RESOLUTION NO. 2509

A RESOLUTION ADOPTING BRIDGE MEMORANDUM OF UNDERSTANDING

WHEREAS, Wilsonville, Tualatin Valley Water District (TVWD), and Sherwood have been engaged in discussions with the cities of Beaverton, Hillsboro, Tigard, and Tualatin regarding planning and evaluation of use of the Willamette River to jointly meet future water system demands, the evaluation of existing water system assets, including the Lower Plant, and future water system assets such as the Upper Plant, the sizing and location of transmission pipeline(s) and reservoirs, and discussion concerning governance and operation of the Lower and Upper plants and other facilities; and

WHEREAS, the majority of discussions have been facilitated by Debra Nudelman of Kearns & West, Inc. and have led the parties to agree that facilitated discussions will need to continue until the end of 2016; and

WHEREAS, a Bridge Memorandum of Understanding is proposed for adoption by the parties to provide for the proposed topics outline, the online planning schedule, and the continued employment and cost-sharing of the Nudelman facilitation services;

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

Based on the above recitals, incorporated by reference as if fully set forth herein:

1. The Bridge Memorandum of Understanding (MOU), together with Exhibit 1, the Proposed Topics Timeline, Exhibit 2, the Online Planning Schedule, and Exhibit 3, the Willamette Governance Facilitation Cost Shares, a copy of which is marked Exhibit A, attached hereto and incorporated by reference as if fully set forth herein, is hereby adopted and the City Manager is authorized to execute the MOU on behalf of the City.
2. This Resolution becomes effective upon the date of adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 5th day of January, 2015, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Fitzgerald	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes

Attachments:

Exhibit A – Bridge Memorandum of Understanding

BRIDGE MEMORANDUM OF UNDERSTANDING

This Bridge Memorandum of Understanding (MOU) is effective this _____ day of _____, 2014 by and between Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264 (TVWD) the City of Wilsonville, an Oregon municipal corporation (Wilsonville), the City of Beaverton, an Oregon Municipal Corporation (Beaverton), the City of Hillsboro, an Oregon municipal corporation, acting by and through its Utilities Commission (Hillsboro), the City of Sherwood, an Oregon municipal corporation (Sherwood), the City of Tigard, an Oregon municipal corporation, (Tigard), and the City of Tualatin, an Oregon municipal corporation (Tualatin).

RECITALS

TVWD, the City of Wilsonville (Wilsonville) and the City of Sherwood (Sherwood) own varied interests in land, water rights, water system assets and capacity in water system assets as part of the existing Willamette River Water Treatment Plant (WRWTP) in Wilsonville.

The original design of the WRWTP Lower Plant allowed for expansion from its current capacity of 15 million gallons per day to produce up to 70 million gallons per day in the future. The real property upon which the Lower Plant is situated could accommodate a second water treatment plant, Upper Plant, with capacity to be determined.

TVWD, Wilsonville and Sherwood have been engaged in discussions with the cities of Beaverton, Hillsboro, Tigard and Tualatin regarding planning and evaluation of use of the Willamette River to jointly meet future water supply demands, the evaluation of existing water system assets including the Lower Plant and future water system assets such as the Upper Plant, the sizing and location of transmission pipeline(s) and reservoirs and discussion concerning ownership, governance and operation of the Lower and Upper Plants and other facilities.

A Master Plan for the WRWTP was completed in December, 2006. In order to facilitate the evaluation of existing and planning for future water system facilities, and to assist in future decision-making by the above named entities, all parties except Tualatin have entered into separate MOUs with TVWD to solicit and negotiate a contract with a consultant to update the Master Plan for the WRWTP and develop a Master Plan for the proposed Upper Plant (collectively referenced hereinafter as the "Master Plan").

The Willamette Water Supply Program (WWSP) is a cooperative project to produce and transmit finished drinking water from the WRWTP to TVWD and Hillsboro and such other municipalities as may elect to participate in the program. All parties, except Wilsonville and Sherwood, have entered into an Intergovernmental Agreement regarding Predesign, Design, Public Affairs and Public Outreach in Furtherance of the Willamette Water Supply Program (Supply Agreement). The Supply Agreement is comprehensive in all aspects to accomplish tasks to achieve preliminary design of the WWSP and final design of the S.W. 124th Avenue Pipeline Project.

The Parties have been engaged in mutual and cooperative discussions regarding the WRWTP, the WWSP, the Master Plan and other issues relating to meeting the Parties' long-term need for finished drinking water. The purpose of this Bridge MOU is to reaffirm the Parties' commitment to continue to participate in the discussions with the goal of developing mutually acceptable Agreement(s) or MOUs related to ownership, finance, design and construction of water system facilities, including the Upper and Lower Plants and the governance, use, operation, maintenance repair and replacement of those facilities (collectively referred to as "Future Agreements"). The Parties recognize and acknowledge that each Party, based upon a determination of its own needs and resources, will evaluate the benefits of becoming a party to those Future Agreements and preserve the opportunity to fully participate with the other Parties if the individual Party finds it is in its best interests to do so.

THE PARTIES AGREES AS FOLLOWS:

1. **Participation**. The Parties recognize and agree that each Party may participate in some, all or none of the Future Agreements. To that end, the Parties anticipate that the Future Agreement(s), if any, will contain a provision that allows a Party to participate upon giving notice with participation to be effective at an agreed upon date.

2. **Tigard and Tualatin Participation**. All Parties recognize and agree that the Tigard and Tualatin Charters require voter approval prior to using the Willamette River as a drinking water source. All Parties recognize and agree that Tigard's or Tualatin's participation in this MOU does not evidence a decision to use the Willamette River as a drinking water source, nor does it require their respective city councils to authorize an election to vote on whether to use the Willamette River as a drinking water source. All Parties recognize and agree that Tigard and Tualatin intend to participate in this MOU in an effort to develop Future Agreements that will provide a mechanism for either to join with the other Parties, if a decision is made by their city councils and voters to use the Willamette River as a drinking water source.

3. **Future Agreements**. The Parties agree to continue to meet, discuss and develop the Future Agreement(s). Development of the Future Agreement(s) does not obligate a Party to approve and enter into Future Agreement(s). The obligation of this MOU is for all Parties to continue to work in good faith and cooperation to allow those Parties that so desire to achieve their water supply system goals and complete construction by 2025. Each Party specifically recognizes that ultimately it or another Party may decline to approve and participate in the future agreement(s) but, until that decision is made, each Party will continue to participate in a cooperative and timely manner.

3.1 **Governance Agreement**. All Parties agree to make reasonable and good faith efforts to develop a Governance Agreement that is mutually beneficial and suitable for submission and recommendation to the Parties governing bodies by the end of 2016. Among other things, the Governance Agreement shall provide methods for identifying and describing ownership of existing assets; construction and contribution of new assets; fair and equitable decision making; management, operation, maintenance, repair and replacement of assets; cost of service rate - making principles integration and system operation, so that existing assets and new assets work together in an efficient and effective manner; internal dispute resolution processes; progressive methods to achieve compliance with the Governance Agreement; and a provision to allow joinder of local government water providers including, but not limited to, a provision to address equitable cost recovery.

3.2 **Other Future Agreements**. Other Future Agreements may include, but not be limited to, topics such as the S.W. 124th Avenue Pipeline Project, the Transmission Pipeline Agreement, Reservoir Agreement, Willamette River Water Treatment Plant Agreement(s) and Right of Way Usage Agreements for City rights of way occupied by water facilities.

4. **Anticipated Schedule**. The Parties will make reasonable good faith efforts to complete the final draft of the Governance Agreement by December 31, 2016 and other Future Agreements as necessary to complete the Willamette Water Supply Program by 2025, as set forth in Exhibits 1 and 2, attached hereto and incorporated by reference as though fully set forth.

5. **Protocols for Development of the Governance Agreement**. The Parties goal is to develop a mutually acceptable Governance Agreement while recognizing that approval by a Party's governing body is completely discretionary. To reach this goal, each Party agrees:

5.1 To share in the costs of facilitating the discussions for the Future Agreement(s) according to the current cost share formula attached hereto as Ex. 3 and incorporated by reference herein as though fully set forth. The estimated cost of future facilitation services is $209,400, and the Parties agree to update and review the cost share formula if necessary. While a Party is not obligated to execute the Governance Agreement, it is obligated to pay its share of facilitation costs. Reimbursement of facilitation or negotiation costs will not be made.

5.2 To follow the facilitator's rules of conduct during project meetings and to provide information to all Parties as to the results of any discussion of issues between less than all Parties when such limited discussions could have an impact on the terms of the Governance Agreement.

5.3 To use best efforts to avoid hindering the schedule to enable the water supply project to be built and on line by 2025.

5.4 To commit staff to attend meetings as appropriate and staff members shall be prepared to discuss and apply the information from the HDR Preliminary Design, the WRWTP Master Plan Update, other studies and work product of the Parties or consultants regarding meeting topics.

5.5 To identify information necessary to enable staff or the governing body of a Party to review, consider and make decisions in a timely manner.

6. **Cooperation By All Parties**. The Parties agree that each will cooperate with the other Parties as reasonably necessary to:

6.1 Provide advice and comment on the Willamette Water Supply Program as it affects a Party and its residents and customers.

6.2 Provide advice, suggested solutions and comment on methods or strategies to protect a Party's interests or reasonable actions to mitigate impacts to the Party's interests.

6.3 Recognize and assist in reasonable mitigation strategies during temporary construction activities within a Party's boundary that may impact the community.

6.4 Assist in developing and implementing a public information and outreach process regarding WWSP activities to residents within the Party's boundary.

6.5 To evaluate the Upper Plant and Lower Plant site configuration and, if requested, to assist in developing Upper Plant site layout alternatives for consideration by those Parties that will use water from the Upper Plant.

6.6 If the preferred Upper Plant site layout requires acquisition of additional property, exchange of property or other action to accommodate the preferred alternative, the affected Parties will cooperate in contacting property owners and affected neighbors, provide detail of the WWSP site needs and otherwise cooperate to

facilitate discussions. However, nothing in this MOU is intended to prevent or hinder Wilsonville from performing its government function in evaluating and issuing development applications or permits.

6.7 The Parties to this Agreement recognize the position of Wilsonville and Sherwood as the only Parties currently using water from the WRWTP. Therefore, any water supply facilities that may be designed and constructed to divert and treat raw water and to convey finished drinking water from the Upper Plant or Lower Plant to a Party's service area must function in a manner that does not adversely impact or impair Wilsonville's or Sherwood's ability to obtain water and serve their respective users, except for temporary impacts during construction that are reasonably mitigated.

7. General Provisions.

7.1 **Future Agreements**. The Parties acknowledge that some or all of the terms and conditions of this MOU may be superseded or replaced by the Future Agreement(s).

7.2 **Withdrawal**. Effective 90 days after written notice to all other Parties, a Party may withdraw from this MOU. The withdrawing Party will be obligated to pay its share of facilitation costs under Section 5.1 through the effective date of withdrawal with no refund. The Parties may mutually agree to another withdrawal date.

7.3 **Assignment**. No Party to this MOU may assign its interest in this MOU (or any portion thereof) without the prior written consent of the other Parties.

7.4 **Counterparts**. This Agreement may be executed in any number of counterparts by the parties which shall constitute an agreement between and among the parties.

7.5 **Notices**. Any notice herein required and permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery or by United States mail, first class postage prepaid, addressed to the parties as follows:

City of Wilsonville
Delora Kerber, P.E.
Public Works Director
29799 SW Town Center Loop E
Wilsonville, OR 97070

Tualatin Valley Water District
Mark Knudson, P.E., CEO
1850 S.W. 170th
Beaverton, Oregon 97003

City of Sherwood
Craig Sheldon
Public Works Director
15527 Southwest Willamette Street
Sherwood, OR 97140

City of Hillsboro
Kevin Hanway
Water Department Director
150 E. Main Street
Hillsboro, Oregon 97123

City of Beaverton
David Winship, P.E.
City Utilities Engineer
P.O. Box 4755
Beaverton, OR 97076

City of Tigard
Dennis Koellermeier
Public Works Director
13125 SW Hall Blvd.
Tigard, OR 97223

City of Tualatin
Jerry Postema
Public Works Director
City Administration
18880 SW Martinazzi Avenue #200
Tualatin, OR 97062

7.6 **Amendment**. This MOU may be amended only by mutual written agreement of all Parties, signed by an authorized representative of each Party.

7.7 **Books, Reports and Accounting**. TVWD, as the contracting party, shall maintain books and records which shall show all income, receipts, expenses and costs in connection with any Consultant contract and this MOU. All such books of account or other records may be examined and copies of books and records made by TVWD staff at reasonable times upon reasonable notice. TVWD will provide a report at least semi-annually showing receipts and expenditures hereunder.

7.8 **Waiver**. The failure of a Party to insist on the strict performance of any provision of this MOU or to exercise any right, power or remedy upon a breach of any provision of this MOU shall not constitute a waiver of any provision of this MOU or limit the Party's right thereafter to enforce any provision or exercise any right.

7.9 **Governing Law**. This MOU shall be governed by and interpreted in accordance with the laws of the State of Oregon.

7.10 **Time is of the Essence**. A material consideration of the Parties entering into this MOU is that the Parties will make all payments as and when due and will perform all other obligations under this MOU in a timely manner. Time is of the essence of each and every provision of this Agreement.

7.11 **Term**. This MOU shall be in effect until the earlier of the execution of the Governance Agreement or December 31, 2016.

THE UNDERSIGNED, PURSUANT TO AUTHORIZATION FROM THE GOVERNING BODY, HEREBY EXECUTES THIS MEMORANDUM OF UNDERSTANDING ON BEHALF OF HIS/HER RESPECTIVE ENTITY

CITY OF WILSONVILLE
An Oregon Municipal Corporation

By:_____
Its: _____

APPROVED AS TO FORM

_____
City Attorney

CITY OF TUALATIN
An Oregon Municipal Corporation

By:_____
Its: _____

APPROVED AS TO FORM

_____
City Attorney

CITY OF BEAVERTON
An Oregon Municipal Corporation

By:_____
Its: _____

APPROVED AS TO FORM

_____
City Attorney

CITY OF TIGARD
An Oregon Municipal Corporation

By:_____
Its: _____

APPROVED AS TO FORM

_____
City Attorney

TUALATIN VALLEY WATER DISTRICT
A Domestic Water Supply District

_____
Chief Executive Officer

APPROVED AS TO FORM

_____
District Counsel

CITY OF SHERWOOD
An Oregon Municipal Corporation

By:_____
Its: _____

APPROVED AS TO FORM

_____
City Attorney

CITY OF HILLSBORO
An Oregon Municipal Corporation

By:_____
Its: _____

APPROVED AS TO FORM

_____
City Attorney

Willamette Governance Group
Proposed Topics Timeline
12.10.14

Resolution No. 2509

2026 WWSP Online Planning Schedule

Exhibit 2

* See WGG Topics Outline
** See Detailed Project Schedule

Exhibit 1

Willamette Governance Facilitation Cost Shares:

Exhibit 3

Current Cost Distritibution (Total Project)

Facilitation Fee: **$ 209,400.00**

Amount for Phase 3 of Governance Process (December 2014 through December 2016)

	Connections	Portion of Connections	Connection Amount	Equal Amount	Total Amount	
Beaverton	17,700	12.9%	$ 13,550.87	$ 14,957.14	$ 28,508.01	Beaverton
Hillsboro	24,793	18.1%	$ 18,981.17	$ 14,957.14	$ 33,938.31	Hillsboro
Sherwood	5,610	4.1%	$ 4,294.94	$ 14,957.14	$ 19,252.08	Sherwood*
Tigard	18,035	13.2%	$ 13,807.34	$ 14,957.14	$ 28,764.49	Tigard*
Tualatin	6,668	4.9%	$ 5,104.93	$ 14,957.14	$ 20,062.07	Tualatin*
TVWD	58,883	43.1%	$ 45,080.00	$ 14,957.14	$ 60,037.14	TVWD*
Wilsonville	5,069	3.7%	$ 3,880.76	$ 14,957.14	$ 18,837.90	Wilsonville
Total Connections	136,758		$ 104,700.00	$ 104,700.00	$ 209,400.00	

* $ 128,115.77 Amount to be Paid by WRWC

Estimate of Additional FY 2014-2015 Amount Using Cost Distritibution

Facilitation Fee: **$ 58,650.00**

Amount for Phase 3 of Governance Process (December 2014 through December 2016)

	Connections	Portion of Connections	Connection Amount	Equal Amount	Total Amount	
Beaverton	17,700	12.9%	$ 3,795.41	$ 4,189.29	$ 7,984.69	Beaverton
Hillsboro	24,793	18.1%	$ 5,316.36	$ 4,189.29	$ 9,505.65	Hillsboro
Sherwood	5,610	4.1%	$ 1,202.95	$ 4,189.29	$ 5,392.24	Sherwood*
Tigard	18,035	13.2%	$ 3,867.24	$ 4,189.29	$ 8,056.53	Tigard*
Tualatin	6,668	4.9%	$ 1,429.82	$ 4,189.29	$ 5,619.10	Tualatin*
TVWD	58,883	43.1%	$ 12,626.27	$ 4,189.29	$ 16,815.56	TVWD*
Wilsonville	5,069	3.7%	$ 1,086.95	$ 4,189.29	$ 5,276.23	Wilsonville
Total Connections	136,758		$ 29,325.00	$ 29,325.00	$ 58,650.00	

* $ 35,883.43 Amount to be Paid by WRWC

Estimate of FY 2015-2016 Amount Using Cost Distritibution

Facilitation Fee: **$ 100,500.00**

Amount for Phase 3 of Governance Process (December 2014 through December 2016)

	Connections	Portion of Connections	Connection Amount	Equal Amount	Total Amount	
Beaverton	17,700	12.9%	$ 6,503.64	$ 7,178.57	$ 13,682.21	Beaverton
Hillsboro	24,793	18.1%	$ 9,109.87	$ 7,178.57	$ 16,288.45	Hillsboro
Sherwood	5,610	4.1%	$ 2,061.32	$ 7,178.57	$ 9,239.90	Sherwood*
Tigard	18,035	13.2%	$ 6,626.73	$ 7,178.57	$ 13,805.30	Tigard*
Tualatin	6,668	4.9%	$ 2,450.07	$ 7,178.57	$ 9,628.64	Tualatin*
TVWD	58,883	43.1%	$ 21,635.81	$ 7,178.57	$ 28,814.39	TVWD*
Wilsonville	5,069	3.7%	$ 1,862.54	$ 7,178.57	$ 9,041.11	Wilsonville
Total Connections	136,758		$ 50,250.00	$ 50,250.00	$ 100,500.00	

* $ 61,488.23 Amount to be Paid by WRWC

Estimate of FY 2016-2017 Amount Using Cost Distritibution

Facilitation Fee: **$ 50,250.00**

Amount for Phase 3 of Governance Process (December 2014 through December 2016)

	Connections	Portion of Connections	Connection Amount	Equal Amount	Total Amount	
Beaverton	17,700	12.9%	$ 3,251.82	$ 3,589.29	$ 6,841.11	Beaverton
Hillsboro	24,793	18.1%	$ 4,554.94	$ 3,589.29	$ 8,144.22	Hillsboro
Sherwood	5,610	4.1%	$ 1,030.66	$ 3,589.29	$ 4,619.95	Sherwood*
Tigard	18,035	13.2%	$ 3,313.37	$ 3,589.29	$ 6,902.65	Tigard*
Tualatin	6,668	4.9%	$ 1,225.04	$ 3,589.29	$ 4,814.32	Tualatin*
TVWD	58,883	43.1%	$ 10,817.91	$ 3,589.29	$ 14,407.19	TVWD*
Wilsonville	5,069	3.7%	$ 931.27	$ 3,589.29	$ 4,520.56	Wilsonville
Total Connections	136,758		$ 25,125.00	$ 25,125.00	$ 50,250.00	

* $ 30,744.11 Amount to be Paid by WRWC