

RESOLUTION NO. 5259-15

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE CITY OF HILLSBORO AND TUALATIN VALLEY WATER DISTRICT (TVWD) FOR TEMPORARY AND EMERGENCY WATER SUPPLY CONNECTIONS.

WHEREAS, ORS 190 authorizes units of local government to enter into intergovernmental agreements; and

WHEREAS, the City of Hillsboro and TVWD have agreed to construct the S.W. 124th Avenue Water Pipeline (124th Avenue Pipeline) which will be part of Washington County's S.W. 124th Avenue Extension Project for roadway and waterline improvements; and

WHEREAS, the 124th Avenue Pipeline will need a temporary potable water connection between the 124th Avenue Pipeline and the City of Tualatin's water system to provide potable water to TVWD and Hillsboro for the purposes of testing and maintaining the 124th Avenue Pipeline; and

WHEREAS, this IGA will also provide an opportunity for the City of Tualatin to establish an emergency connection in the future to the 124th Avenue Pipeline similar to Tualatin's existing emergency connection facilities with the City of Wilsonville;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Manager is authorized to execute an IGA with the City of Hillsboro and TVWD for temporary and emergency water supply connections, in a form substantially similar to that set forth in Attachment A.

Section 2. The City Manager is authorized to make administrative modifications to the Intergovernmental Agreement to fully implement its intent.

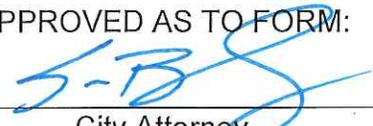
Section 3. This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 9th day of November, 2015.

CITY OF TUALATIN, OREGON

BY  _____
Mayor

APPROVED AS TO FORM:

BY  _____
City Attorney

ATTEST:

BY  _____
City Recorder

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF HILLSBORO,
CITY OF TUALATIN AND TUALATIN VALLEY WATER DISTRICT FOR
TEMPORARY AND EMERGENCY WATER SUPPLY**

This Intergovernmental Agreement (Agreement) is entered into between the City of Hillsboro, an Oregon municipal corporation (Hillsboro), the City of Tualatin, an Oregon municipal corporation (Tualatin) and the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264 (TVWD), also referred to as Party or collectively as “Parties.”

RECITALS:

WHEREAS, ORS 190 authorizes units of local government to enter into intergovernmental agreements for the performance of any or all functions and activities that a Party to the Agreement has the authority to perform; and

WHEREAS, Hillsboro and TVWD have agreed to construct the S.W. 124th Avenue Water Pipeline (124th Avenue Pipeline) which will be part of the Willamette Water Supply System (WWSS) providing municipal drinking water from the Willamette River to their respective water systems.

WHEREAS, the 124th Avenue Pipeline will be built as part of Washington County’s S.W. 124th Avenue Extension Project for roadway and waterline improvements, which will commence at SW Tualatin-Sherwood Road and continue southerly and then easterly along SW Tonquin Road to its terminus on SW Grahams Ferry Road; and

WHEREAS, the 124th Avenue Pipeline is a section of the WWSS transmission pipeline from Wilsonville to Hillsboro and TVWD, which will be constructed, yet not placed into service until 2026, when construction of the remainder of the WWSS components are completed; and,

WHEREAS, the 124th Avenue Pipeline will need a temporary potable water connection between the 124th Avenue Pipeline and the City of Tualatin’s water system for the purposes of testing and maintaining the 124th Avenue Pipeline; and

WHEREAS, the Parties anticipate there will be additional sections of the WWSS that will be constructed where a temporary connection with the Tualatin system might be used for the purpose of testing and maintaining those sections until the WWSS is complete; and

WHEREAS, the temporary potable water connection will no longer be needed by TVWD and Hillsboro once construction of the WWSS is complete and the System begins water service to TVWD and Hillsboro; and,

WHEREAS, at that time, Tualatin may wish to construct improvements to make a permanent twelve inch (12”) emergency connection to the 124th Avenue Pipeline similar to Tualatin’s existing emergency connection facilities with the City of Wilsonville; and

WHEREAS, if Tualatin wishes to modify the connection for emergency water supply, the Parties will negotiate a separate emergency water use agreement at that time and Tualatin will

not use its connection to the WWSS for emergency purposes in the absence of an agreement for emergency use.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set further below, the Parties agree as follows:

1. **Project Description:** The Parties agree that Hillsboro and TVWD may design and construct a temporary four inch (4") connection between the Tualatin water distribution system and the 124th Avenue Pipeline within the City of Tualatin at such location as the Parties mutually agree. The point of connection shall be in a public right of way so that Tualatin, Hillsboro and TVWD have full and complete access at all times. Hillsboro and TVWD will also cause the design to provide for a future permanent twelve inch (12") emergency connection so that Tualatin can obtain future emergency water supply for its water system from the 124th Avenue Pipeline.

Subject to the allocation of costs and Tualatin's election under Section 2e below, TVWD and Hillsboro will cause to be designed the following improvements as part of the 124th Avenue Pipeline Project:

- a. A twelve inch (12") emergency connection at the S.W. 124th Avenue Pipeline and at Tualatin's sixteen inch (16") transmission line at mutually agreed locations.
 - b. A temporary connection will be made between the pipelines using 4" piping, fittings, isolation valves, back flow device and flow meter.
 - c. If Tualatin elects not to proceed as provided in Section 2, then TVWD and Hillsboro shall make the Tualatin side connection between the S.W. 124th Avenue Pipeline and Tualatin's system in 4" sizing.
2. **Cost:** The cost of this Project will be determined by a formula described in Exhibit A, attached hereto and incorporated by reference as though fully set forth. Generally, cost of this Project will be determined as follows:
 - a. TVWD and Hillsboro will be solely responsible for all costs to design, construct, operate, maintain, repair and replace a 4" temporary connection for testing and maintenance of the 124th Avenue Pipeline until such time as the entire WWSS is completed and water is produced and delivered from the WWSS.
 - b. Tualatin will be solely responsible for all costs to design and construct a 12" emergency connection, if it so elects, at the same location as the temporary 4" connection or such other location as the Parties mutually agree. If Tualatin elects not to construct the emergency connection as part of the Project, Tualatin will still be obligated to reimburse TVWD and Hillsboro for the costs incurred by TVWD and Hillsboro, including but not limited to design costs incurred as a result of the design consultant.
 - c. The design of the 12" emergency connection shall be compatible with and provide for interoperability so that TVWD and Hillsboro may use the 4" temporary connection for their purposes. TVWD and Hillsboro will cause their design consultant to provide an engineer's estimate to construct the 4" temporary

connection to periodically draw testing and maintenance water from Tualatin for use in sections of the Willamette Water Supply System. This will be "Cost A". TVWD and Hillsboro will cause their design consultant to provide an engineer's estimate for the cost of constructing a 12" emergency connection based upon mutually agreed design standards for the work listed in Section 1. There will be no vault or other Tualatin permanent connection construction cost included in the estimate. This will be "Cost B".

- d. The Parties will then calculate the proportion of Cost A to Cost B (i.e. Cost A divided by Cost B X 100 = Cost A percentage). The remaining portion will be the Cost B percentage.
- e. The 124th Avenue Pipeline Project will request a bid from the selected pipeline contractor for the work described in Section 1. Tualatin will have 5 days from receipt of bids to determine whether to have the work included in the construction contract and inform TVWD and Hillsboro of its election. If Tualatin elects to proceed, TVWD and Hillsboro will be responsible for the Cost A percentage of the actual construction cost incurred and Tualatin will be responsible for the Cost B portion of the actual construction cost incurred.
- f. Tualatin will be billed for their portion of connection (Cost B) as costs are billed by the designer and contractor to TVWD and Hillsboro. Payment will be due and payable to TVWD within 30 days of invoice.
- g. TVWD and Hillsboro will notify Tualatin of any potential construction contract change orders that may affect Tualatin's cost at the earliest possible time after TVWD and Hillsboro receive notice from Washington County. TVWD and Hillsboro will endeavor to avoid or minimize change order requests from Washington County that affect Tualatin. If Tualatin does not approve the change order that increases Tualatin's cost, the Parties recognize that Washington County, in its sole discretion or with approval by TVWD and Hillsboro, may still approve the change order and in such case TVWD and Hillsboro will be responsible to pay the change order amount; provided however that TVWD and Hillsboro may seek contribution from Tualatin for Tualatin's proportional share and the Parties reserve all rights as to responsibility for payment and agree to resolve the matter through dispute resolution.

3. System Connections and Operation Protocols:

- a. Following construction, each Party shall appoint a representative to coordinate the use, operation, maintenance, repair and replacement of the connection and valves according to prudent utility practices.
- b. The TVWD/Hillsboro temporary connection installed as part of the SW 124th Pipeline construction will include two installed 4" isolation valves, meter and an approved backflow prevention device that will connect to the Tualatin system. Both isolation valves will remain closed to the Tualatin system except for those periods when water from Tualatin will be used to test and maintain the WWSS pipeline.
- c. The Parties will be responsible for, and maintain control of, separate valves including all costs associated therewith. The portion of the connection improvements from the valve closest to Tualatin's system will be the responsibility of Tualatin. The portion from the valve closest to the 124th Avenue

Pipeline meter and mutually approved backflow prevention device will be the joint responsibility of TVWD and Hillsboro.

- d. All parties agree to maintain their portion of the connection in good working order so that they are available to be put in service when a water draw is needed.
 - e. The potential 12” emergency connection shall be the responsibility of Tualatin and part of the Future Tualatin Agreement referred to in Section 5.
4. **Term:** The term of this Agreement and use of water by TVWD and Hillsboro shall continue until construction of the Willamette Water Supply System is complete and begins potable water delivery service to TVWD and Hillsboro, anticipated to occur in 2026, at which time, this agreement will expire. Upon expiration, and if Tualatin does not wish to have the 12” emergency connection, then TVWD and Hillsboro will remove the temporary 4” connection at their cost and expense as provided in Section 6.
 5. **Future Tualatin Agreement:** This Agreement confers no rights or privileges upon Tualatin to the Willamette Water Supply System, to the 124th Avenue Pipeline segment or to receive any water through the WWSS. If Tualatin desires to provide for a permanent 12” emergency connection to the WWSS, then prior negotiation and adoption of a separate agreement regarding construction, connection, metering and use will be required. TVWD and Hillsboro will not provide WWSS water to Tualatin in the absence of such an agreement. Tualatin will be required to bear all costs of making the conversion to a permanent connection, including cross connection control devices and a meter to measure usage.
 6. **Removal of Temporary Connection:** If Tualatin does not participate in the future 12” emergency interconnection upon termination of this Agreement, Hillsboro and TVWD, at their sole cost, must obtain required permits, pay necessary fees, remove the 4” temporary pipe, meter, backflow device and all appurtenances associated with the temporary connection and restore all areas disturbed during removal of all temporary pipe and connections. Hillsboro and TVWD must remove and cap or plug the pipelines or connections in a manner approved by the Tualatin City Engineer.
 7. **Construction Coordination:** The design and construction of the items in this agreement will be conducted as part of the 124th Avenue Pipeline and the SW 124th Extension Project. The Parties will coordinate with each other during the design and construction to provide for minimal inconvenience to each other. The Parties will each conduct review and approval of plans at no charge to the other Parties. TVWD and Hillsboro will coordinate with the Tualatin on the inspection of the facilities associated with the connection.
 8. **Fiscal and Operational Impacts and Use of Water:** The Parties agree to work together to determine how best to provide the water to fulfill the need to test and maintain the sections of the Willamette Water Supply System. When temporary water is required (“water draw”), TVWD and Hillsboro will notify Tualatin to coordinate the timing, method and conditions for drawing water into the WWSS from Tualatin. The water will either be sold by Tualatin to TVWD and Hillsboro or TVWD water will be wheeled through the Tualatin System as set forth in Section 9. The method selected will avoid or minimize adverse operational effects on the Tualatin system (e.g. significant decrease in

pressure or water quality) or adverse fiscal effects on Tualatin's guaranteed minimum purchase or peaking factors under its existing Regional Water Sales Agreement with the City of Portland. The Parties agree that they will hold harmless and indemnify each other from adverse fiscal or operational impacts as a direct result of this agreement.

9. **Cost of Water and Payment:** Following coordination and selection of either sale by Tualatin or wheeling TVWD water through Tualatin, then at the conclusion of a water draw under this agreement, Tualatin will read the meter and determine the quantity supplied.
- a. If the sale option is used, Tualatin will sell water to TVWD and Hillsboro during the months of October through May, but only the cost of the water shall be charged for the actual water used at a rate per hundred cubic feet (ccf) agreed upon by the parties that is at or below the approved residential customer class rate adopted by Tualatin. Recognizing the temporary and sporadic nature of the need, there will be no system delivery charge, system development charge, connection fee or other fixed charge associated with this use; or
 - b. If it is determined by all Parties that it is best to wheel TVWD water from the Washington County Supply Line through Tualatin's System, then Tualatin will agree to allow the wheeling of water at a rate agreed upon by the Parties, taking into consideration the Tualatin water system facilities used to deliver water to the 124th Avenue Pipeline connection point and cost of service principles.
 - c. The cost of water, as determined under Section 9a or 9b, will be billed by Tualatin to TVWD and payable within 30 days of invoice. TVWD and Hillsboro agree to pay Tualatin for the cost as determined above.

10. **Indemnity.** This Agreement is for the benefit of the parties only. Each Party agrees to indemnify and hold harmless the other Party (ies), and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). Notwithstanding the foregoing, each Party shall be solely responsible for any contract claims, delay damages, permit compliance or permit violations or similar items to the extent arising from or caused by the action or inaction of the Party under this Agreement.

11. **General Provisions.**

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

To Tualatin:

City of Tualatin
Attn: City Manager
18880 SW Martinazzi Ave.
Tualatin OR 97062

To Hillsboro:

City of Hillsboro
Attn: Water Director
150 East Main Street
Hillsboro OR 97123

To TVWD:

Tualatin Valley Water District
Attn: Chief Executive Officer
1850 SW 170th Avenue
Beaverton OR 97003

11.2 Dispute Resolution: The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Agreement or interpretation thereof shall follow a prescribed process beginning with negotiation and subsequently moving to mediation, provided the dispute remains unresolved. If the interests of TVWD and Hillsboro are aligned on a dispute with Tualatin, TVWD and Hillsboro shall be deemed a single Party for purposes of dispute resolution. If a dispute arises between the Parties regarding this Agreement, the Parties shall follow the dispute resolution provisions below:

- a. Written Notice. A written notice regarding the dispute (Dispute Notice) shall be sent to the other Parties.
- b. Negotiations. Within thirty (30) days following receipt of the Dispute Notice, the Parties to the dispute ("Disputing Parties") shall each assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days after appointment of the representatives.
- c. Mediation. If after the sixty (60) day period of negotiation (or a period not to exceed ninety (90) days following the receipt date of the Dispute Notice), the dispute(s) cannot be resolved, the Disputing Parties agree to submit the matter to non-binding mediation. The Disputing Parties shall attempt to agree on a mediator in a period not to exceed one hundred twenty (120) days following the receipt date of the Dispute Notice and proceed accordingly.
- d. Litigation. If the Parties cannot agree on a mediator within the allocated time, or if the mediator cannot resolve the dispute(s) within one hundred eighty (180) days following the receipt date of the Dispute Notice, either of the Disputing Parties may avail itself of the remedies provided for herein. Moreover, each of the Disputing Parties shall bear its own legal and expert witness fees at all stages of the dispute resolution process, including at trial or on any appeals. In addition, nothing shall prevent the Disputing Parties from waiving any of the dispute resolution steps by mutual consent.

11.3 Default. The failure of a Party to perform any duty imposed upon it by this Agreement shall constitute a default.

- a. Notice of Default. The non-defaulting Party shall have the right to give the defaulting Party a written notice of default, which shall describe the default in reasonable detail and state the day by which the default must be

cured, which date shall be at least ten (10) days after receipt of the notice of default.

b. Rights Upon Default. Recognizing time is of the essence, a defaulting Party shall have ten (10) days to cure a default, following written notice thereof, unless cure within such (10) day period is not reasonably possible; in that case, the period to cure the default shall be extended to thirty (30) days, or such other time that the non-defaulting Party is willing to agree to, provided that the defaulting Party has diligently begun to work, in good faith, to cure the default within the original prescribed ten (10) day period. In addition, the non-defaulting Party may pursue any other remedy available at law or in equity against the defaulting Party, subject to the dispute resolution procedures set forth in Section 10.2.

11.4 Termination. Any Party may terminate this Agreement upon written notice to each of the other Parties, under any of the following conditions:

- a. For breach of a material term of this Agreement
- b. By mutual agreement to terminate for convenience.

11.5 Excused Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enacts of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

11.6 Effective Date. This Agreement is effective on the last date signed by the Parties below and remains in effect until terminated as provided herein.

11.7 Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the Parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

11.8 Assignment/Additional Parties. TVWD and Hillsboro may create further Intergovernmental Agreement(s) between them as well as with other municipal water suppliers that may own or use the 124th Avenue Pipeline and the WWSS. Tualatin agrees to assignment of the rights, obligations and covenants of this Agreement to include those municipal water suppliers individually along with TVWD and Hillsboro or to assign rights, obligations and covenants of this Agreement to a successor intergovernmental entity formed by TVWD and Hillsboro under ORS Chapter 190.

11.9 Adherence to Law. The Parties shall adhere to all applicable federal, state, and local. Any certificates, licenses, or permits are required by law to obtain or maintain in order to perform any work described in this Agreement shall be obtained and maintained throughout the term of this Agreement.

11.10 Governing Law. This Agreement is governed by the laws of the State of Oregon. Venue for any litigation shall be in Washington County, Oregon.

- 11.11 Nonwaiver.** Failure by any Party at any time to require performance by any other Party of any of the provisions of this Agreement shall in no way affect the Party's rights hereunder to enforce the same, nor shall any waiver by the Party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.
- 11.12 Severability.** In case any one or more of the provisions contained in this Agreement shall be judicially deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 11.13 Amendment.** The terms of this Agreement may be amended or supplemented by mutual agreement of the Parties. Any amendment or supplement shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.
- 11.14 Survival Terms and Conditions.** The provisions of this Agreement shall survive its termination to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.
- 11.15 Time of the Essence.** Time is expressly made of the essence in the performance of this Agreement.
- 11.16 Number, Gender and Captions.** In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.
- 11.17 Good Faith and Cooperation.** The Parties agree and represent to each other good faith, cooperation, and due diligence in the performance of all obligations of the Parties pursuant to this Agreement.
- 11.18 Interpretation.** This Agreement shall be deemed and construed to have been prepared mutually by each Party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any Party.
- 11.19 Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and, when taken together, shall constitute one and the same agreement.
- 11.20 Authority.** Each person signing on behalf of a Party hereby warrants actual authority to bind his/her respective Party.
- 11.21 Access to Books, Records, and Accounting.** TVWD and Hillsboro shall maintain books, records and reports regarding the connection to the 124th Avenue Pipeline showing all income, receipts, expenses and costs. These records shall be maintained for a period of 3 years following final completion. All such books, records, and reports may be examined and copies made by Tualatin staff at reasonable times upon reasonable notice.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below

<p>CITY OF TUALATIN</p> <p>By: <u><i>[Signature]</i></u></p> <p>Date: <u>11/9/15</u></p> <p>Approved as to Form</p> <p><u><i>[Signature]</i></u></p> <p>City Attorney</p>	<p>CITY OF HILLSBORO</p> <p>By: _____</p> <p>Date: _____</p> <p>Approved as to Form</p> <p>_____</p> <p>City Attorney</p>
<p>TUALATIN VALLEY WATER DISTRICT</p> <p>By: _____</p> <p>Date: _____</p> <p>Approved as to Form</p> <p>_____</p> <p>District Counsel</p>	