managing Agency who shall then distribute it to the Board and the Management Committee. Each Party's representative of the Management Committee will be responsible for presenting the application to their respective governing bodies for a recommendation to approve or deny. Once the Management Committee reports back the results from each of the Party's respective governing bodies, at the next regularly scheduled Board meeting, the Board will consider the request. A decision to consider an application for admission will require a unanimous affirmative vote of the Board. If the Board determines that the application will not be considered, the Managing Agency will inform the Applicant the request is denied and the matter will be deemed concluded.

20.4. **Provision of Additional Information**

If the Board unanimously votes to consider the admission, the Board, through the Managing Agency, shall request that Applicant provide all information as the Board deems necessary, in its sole discretion, to adequately consider the matter. This may include a request for oral presentation by Applicant's staff and/or elected officials.

20.5. **Term Sheet**

Based on the information submitted, the Board shall determine if there is unanimous interest to continue to consider the request. If so, then the Managing Agency shall deliver a term sheet to the Applicant defining the terms and conditions for joinder, including but not limited to the date of joinder, the method of payment

for existing Capacity and Applicant's obligations for construction of new Intake Facilities or expansion of existing Intake Facilities.

**20.6. Applicant Review of Term Sheet and Negotiation**

The Applicant shall have 30 days from the receipt of the term sheet to accept or decline the term sheet, or propose modified terms. If the term sheet is acceptable to the Applicant and the Board, or if the Applicant and the Board negotiate and reach agreement within 30 days on the proposed modified terms, the Managing Agency shall cause a joinder agreement to be prepared for approval by the Applicant and the Board. If declined, the matter will be deemed terminated without any further action.

**20.7. Sale or Transfer to Applicant**

In accordance with Section 19, if an existing Party wishes to sell or transfer Capacity ownership to an Applicant, the Party seeking to sell shall give notice to the Managing Agency as provided in Section 19, Sale of Interest. The Party shall also include a written statement of its intent to sell. Thereafter, the evaluation of the Applicant and terms and conditions of joinder shall follow the process of Applicant request under this Section concurrent with the Sale of Interest provisions of Section 19 for the Selling Party and remaining Parties.

**21. Indemnity**

**21.1. Indemnification of Board, Officers and Employees**

Except as may otherwise be provided by contractual agreement between the Commission or Board and any agent of the Commission, including but not limited to the Managing Agency, the Commission shall defend and indemnify any Board member, officer, committee member, employee or agent of the Commission who was or is a party, or is threatened to be a party, to any threatened or actual action, suit or proceeding, whether civil, criminal, administrative or investigative (other

than an action by the collective Parties under this Agreement), by reason of the fact that such person is or was a Board member, officer, committee member, employee, or agent of the Commission, against all reasonable expenses, attorney fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if such person acted in good faith and such person reasonably believed his or her conduct to be lawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or with a plea of nolo contendere or its equivalent shall not in and of itself create a presumption that the person did not act in good faith or did not reasonably believe his or her conduct to be lawful. Payment under this clause may be made during the pendency of such claim, action suit or proceeding as and when incurred, subject to the right of the Commission to recover such payment from such person, should it be proven at a later time that such person had no right to such payments. Any person who is ultimately held liable for his/her good faith and reasonably believed to be lawful actions on behalf of the Commission as a Board Member, officer, committee member, employee, or agent of the Commission shall be fully covered by this indemnity. Any person who is ultimately held liable but is determined by the Board to have acted in bad faith or without reasonably believing his or her conduct to be lawful shall not be indemnified by the Commission but may have a right of contribution over and against any other Board Members, officers, committee member, employees, agent of the Commission, or Parties who, in bad faith or without reasonably believing his

or her conduct to be lawful, participated in the action that created said liability. As used herein, “person” refers to an individual or an entity.

## **22. Default**

### **22.1. Generally**

A Party is deemed in Default of this Agreement if the Party violates any provision of this Agreement or fails to perform an obligation required to be performed or otherwise breaches this Agreement. An Event of Default shall be deemed to have occurred if the Defaulting Party fails to cure the Default within the cure period designated in this Section.

### **22.2. Notice of Default and Cure**

A written notice of Default (“Notice of Default”) shall be delivered to the Party in Default (“Defaulting Party”) by the Managing Agency, acting at the direction of the Board. The Notice must specify the nature of the Default and provide a specified period to cure the Default or otherwise reasonably commence to cure the Default in a diligent manner. A reasonable cure period (“Cure Period”) shall be deemed to be 30 days unless another time for cure is set by the Board and contained in the Notice of Default. The Notice of Default may also include a requirement to engage in the Dispute Resolution process. A copy of the Notice of Default shall be delivered to all other Parties. Specific provisions relating to Default by the Managing Agency are found in Section 24.

### **22.3. Response by Defaulting Party**

#### **22.3.1. Nonpayment Default**

The alleged Defaulting Party shall either: (1) make payment in full by the date set in the Default notice; (2) submit a plan for repayment that the Board must approve; or (3) request Dispute Resolution. The Cure Period for non-

payment is a 30 day period, but the Board may, in its sole discretion, approve a payment plan in extraordinary circumstances.

#### **22.3.2. Other Defaults**

The Defaulting Party must: (1) cure the Default by the Cure Period set forth in the Notice of Default; (2) state why the Default cannot be cured within the Cure Period, what efforts the Defaulting Party has made to Cure the Default and provide a reasonable plan to cure the Default; or (3) request Dispute Resolution. The Board must approve the plan for cure and if not approved, an Event of Default will be declared. If Dispute Resolution is requested by the Defaulting Party of the Board, then that process will be followed.

#### **22.3.3. Failure to Cure**

Failure to cure the Default within the allowed Cure Period will result in the Declaration of an Event of Default, and a Final Notice to Cure will be delivered to the Defaulting Party by the Managing Agency. The Final Notice to Cure will contain one final allowed Cure Period. Failure to cure the Event of Default within Final Notice of Default Cure Period will result in a Declaration of Default and the Remedies for Default will apply.

### **23. Remedies**

#### **23.1. Determination of Remedy**

Upon Declaration of an Event of Default, the Board will determine an appropriate remedy. The Defaulting Party will not have voting privileges regarding the appropriate remedy and a Supermajority vote of the remaining Board Members shall be required to determine the remedy. The imposition and scope of remedies

by the Board is subject to Dispute Resolution. In making a determination of remedy for the Default, the remaining Board Members shall consider:

23.1.1. The nature of and severity of the Event of Default and resulting impact on the other Parties;

23.1.2. Whether the factors leading to the Event of Default were beyond the reasonable control of the Defaulting Party;

23.1.3. The Defaulting Party's history of performance and satisfaction of obligations and duties under this Agreement;

23.1.4. The Defaulting Party's responsiveness and cooperation to cure the Event of Default, including consideration of how proactive the Defaulting Party was in revealing the Default.

23.1.5. Other factors that the Board deems relevant.

23.2. **Potential Remedies for Consideration by the Board**

The Board may consider all remedies available at law, or in equity, for breach of this Agreement as provided in this Section and Section 24. The purpose of the remedy is to make all non-Defaulting Parties whole and to bring the Defaulting Party into compliance, if possible. The remedies, until the Event of Default is cured, may include, but not be limited to, the following:

23.2.1. **Loss of Voting Privileges**

The loss of voting privileges such that a Supermajority of the remaining Members of the Board may conduct business without the Defaulting Party until the Defaulting Party fully cures the Event of Default.

#### **23.2.2. Money Damages**

The Board may recover money damages for additional costs of service, costs of capital and other actual costs incurred by the other Parties resulting from the Default, plus interest at the statutory judgement rate of interest from the date of Default.

#### **23.2.3. Termination of Service**

The Board may elect: (1) to terminate water deliveries to the Defaulting Party until the Event of Default is cured, if the Defaulting Party has other sources of water sufficient to meet Non-peak Season average daily demands, or (2) reduce water deliveries so that the Intake Facilities provides only enough water to meet Non-peak Season average daily demands when combined with the Defaulting Party's other sources.

#### **23.2.4. Expulsion**

In cases of repeated Defaults by the Defaulting Party, the Board may expel the Defaulting Party from the Commission and require the Defaulting Party to sell their Capacity ownership in the Intake Facilities. The removed Defaulting Party may ask to be a wholesale finished water supply purchaser from either Water Treatment Plant.

#### **23.2.5. Litigation**

Subject to Section 22 and 23, if the Event of Default is not cured or the Board imposed Remedies are not complied with and the Dispute Resolution process has been waived or unsuccessful, any Party may file a lawsuit and seek available remedies under Oregon law.

### **23.3. Suspension of Legal Remedies Imposed by the Board**

A Default may be addressed using the Dispute Resolution process described in Section 25. If Dispute Resolution has been requested, then the Remedy provisions



of Section 23 will be suspended until the Dispute Resolution process is exhausted. Notwithstanding the foregoing, if the Default is of a nature that it poses a health risk to any user of the Intake Facilities or could cause damage to the Intake Facilities. Water Treatment Plants, or the Real Property, then the Board or any aggrieved Party may seek immediate equitable relief without waiting for initiation or completion of any Dispute Resolution.

## **24. Default by the Managing Agency**

### **24.1. Generally**

This Agreement obligates the Managing Agency to manage the business affairs of the Commission for the mutual benefit of all Parties to consistently deliver water from the Intake Facilities to their respective Water Treatment Plants. If the Managing Agency is also a Party and is alleged to be a Defaulting Party, a Supermajority of the remaining Board Members shall designate another Party to act as the facilitator for the Default. Based on the nature of the Default, the Board may also remove the Managing Agency from some or all Managing Agency duties pending Dispute Resolution, mediation, arbitration, or litigation, as the case may be. The following provisions shall apply to a Default by the Managing Agency, unless other Default provisions are contained in a separate Managing Agency contract, with the Managing Agency and are stated to control and supersede over these provisions.

### **24.2. Notice of Default and Cure**

A written Notice of Default shall be delivered to the Managing Agency by the Board following a Supermajority vote of the remaining Members of the Board. The Managing Agency serves at the will of the Board. Therefore, the Notice may include a Notice of Termination of the Managing Agency, which termination may be immediate for acts or omissions such as gross negligence, malfeasance or

dishonesty in financial practices, or at the end of a specified period of time set by the Board in the Notice. The Board must consider and provide a plan of transition if the Notice includes termination. If a Notice of Default with an opportunity to cure the Default is given, the Notice must specify the nature of the Default and provide a specified period in which to cure the Default or otherwise reasonably commence to cure the Default in a diligent manner. A reasonable cure period (“Cure Period”) shall be deemed to be 30 days unless another time for cure is set by the Board and contained in the Notice of Default. The Notice of Default may also include a requirement by the Board for the Managing Agency to engage in the Dispute Resolution process. A copy of the Notice of Default shall be delivered to all Parties. If the Managing Agency is a Party and the Board does not elect to terminate the Managing Agency, the Board may vote to temporarily remove the Managing Agency from some or all of its duties pending a cure of the Default.

24.3. **Event of Default**

The Managing Agency shall be deemed in Default of this Agreement if it fails to perform any obligation required to be performed by the Managing Agency under this Agreement or through a separate Managing Agency contract. An Event of Default shall be deemed to have occurred if the Managing Agency fails to cure the Default within the Cure Period designated in this Section 24.2, if any Cure Period is allowed. If no Cure Period is given, then the Default shall be deemed to be an immediate Event of Default.

24.4. **Remedies**

If the Managing Agency commits an Event of Default, the Commission may seek any remedy available to it, at law or in equity. Such remedies include but are not limited to money damages, including restitution; specific performance; injunctive relief; and termination of the Managing Agency’s contract. The Board, at its sole

discretion, may enter into the Dispute Resolution process described in Section 25 if requested by the Managing Agency.

## **25. Dispute Resolution**

This Agreement obligates the Parties to cooperate in the ownership and operation of the Intake Facilities for the mutual benefit of all Parties to consistently deliver water to their respective Water Treatment Plants. The Intake Facilities are the foundation of the other water system assets and Water Treatment Plants of the Parties. To that end, the Parties agree that each Party should bring forward issues regarding past performance or anticipated performance of obligations and duties at the earliest reasonable opportunity so that all Parties can proactively work toward solutions in an attempt to avoid a formal declaration of default. This Dispute Resolution process is provided to encourage informal resolution through negotiation among the Parties' staff, executives or elected officials before resorting to a formal process using mediation, arbitration, or litigation.

### **25.1. Notice of Dispute**

Except in the case of a Default, any dispute shall be submitted in writing to the Management Committee. The Management Committee has 30 days from the date of notice to meet with the affected Parties to resolve the dispute. If the Management Committee does not resolve the dispute within the 30 day period, it shall be referred to mediation. In the case of a Default, either the Defaulting Party or the Board may demand Dispute Resolution at any time during the Default process or within 10 days following imposition of any of the Remedies by the Board or the court, as set forth above. If Dispute Resolution is not requested during that time period, it shall be deemed waived and any aggrieved Party may proceed to litigation.

### **25.2. Mediation**

A Party desiring mediation shall provide the other Parties with a written notice ("Request to Mediate"), which shall set forth the nature of the dispute. The Parties

will thereafter cooperate in good faith to select the mediator within 14 days of either Party requesting mediation, and may adopt any procedural format that seems appropriate for the particular dispute. Mediation should be scheduled within 14 days of selection of the mediator, or as soon as possible, based on availability. In the event the Parties cannot agree on a mediator, the Parties will ask the Presiding Judge of Clackamas County Circuit Court to appoint a mediator. The mediator will then set the ground rules for the mediation. The Parties will share the mediation costs as agreed upon with the mediator. If a written settlement agreement is not reached by the Parties within 60 days from the date of the Request to Mediate, or such longer time frame as may be agreed upon, in writing, by the Parties, then the Parties may commence litigation. If the mediation fails the Parties may agree to binding arbitration. If all Parties do not agree to arbitrate, then any Party may seek legal relief through the Circuit Court of Clackamas County, or U.S. District Court if jurisdiction is available.

25.3. **Arbitration**

If the Parties agree to enter into binding arbitration, selection of the arbitrator, time frame for arbitration, and ground rules for arbitration will be agreed upon at that time. Any arbitrator or arbitrators selected must have a minimum of 10 years' of municipal law experience, unless the Parties mutually agree, in writing, otherwise.

25.4. **Injunctive Relief and Specific Performance**

A Party may seek and obtain immediate equitable relief before or during the Dispute Resolution process and as described in Section 23.3.

25.5. **Attorney Fees**

Each Party shall bear its own legal fees and expert witness fees and all other costs in any Dispute Resolution process, including litigation.

## **26. Dissolution**

The Parties may desire to dissolve the Commission. Dissolution of the Commission shall require an affirmative vote of each Party's governing body. Dissolution shall occur no later than five years from the date of the last affirmative vote to dissolve and no sooner than two years, unless the governing body of each Party agrees to a different deadline. If the Commission is not dissolved then any Party(ies) seeking dissolution may elect to terminate and withdraw as described in Section 19. If the Commission is dissolved, the Easement for the Intake Facilities in **Exhibit 1** will be automatically terminated.

### **26.1. Plan of Dissolution**

The Managing Agency will develop a dissolution plan to wind up business affairs, to be reviewed and approved by the Management Committee before it is presented to each Party's respective governing body. The dissolution plan must provide for among other things: (1) the continued operation of the Intake Facilities while the dissolution plan is implemented; (2) an accounting of assets and liabilities; (3) provisions for the payment of debts and obligations, including assumption of future payment for ongoing debts and obligations along with appropriate indemnity provisions as the Parties mutually agree; (4) the creation of a reserve account for known, unforeseen, and contingent liabilities; (5) a plan for liquidation of the assets; and (6) a mechanism for distribution of asset proceeds and excess funds among the Parties in accordance with their ownership interest, following payment of all liabilities and obligations related to the Intake Facilities.

### **26.2. Transfer of Capacity Ownership**

The dissolution plan may provide for transfers of Capacity ownership, for cash or other consideration, from a Party that seeks complete divestiture of ownership to a Party who plans to remain and withdraw water from the Willamette River at the Intake Facilities. The dissolution plan must provide for appropriate documents to

vest proportionate ownership as tenants in common for owners that remain in joint ownership of the Intake Facilities.

26.3. **Disputes**

Any dispute regarding dissolution, the dissolution plan, division of Capacity or transfer of Capacity shall be first subject to the Dispute Resolution process of Section 25 and, if not resolved in Dispute Resolution or mediation, then as determined by the Circuit Court of Clackamas County under ORS 190.020 (2).

**27. General Provisions**

27.1. **Warranties and Representations**

Each Party hereto warrants and represents that it has the legal authority to enter into this Agreement.

27.2. **Ordinance of the Governing Body**

Each Party to this Agreement hereby represents that it has undertaken or will undertake the necessary public procedures to approve an ordinance in accordance with ORS 190.085. The ordinance shall authorize the Party's representatives to the Board of the Commission to modify the Exhibits to this Agreement as provided in Section 27.6. The Parties further agree that they shall file with the Secretary of State, within 30 days after the Effective Date, the filings described in ORS 190.085(2).

27.3. **Insurance Requirements**

The insurance requirements and limits necessary for the operations of the Intake Facilities are described in **Exhibit 12** and shall be purchased and maintained at all times. The requirements will be reviewed by the Board annually, and modified when necessary per recommendations from the Managing Agency.

27.4. **Other Agreements**

Each Party warrants that entry into this Agreement will not constitute a default under any other agreement or covenant the Party may be bound to.

27.5. **Interpretation**

Unless a clear contrary intention appears: (a) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (b) reference to any gender includes each other gender; (c) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (d) reference to any Section, Schedule or Exhibit means such Section, Schedule or Exhibit to this Agreement, and references in any Section, Schedule, Exhibit or definition to any clause means such clause of such Section, Schedule, Exhibit or definition; (e) "hereunder," "hereof," "hereto," "herein," and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof; (f) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding," and "through" means "through and including"; (g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (h) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; and reference

to a singular number or person may include the plural number or person, and the plural number or person the singular.

27.6. **Exhibits**

The Parties agree that the Exhibits to this Agreement may be modified or amended by the Commission without other modification or amendment to this Agreement and without approval by the governing body of each Party. Upon execution of this Agreement, the Parties have agreed to include **Exhibits 1 through 13**, attached hereto and incorporated by reference. The purpose and intent of specific exhibits are set forth in other parts of this Agreement. Exhibits consisting of other agreements or contracts among other Parties to this Agreement, or with outside parties, may only be modified by consent of all of those named Parties/parties to those other agreements or contracts and not by the Commission without the consent of those other Parties/parties.

27.7. **Existing Agreements**

Existing Agreements between some or all of the Parties that affect or are affected by the Intake Facilities that are the subject of this Agreement are identified in **Exhibit 13**. These related agreements are not superseded or modified by this Agreement. Nothing in this Agreement shall be construed to require any alteration or modification of any other Existing Agreement. Specifically, the duration of this Agreement does not alter or extend the term of the Ground Lease.

27.8. **Periodic Review**

Exhibits shall be reviewed at least annually by the Board. Exhibits must be updated by resolution of the Board when ownership percentages change, new or expanded Capacity is placed in service, a new Party joins, an existing Party withdraws, or one or more Party(ies) purchases or sells an interest in the Intake Facilities.



27.9. **Severability**

Should any provision of this Agreement be rendered invalid by a court of competent jurisdiction or arbitrator with authority to render a provision invalid, it is agreed that every other part of the Agreement shall remain in full force and effect.

27.10. **No Joint and Several Liability**

Each Party to this Agreement assumes its own rights and obligations and does not assume the rights and obligations of any other Party.

27.11. **Counterparts**

This Agreement may be signed in one or more counterparts, and each counterpart shall be deemed to be an original instrument.

27.12. **Amendments and Modifications**

Except as provided in Section 27.6 for Exhibits, any modification or amendment to this Agreement requires unanimous approval of the Board and an affirmative vote of the governing bodies of all Parties. The amended Agreement must be signed by all Parties upon approval.

27.13. **Judicial Review and Attorney Fees**

This Agreement and its construction shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between the Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon. In any such claim, action, suit, or proceeding, the Parties shall bear their own fees and costs including attorney fees.

27.14. **Third Parties**

Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, express or implied, upon any person not a Party to this Agreement.

27.15. **Non-Waiver**

Failure of any Party at any time to require performance of any provision of this Agreement shall not limit the Party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provisions.

27.16. **Time of the Essence**

Time is of the essence of each and every term, covenant, and condition set forth in this Agreement.

27.17. **Further Assurances**

Each Party agrees that it will reasonably consider cooperation in the execution of other documents and/or performance of other action as may be reasonably requested by another Party to more effectively consummate or achieve the purposes or subject matter of this Agreement.

27.18. **Signing Authority**

Each person signing this Agreement on behalf of a Party hereby warrants actual authority to bind their respective Party.

*[signatures on following page]*

**TUALATIN VALLEY WATER DISTRICT**

By:

\_\_\_\_\_  
Richard Burke, President

APPROVED AS TO FORM

By:

\_\_\_\_\_  
Clark Balfour, District Counsel

**CITY OF SHERWOOD**

By:

\_\_\_\_\_  
Lee Weislogel, Mayor

APPROVED AS TO FORM

By:

\_\_\_\_\_  
Josh Soper, City Attorney

**CITY OF TIGARD**

By:

\_\_\_\_\_  
John Cook, Mayor

APPROVED AS TO FORM

By:

\_\_\_\_\_  
Shelby Rihala, City Attorney

**CITY OF WILSONVILLE**

By:

\_\_\_\_\_  
Tim Knapp, Mayor

APPROVED AS TO FORM

By:

\_\_\_\_\_  
Barbara Jacobson, City Attorney

**CITY OF HILLSBORO**

By:

\_\_\_\_\_  
Michael Brown, City Manager

APPROVED AS TO FORM

By:

\_\_\_\_\_  
Christopher Crean, City Attorney

**CITY OF BEAVERTON**

By:

\_\_\_\_\_  
Dennis Doyle, Mayor

APPROVED AS TO FORM

By:

\_\_\_\_\_  
Peter Livingston, City Attorney