



Board Work Session Minutes  
March 5, 2019

**WORK SESSION – 6:30 PM**

**CALL TO ORDER**

Commissioners Present: Bernice Bagnall; Jim Doane, PE; Todd Sanders

Commissioners Absent: Jim Duggan, PE; Dick Schmidt

Staff Present: Mark Knudson, PE, Chief Executive Officer; Paul Matthews, Chief Financial Officer; Carrie Pak, PE, Chief Engineer; Clark Balfour, General Counsel; Nick Augustus, PE, Engineering Division Manager; Dave Kraska, PE, Water Supply Program Director; Joe Healy, Senior Management Analyst; Andrea Watson, Communications and Public Affairs Supervisor; Tod Burton, Financial Planning Debt Project Manager; Debbie Carper, District Recorder

Other Attendees: Budget Committee members Marilyn McWilliams and Mike Whiteley

**ANNOUNCEMENTS**

Mr. Matthews presented the Safety Minute on the risk of static electricity and vehicle refueling.

Mr. Knudson provided updates on water supply levels and supply requests, thanked staff responsible for coordinating the recent Budget Committee tour and asked for Board feedback on meter reading vehicles (see attached memo). Commissioners, including Commissioner Duggan via Commissioner Bagnall, said they would appreciate staff using their best judgment to acquire and maintain meter reading vehicles as well as a short update on the topic in the spring or summer.

Mr. Knudson concluded his announcements by noting upcoming days out of the office and requesting the Board approve his request to attend the American Water Works Association (AWWA) annual conference to receive the Outstanding Service to AWWA Award. Commissioners expressed support for his request, and Mr. Balfour said there will be an action item presented for Board approval on the March 20 Consent Agenda.

**1. DISCUSSION ITEMS**

- A. Update on TVWD Board Action Plan for 2018-19. *Staff Report – Mark Knudson*

Mr. Knudson reviewed the status of the Board Action Plan (see attached presentation).

B. Review of District's Financial Planning Scenarios. *Staff Report – Paul Matthews*

Mr. Matthews outlined the District's financial performance and reviewed financial plan scenarios, with Ms. Pak provided examples of how staff would implement the various Capital Improvement Plan alternatives (see attached presentation).

In response to questions, staff said:

- The District's financial performance is favorable in part because staff is strategically purchasing water to keep costs down and customers are consuming more water billed at the higher block 2 rate.
- It is not yet clear that the national development slowdown has affected local production of multifamily homes.
- There may be a reduction in water sales as the City of Beaverton withdraws certain Tualatin Hills Park and Recreation parks.
- Staff can provide graphics that show cumulative dollars.
- The rates listed on the Comparison of Alternatives slide are inclusive of inflation.
- The Willamette Water Supply System intergovernmental agreement contains provisions for each partner to be responsible for their own debt obligations, including Water Infrastructure Finance and Innovation Act (WIFIA) loan repayment.

Commissioners provided feedback that they are interested in assuming the medium risk alternative in the next budget cycle with the potential of moving toward the low risk alternative as the Willamette Water Supply System is completed. Mr. Knudson pointed out the ability of the Board to modify risk levels in coming years. Commissioners also said they would like staff to show the low and medium risk options to key customers while pointing out the Board's desire to pursue the lower rate increase.

C. Update on Long-Term Debt Program. *Staff Report – Paul Matthews*

Mr. Matthews discussed the key steps in the long-term debt program and the timing of each (see attached presentation). In response to a question, he said the reimbursement authority within WIFIA (versus a traditional revenue bond program) contains case-by-case basis requirements.

D. Willamette Water Supply System Intergovernmental Agreement. *Staff Report – Clark Balfour*

Mr. Balfour distributed a draft of the agreement (see attached document) and reviewed specific sections of the agreement in more detail (see attached presentation).

In response to questions, staff said:

- The possibility of termination of water service in the Default and Performance stipulations provides a strong impetus toward dispute resolution.

- The agreement does not contain specifics about the possibility that funds could be deposited into a neutral account, but that does not limit that option in the future.
- The agreement specifically delineates points of delivery for each partner.
- Future participation by the cities of Tigard, Tualatin and Sherwood is unknown, but the potential is there, especially for emergency supply agreements.

## **ADJOURNMENT**

There being no further business, President Bagnall adjourned the meeting at 8:28 p.m.

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Bernice Bagnall, President

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Todd Sanders, Secretary



## MEMO

**Date:** March 5, 2019  
**To:** TVWD Board of Commissioners  
**From:** Mark Knudson, CEO  
**Re:** CEO Announcements

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I will cover the following items during the CEO's Announcements at the work session:

1. **Be Sure to Use Microphones** – Just a reminder to please be sure to use your microphone whenever you are speaking during the work session this evening. Also, please be sure to turn off your microphone when you are not speaking.
2. **Safety Minute** – Paul Matthews, TVWD's Chief Financial Officer, will present the safety minute this evening.
3. **Weather and Water** – Although the late winter weather last week made driving conditions challenging, it was a great boost for the region's water supply outlook. Recent information from the Portland Water Bureau shows that snowpack in the Bull Run Watershed has now reached 'normal' or historic average conditions at four monitoring locations in the watershed. In addition, as of late last week, the level in Scoggins Reservoir has recovered nicely and is now following the rule curve, which is normal for this time of year. Barney Reservoir is still below normal at about 60% full, but hopefully the recent snow in the Coast Range will translate to increased runoff this spring.

Based on TVWD's experience during the summer of 2018 (TVWD used its full capacity share of Barney storage), staff has submitted a request to the Barney Reservoir Managing Agency to lease 580 acre-feet of stored water in the Barney Reservoir this coming summer. That lease request will be considered by the Barney Commission at its next meeting on April 12, 2019.

4. **Budget Committee Tour** – The Budget Committee Tour last week was a big success. A special thanks to the District's budget team, including Tod Burton, Kristi Kernal and Justin Dyke for making the necessary arrangements. Also, a big thanks to Paul Matthews, Andrew Carlstrom, Carrie Pak, Dave Kraska, Nick Augustus, Pete Boone and Andrew Barrett for their help in planning the tour and for their participation during the tour. And, finally, thanks to Nick LaRue who helped prepare the graphics included in the handouts.
5. **Meter Reading Vehicle Update** – Several years ago, TVWD staff conducted an extensive analysis as part of its meter reading vehicle selection. Ultimately, the Firefly electric vehicle (EV) was selected and the District has acquired a fleet of six Fireflies. During the

time we acquired our units, the company was sold (twice). It turns out the first two Fireflies acquired by the District have performed well. The subsequent four Fireflies were produced by one of the new owners of the company and have had numerous, significant performance and reliability problems. We have fully exhausted all warranties on the four problem Fireflies to the point the units are now out of warranty and still do not provide the level of performance or reliability required by the District.

Staff recommends we move forward with acquiring two new meter reading vehicles. The recommended units are called a Go-4; they are similar in size to a Firefly but are gas powered and have a proven history of performance (for example City of Portland Parking Patrol uses Go-4s).

Typically, we would not bring vehicle purchase issues to the Board, but we are keenly aware that the Board was especially interested in pursuing EV technology when the decision was made to acquire a fleet of EVs as meter reading vehicles. Before acquiring the Go-4 units, I'm looking for Board feedback on the following three options:

1. This is an administrative matter, and staff should use its best judgement to acquire and maintain a fleet of reliable meter reading vehicles, or
  2. Before changing direction on using EVs as meter reading vehicles, the Board wants a more detailed briefing about the maintenance and repair history of the Firefly units as well as more details on EV options, or
  3. Staff should use its best judgement to acquire and maintain meter reading vehicles AND the Board would like a work session briefing on the Firefly EVs sometime later this spring or summer.
6. **Mark to Receive Outstanding Service to AWWA Award** – As explained in the attached letter, I have been selected to receive the 2019 Outstanding Service to AWWA Award. The award will be presented at the opening general session of the AWWA Annual Conference and Exhibition on Monday, June 10, 2019 in Denver, Colorado. Additional details about the award can be found on the [AWWA website](#).

My current employment agreement with TVWD specifies “the District will not pay for Knudson to attend any trainings unless approved by the Successor CEO or the Board, if there is no Successor.” Further, “Knudson will not attend AWWA ACE in June 2019 unless directed by the Board or authorized by the Successor CEO.”

I respectfully request that the Board authorize my attendance at the AWWA ACE opening general session and the District pay my salary for a total of two days while I am traveling to and from ACE. The Water Research Foundation has agreed to pay my airfare to and from Denver and for my lodging expenses the weekend before the award presentation. I will not be registering for the conference itself and will be returning to Portland immediately following the award presentation.

I welcome the Board's feedback on this proposal.

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7. **Board Communications Log** – There are two updates to the Board communications log this month. Attached are meeting summaries of the Finance Committee meetings held on January 28 and February 26, 2019.
8. **CEO's Schedule** – I plan to take a couple of days off; I will be out of town this Friday, March 8, through Monday, March 11. Andrew Carlstrom will be acting in capacity for the CEO while I am gone. I will be back in the office on Tuesday, March 12.

Attachments:

- 2019 Outstanding Service to AWWA Award
  - Board Communications Log
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**American Water Works  
Association**

*Dedicated to the World's Most Important Resource™*

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February 13, 2019

Mr. Mark Knudson  
Tualatin Valley Water District  
1850 SW 170th Ave  
Beaverton, OR 97003-4211

Dear Mr. Knudson:

It pleases me very much to inform you that you have been selected as the recipient of the 2019 Outstanding Service to AWWA Award. This award was established to recognize and honor a member of the Association who has demonstrated outstanding service to the Association through leadership and active participation in AWWA programs.

The citation approved by the AWWA Executive Committee at its 2019 winter meeting reads as follows:

*With over 30 years of volunteer service to AWWA, Mark is a respected leader whose dedication, expertise and communication skills have helped advance the water industry. Mark's efforts at AWWA, the Pacific Northwest Section and the Water Research Foundation are helping communities reliably meet the water needs of future generations.*

In recognition of this high honor, the award will be presented to you during the Opening General Session on Monday morning, June 10, 2019 at ACE19 in Denver, Colorado. Information on arrangements for the presentation will be sent to you later. In order to include your photo in the awards display at the conference, please email a high-resolution electronic color photo (portrait style) to Brynn Findlay at [bfindlay@awwa.org](mailto:bfindlay@awwa.org) no later than **April 15<sup>th</sup>**.

The Association's Officers and Directors join me in congratulating you on achieving this very high honor.

Sincerely,

A handwritten signature in black ink, appearing to read "David LaFrance".

David LaFrance  
Chief Executive Officer

## 2019 Board Communications Log

Commissioner Questions/Topics: (includes research requests directed to staff via email or at Board meeting)

- Initial request sent to Mark (copy Board President)
- Mark responds with projected timeframe for response and any other logistical info
- Answer shared with the full Board during work sessions

Item Number	Requestor	Subject	Date Submitted	Response Date	Date Information Shared with Full Board
01-19					

Board Committee Information:

- Meeting notes/handouts shared with the full Board during work sessions

Meeting Date	Notes	Date Information Shared with the Full Board
<b>Finance Committee</b>		
January 29	Meeting synopsis prepared by Debbie Carper	March 5
February 26	Meeting synopsis prepared by Katherine Lipari DeSau	March 5
<b>Policy and Board Development Committee</b>		
<b>Strategic Planning Committee</b>		
<b>Water Supply Committee</b>		



# Tualatin Valley Water District



Delivering the Best Water 💧 Service 💧 Value

Finance Committee Meeting  
January 29, 2019

## Meeting Notes

Attendees: Commissioners Bernice Bagnall and Jim Duggan, PE

Staff Present: Mark Knudson, PE, Chief Executive Officer; Paul Matthews, Chief Financial Officer; Carrie Pak, PE, Chief Engineer; Clark Balfour, General Counsel; Debbie Carper, District Recorder

### 1. Unbudgeted Capital Improvement Program Items

Mr. Knudson described the additional costs related to the District's application for Water Infrastructure Finance and Innovation Act funding as well as the repair work to the Thompson and Inglewood reservoirs and recommended absorbing the costs within the budget rather than approving a supplemental budget. Finance Committee members expressed support for the recommended concept. He said staff would seek input from the full Board on staff's recommendation at the work session later in the evening.

### 2. Master Declaration

Mr. Matthews distributed a draft of the master declaration (see attachment), and the Commissioners provided feedback. Mr. Balfour said the document would need to be adopted by ordinance.

Commissioners said they would review the document and provide input to embed in the staff report to be presented to the full Board for action, tentatively at the March regular meeting.

### 3. Financial Management Policies

Mr. Matthews distributed an updated draft of the policies (see attachment) and highlighted the revisions following the discussion about the prior draft. Commissioners said they would review the latest draft and provide comments to staff prior to full Board consideration for adoption.

**Form of  
MASTER WATER SYSTEM REVENUE  
BOND DECLARATION**

**Tualatin Valley Water District, Oregon**

**Water Revenue Bonds**

**Series [2019]**

**Executed by the District Official of the Tualatin Valley Water District, Oregon**

**As of the \_\_ day of \_\_\_\_\_, \_\_**

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## MASTER WATER SYSTEM REVENUE BOND DECLARATION

THIS MASTER WATER SYSTEM REVENUE BOND DECLARATION is executed as of [Insert Date of Master], by an authorized District Official of the Tualatin Valley Water District, Oregon pursuant to the authority granted to the District Official by Ordinance No. \_\_\_\_\_ adopted by the District Board of Commissioners on \_\_\_\_\_, \_\_\_\_, to establish the terms under which the District's Water Revenue Bonds, Series [2019] and future Parity Bonds may be issued.

### Section 1. Findings.

The District finds that it adopted the Ordinance on \_\_\_\_\_, \_\_\_\_. That ordinance authorizes the District to issue up to \$ \_\_\_\_\_ of water revenue bonds under Oregon Revised Statutes Section 287A.150 and related provisions of ORS Chapter 287A, and to enter into this Master Declaration. This Master Declaration establishes the terms under which the District's Water Revenue Bonds, Series [2019] are issued and the terms under which future obligations may be issued on a parity with the Series [2019] Bonds.

### Section 2. Definitions.

Unless the context clearly requires otherwise, capitalized terms that are used in this Master Declaration and are defined in this Section 2 shall have the meanings defined for those terms in this Section 2.

"Adjusted Coverage Revenues" means the Coverage Revenues, adjusted for purposes of Section 7.1.C(ii) as provided in Section 7.3.

"Adjusted Net Revenues" means the Net Revenues, adjusted for purposes of Section 7.1.C(ii) as provided in Section 7.3.

"Annual Bond Debt Service" means in any Fiscal Year the amount of principal and interest required to be paid in that Fiscal Year on all Outstanding Bonds, adjusted as follows:

- (a) Interest which is to be paid from Bond Proceeds shall be subtracted;
- (b) Bonds which are subject to scheduled, noncontingent redemption/prepayment or tender shall be deemed to mature on the dates and in the amounts which are subject to mandatory redemption/prepayment or tender, and only the amount scheduled to be Outstanding on the final maturity date shall be treated as maturing on that date;
- (c) Interest subsidies shall be subtracted from the interest due on Interest Subsidy Bonds as provided in Section 6.5;
- (d) Bonds which are subject to contingent redemption/prepayment or tender shall be treated as maturing on their stated maturity dates; and,
- (e) Each Balloon Payment shall be assumed to be paid according to its Balloon Debt Service Requirement.

"Auditor" means a person authorized by the State Board of Accountancy to conduct municipal audits pursuant to ORS 297.670.

“Balloon Debt Service Requirement” means the Committed Debt Service Requirement for a Balloon Payment or, if the District has not entered into a firm commitment to sell Bonds or other obligations to refund that Balloon Payment, the Estimated Debt Service Requirement for that Balloon Payment.

“Balloon Payment” means any principal payment for a Series of Bonds which comprises more than twenty-five percent of the original principal amount of that Series, but only if that principal payment is designated as a Balloon Payment in the closing documents for the Series.

“Base Period” means the alternative selected by the District from the following two options: (a) any twelve consecutive months selected by the District or Qualified Consultant out of the most recent eighteen months preceding the delivery of a Series of Parity Bonds; or (b) the most recently completed fiscal year for which audited financial statements are available.

“BEO” means “book-entry-only” and refers to a system for clearance and settlement of securities transactions through electronic book-entry changes, which eliminates the need for physical movement of securities.

“Bond” or “Bonds” means the Series [2019] Bonds and any Parity Bonds.

“Bond Counsel” means a law firm selected by the District and having knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.

“Bond Reserve Account” means the Bond Reserve Account in the Water Fund described in Section 5.3 of this Master Declaration.

“Business Day” means any day except a Saturday, a Sunday, a legal holiday, a day on which the offices of banks in Oregon or New York are authorized or required by law or executive order to remain closed, or a day on which the New York Stock Exchange is closed.

~~“District” means the Tualatin Valley Water District in Washington County, Oregon, a municipal corporation of the State of Oregon.~~

~~“District Board” means the Board of Commissioners of the District.~~

~~“District Official” means the \_\_\_\_\_ to act on behalf of the District under the Ordinance.~~

“Closing” means the date on which a Series of Bonds is delivered in exchange for payment.

“Code” means the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated thereunder.

“Committed Debt Service Requirement” means the schedule of principal and interest payments for a Series of Bonds or other obligations which refund a Balloon Payment, as shown in the documents evidencing the District’s firm commitment to sell that Series. A “firm commitment to sell” means a bond purchase agreement or similar document which obligates the District to

sell, and obligates a purchaser to purchase, the Series of refunding Bonds or other obligations, subject only to the conditions which customarily are included in such documents.

“Coverage Revenues” means the Net Revenues less systems development charges.

“Credit Facility” means a letter of credit, a municipal bond insurance policy, standby bond purchase agreement or other credit enhancement device which is obtained by the District to secure payment in full of Bonds, and which is issued or provided by a Credit Provider.

“Credit Provider” means the person or entity that is: (i) obligated to make or guarantee payments under a Credit Facility or Reserve Credit Facility; and (ii) whose long-term debt obligations or claims-paying ability (as appropriate) are rated, at the time the Credit Facility or Reserve Credit Facility is issued, in one of the two highest rating categories by a Rating Agency that has issued a rating on Outstanding Bonds. Under rating systems in effect on the date of this Master Declaration, a rating in one of the two highest rating categories by a Rating Agency would be a rating of “AA-/Aa3” or better.

“Debt Service Account” means the Debt Service Account described in Section 5.2 of this Master Declaration.

“District” means the Tualatin Valley Water District in Washington County, Oregon, a municipal corporation of the State of Oregon.

“District Board” means the Board of Commissioners of the District.

“District Official” means the \_\_\_\_\_ to act on behalf of the District under the Ordinance.

“DTC” means The Depository Trust Company or any other qualified securities depository designated by the District as its successor.

“Estimated Debt Service Requirement” means the schedule of principal and interest payments for a hypothetical Series of Bonds that refunds a Balloon Payment, that is prepared by the District Official and that meets the requirements of Section 6.4.

“Event of Default” means any event specified in 11.2 of this Master Declaration.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or as otherwise defined by State law.

“Fitch” means Fitch Investors Service, Inc., its successors and assigns.

“Fund” or “Account” refers to any fund, account, or other accounting concept that permits the District to account accurately for amounts that are credited to it under this Master Declaration. A “Fund” in this Master Declaration does not need to appear as a “fund” in the District’s budget and an “Account” in this Master Declaration does not need to appear as an “account” in the District’s budget.

“Government Obligations” means (a) direct, noncallable obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury and principal-only and interest-only strips that are issued by the U.S. Treasury); or (b) noncallable obligations the principal of and interest on which are secured by the full faith and credit of the United States of America or are unconditionally guaranteed by the United States of America.

“Gross Revenues” means all fees and charges and other revenues that are properly accrued under generally accepted accounting principles as revenues of the Water System, including systems development charges but only to the extent Oregon law allows those systems development charges to be used to pay Bonds, revenues from product sales, and interest earnings on Gross Revenues in the Water Fund. Gross Revenues shall be increased by any withdrawals from the Rate Stabilization Account as provided in Section 5.5.B, and shall be reduced by any deposits to the Rate Stabilization Account as provided in Section 5.5.A. However, the term “Gross Revenues” shall not include:

- (a) The interest income or other earnings derived from the investment of any escrow fund established for the defeasance or refunding of outstanding indebtedness of the District;
- (b) Any gifts, grants, donations or other amounts received by the District from any State or Federal Agency or other person if such amounts are restricted by law or the grantor to uses inconsistent with the payment of Bonds;
- (c) The proceeds of any borrowing;
- (d) The proceeds of any liability or other insurance (excluding business interruption insurance or other insurance of like nature insuring against the loss of revenues);
- (e) The proceeds of any casualty insurance which the District intends to utilize for repair or replacement of the Water System;
- (f) The proceeds derived from the sales of assets pursuant to Section 10.9 of this Master Declaration;
- (g) Any ad valorem or other taxes imposed by the District (except charges or payments for Water System services which become “taxes” within the meaning of Article XI, Section 11b of the Oregon Constitution only because they are imposed on property or property owners);
- (h) Any income, fees, charges, receipts, profits or other amounts derived by the District from its ownership or operation of any Separate Utility System;
- (i) Installment payments of District line and branch charges, connection fees, or local improvement district assessments that have been pledged as security for a borrowing other than a Bond;
- (j) The proceeds of any fees or charges the District collects on behalf of a third party, including the fees currently collected by the District on behalf of the cities of Beaverton, Tigard and Hillsboro; or [Does this capture the concept?]
- (k) Any federal interest subsidies the District receives for Interest Subsidy Bonds.

“Interest Payment Date” means any date on which Bond interest is scheduled to be paid, and any date on which Bonds are called for redemption/prepayment.

“Interest Subsidy Bonds” means Bonds for which the District is eligible to receive federal interest rate subsidies that are similar to the interest subsidies that were available for Build America Bonds.

“Master Declaration” means this Master Water System Revenue Bond Declaration, including any amendments made pursuant to Section 12.

“Maximum Annual Bond Debt Service” means the greatest amount of Annual Bond Debt Service that is due in any Fiscal Year, beginning with the Fiscal Year for which the calculation is made, and ending with the last Fiscal Year in which Outstanding Bonds are scheduled to be paid.

“Moody’s” means Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns.

“Net Revenues” means the Gross Revenues less the Operating Expenses.

“Operating Expenses” means all costs which are properly treated as expenses of operating and maintaining the Water System under generally accepted accounting principles. However, Operating Expenses do not include:

- (a) Any rebates or penalties paid from Gross Revenues under Section 148 of the Code;
- (b) Payments of judgments against the District and payments for the settlement of litigation;
- (c) Depreciation and amortization of property values or losses, and other non-cash expenses, including non-cash expenses related to pensions and postemployment benefits,;
- (d) All amounts eligible to be treated for accounting purposes as payments for capital expenditures;
- (e) Interest and other debt service payments, paying agent fees, broker-dealer fees and similar charges for the maintenance of borrowings;
- (f) The expenses of owning, operating or maintaining any Separate Utility System;
- (g) Expenditures made from any liability insurance proceeds;
- (h) Expenditures made from any casualty insurance proceeds used to pay for costs of repairing or replacing portions of the Water System;
- (i) Expenditures made from grant funds, regardless of whether such grant funds are dedicated to a specific purpose or available for the general operation, maintenance and repair or replacement of the Water System;
- (j) Extraordinary, non-recurring expenses of the Water System;
- (k) Payments to third parties from the proceeds of any fees or charges the District collects on behalf of such third parties, including the fees currently collected by the District on behalf of the cities of Beaverton, Tigard and Hillsboro; or [Does this capture the concept?]
- (l) Expenditures allocable to any other funding source which does not constitute Gross Revenues of the Water System.

“Ordinance” means Ordinance \_\_\_\_ adopted by the District Board on \_\_\_\_\_, \_\_\_\_.

“ORS” means the Oregon Revised Statutes.

“Outstanding” refers to all Bonds except Bonds that have been defeased pursuant to Section 13 of this Master Declaration, and Bonds which have matured and not been presented for payment (provided sufficient funds to pay those Bonds have been transferred to the Paying Agent).



“Owner” means a registered owner of a Bond.

“Parity Bond” means any obligation that is secured by the Net Revenues on an equal basis with the Bonds and is issued in accordance with Section 7.

“Paying Agent” means the paying agent for the Bonds, which is [Insert Name of Paying Agent] on the date of this Master Declaration.

“Payment Date” means a Principal Payment Date or an Interest Payment Date.

“Permitted Investments” means any investments which the District is permitted to make under the laws of the State.

“Principal Payment Date” means any date on which any Bonds are scheduled to be retired, whether by virtue of their maturity or by mandatory sinking fund redemption/prepayment prior to maturity, and the redemption/prepayment date of any Bonds which have been called for redemption/prepayment.

“Qualified Consultant” means an independent engineer, an independent auditor, an independent financial advisor, or similar independent professional consultant of recognized standing and having experience and expertise in the area for which such person or firm is retained by the District for purposes of performing activities specified in this Master Declaration or any Supplemental Declaration.

“Rate Stabilization Account” means the Rate Stabilization Account established in the Water Fund pursuant to Section 5.5.

“Rating Agency” means Fitch, Moody’s, S&P, or any other nationally recognized financial rating Agency which has rated Outstanding Bonds or a Credit Facility at the request of the District.

“Record Date” for the Bonds means the \_\_\_\_\_ day of the month preceding the month in which each Interest Payment Date occurs, whether or not a Business Day.

“Reserve Credit Facility” means any arrangement in which the District pays a fee in exchange for an agreement of a Credit Provider to advance money to the District in the future that the District will use in lieu of using cash or Permitted Investments credited to a subaccount in the Bond Reserve Account. “Reserve Credit Facility” does not include guaranteed investment contracts, master repurchase agreements and similar Permitted Investments.

“Reserve Credit Facility Rating” means a long-term debt, financial strength or claims-paying ability rating assigned by a Rating Agency to: (a) a provider of a Reserve Credit Facility, or (b) to any reinsurer of the obligations of a provider of a Reserve Credit Facility.

“Reserve Requirement” means a set of rules for funding a subaccount in the Bond Reserve Account. Each Reserve Requirement shall indicate the amount that is required to be credited to the subaccount, the dates by which that amount must be credited to the subaccount, and the requirements for restoring amounts to the subaccount if amounts are withdrawn to pay Bonds

that are secured by the subaccount. [The Series [2019] Bonds are not secured by the Bond Reserve Account or any subaccount therein.]

“S&P” means S&P Global Ratings, a corporation organized and existing under the laws of the State of New York, its successors and their assigns.

“Separate Utility System” means any utility property which is declared by the District to constitute a system which is distinct from the Water System in accordance with Section 9.

“Series” refers to all Bonds authorized by a single ordinance or declaration and delivered in exchange for payment on the same date, regardless of variations in maturity, interest rate or other provisions, unless the closing documents for the Series provide otherwise.

“Series [2019] Bonds” means the District’s Water Revenue Bonds, Series [2019] issued pursuant to Section 17 of this Master Declaration.

“State” means the State of Oregon.

“Subordinate Obligations” means obligations having a lien on the Net Revenues which is subordinate to the lien of the Bonds. Restrictions on Subordinate Obligations are described in Section 8. On the date of this Master Declaration, the District has no borrowings outstanding with a subordinate lien on the Net Revenues.

“Subordinate Obligations Account” means the Subordinate Obligations Account of the Water Fund which is described in Section 5.5.

“Supplemental Declaration” means any declaration, resolution or other document which supplements or amends this Master Declaration, entered into by the District in compliance with Section 12.

“Tax Maximum” means, for any Series of Bonds, the least of: the greatest amount of principal, interest and premium, if any, required to be paid in any Fiscal Year on such Series; 125% of average amount of principal, interest and premium, if any, required to be paid on such Series during all Fiscal Years in which such Series will be Outstanding, calculated as of the date of issuance of such Series; or, ten percent of the proceeds of such Series, as “proceeds” is defined for purposes of Section 148(d) of the Code.

“Valuation Date” means the date or dates on which a subaccount of the Bond Reserve Account shall be valued as prescribed in the Supplemental Declaration authorizing the establishment of such subaccount.

“Water Fund” means the collection of funds and accounts used by the District to hold the Gross Revenues and the proceeds of Bonds.

“Water System” means all [utility property now or hereafter used by the District to supply water within or without the corporate limits of the District, including District’s investment in joint ventures]. However, the Water System does not include any Separate Utility System.

### **Section 3. Rules of Construction.**

In determining the meaning of the provisions of this Master Declaration, the following rules shall apply unless the context clearly requires application of a different meaning:

- A. References to section numbers shall be construed as references to sections of this Master Declaration.
- B. References to one gender shall include all genders.
- C. References to the singular include the plural, and references to the plural include the singular.

### **Section 4. Deposit, Pledge and Use of Gross Revenues.**

- 4.1. All Gross Revenues shall be deposited to and maintained in the Water Fund, and shall be used only as described in this Section as long as any Bonds remain Outstanding. The District shall apply Gross Revenues in the Water Fund on or before the following dates for the following purposes in the following order of priority:
  - A. At any time to pay Operating Expenses which are then due;
  - B. At least one Business Day prior to each Payment Date, to transfer Net Revenues to the Debt Service Account in an amount sufficient (with amounts available in the Debt Service Account) to pay in full all Bond principal, interest and premium, if any, which is due to be paid on that Payment Date;
  - C. On the Closing date for a Series of Bonds and on the first day of the months specified in the provisions creating the subaccounts in the Bond Reserve Account, if the balance in any subaccount of the Bond Reserve Account is determined to be less than the applicable Reserve Requirement, to transfer Net Revenues to the Bond Reserve Account in the amounts required by the provisions creating the subaccounts in the Bond Reserve Account until the balances in all subaccounts of the Bond Reserve Account are equal to their Reserve Requirement;
  - D. On the day on which any rebates or penalties for Bonds are due to be paid to the United States pursuant to Section 148 of the Code, an amount of Net Revenues that is sufficient, with other available funds, to pay the amounts due to the United States;
  - E. On the dates specified in any proceedings authorizing Subordinate Obligations, the District shall transfer to the Subordinate Obligations Account the Net Revenues required by those proceedings; and,
  - F. On any date, the District may transfer Net Revenues to the Rate Stabilization Account or spend Net Revenues for any other lawful purpose relating to the Water System, but only if all deposits and payments that are required to be made on or before that date and that have a higher priority under this Section have been made.

- 4.2. The District hereby pledges the Net Revenues and federal interest subsidies the District receives for Interest Subsidy Bonds to the payment of principal of, premium (if any) and interest on all Bonds. Pursuant to ORS 287A.310, this pledge made by the District shall be valid and binding from the Closing of the Series [2019] Bonds. The Net Revenues and federal interest subsidies so pledged and hereafter received by the District shall immediately be subject to the lien of such pledge without any physical delivery or further act. The lien of these pledges shall be superior to all other claims and liens except liens and claims for the payment of Operating Expenses. The District covenants and agrees to take such action as is necessary from time to time to perfect or otherwise preserve the priority of the pledge.
- 4.3. If a Reserve Credit Facility is permitted to fund a subaccount in the Bond Reserve Account, the District may pledge the Net Revenues available for transfer to that subaccount of the Bond Reserve Account to pay amounts due under any Reserve Credit Facility securing that subaccount.

**Section 5. Bond Funds and Accounts.**

- 5.1. So long as Bonds are Outstanding, the District shall maintain the Debt Service Account as a discrete account in the Water Fund.
- 5.2. **Debt Service Account.** The District shall hold the Debt Service Account. Until all Bonds are paid or defeased, amounts in the Debt Service Account shall be used only to pay Bonds.
  - A. After the transfer described in Section 4.1.B, if the balance in the Debt Service Account is less than the amount of Bond principal, premium and interest that is due on that Payment Date, the District shall credit to the Debt Service Account an amount equal to the deficiency from any Net Revenues in the Subordinate Obligations Account.
  - B. If, after the credit described in Section 5.2.A, the amounts available to pay Debt Service Account is not sufficient to pay all amounts due on the Payment Date, the District shall allocate the available amounts:
    - (i) First, to pay Bond interest, and pro rata based on the amount due on Bonds if the available amount is not sufficient to pay all Bond interest that is due on that Payment Date; and,
    - (ii) Second, to pay Bond principal and premium that is due on that Payment Date, and pro rata based on the amount of principal and premium due on each Bond if the available amount is not sufficient to pay all Bond principal and premium that is due on that Payment Date.
  - C. If, after the allocation described in Section 5.2.B, there is not enough to pay all principal, interest and premium allocated to pay Bonds that are secured by a subaccount in the Bond Reserve Account, the District shall apply any amounts available in the subaccounts in the Bond Reserve Account, but only to pay the principal, interest and premium on the Bonds that are secured by those subaccounts.

- D. The District shall transfer sufficient amounts from the Debt Service Account in time to permit payment of all Bond principal, interest and premium (if any) when due in accordance with the Bonds.
- E. Amounts in the Debt Service Account shall be invested only in Permitted Investments. Earnings on the Debt Service Account shall be credited to the Water Fund.

5.3. **Bond Reserve Account.**

- A. If the District determines to secure Bonds with the Bond Reserve Account and so long as those Bonds are Outstanding, the District shall maintain the Bond Reserve Account as a discrete account in the Water Fund held by the District. The District may create one or more subaccounts in the Bond Reserve Account to secure Series of Bonds and covenant to make deposits into any subaccounts it creates; however, the District is not obligated to create any subaccounts in the Bond Reserve Account, and is not obligated to secure any Series of Bonds with a subaccount in the Bond Reserve Account.
- B. When a subaccount in the Bond Reserve Account is created, the District shall determine whether the subaccount will secure one or more Series of Bonds. If the District creates a subaccount in the Bond Reserve Account, the District shall, when it issues the first Series of Bonds that is secured by that subaccount: a) establish the Reserve Requirement for that subaccount; b) pledge amounts credited to that subaccount to pay the Bonds that are secured by that subaccount; and c) determine if the Reserve Requirement for that subaccount may be funded with Reserve Credit Facilities and the requirements for those Reserve Credit Facilities, and the valuation and replenishment provisions that apply to that subaccount.
- C. The District shall not create any subaccounts in the Bond Reserve Account for any purpose except securing Bonds in accordance with this Master Declaration.
- D. [The Series [2019] Bonds are not secured by the Bond Reserve Account or any subaccount therein.]

5.4. **Subordinate Obligations Account.** The District shall create and maintain the Subordinate Obligations Account in the Water Fund as long as Subordinate Obligations are Outstanding. The Subordinate Obligations Account may be divided into subaccounts, and the District may establish priorities for funding the subaccounts in the Subordinate Obligations Subaccount. Net Revenues shall be deposited into the Subordinate Obligations Account only as permitted by Section 4.1.E. Earnings on the Subordinate Obligations Account shall be credited as provided in the proceedings authorizing the Subordinate Obligations.

5.5. **Rate Stabilization Account.** The District may create a ~~the~~ Rate Stabilization Account in the Water Fund and if created will maintain that account as long as Bonds are Outstanding. Net Revenues may be transferred to the Rate Stabilization Account at the option of the District as permitted by Section 4.1.F. Money in the Rate Stabilization Account may be withdrawn at any time and used for any purpose for which the Gross Revenues may be used.

- A. Deposits to the Rate Stabilization Account decrease Gross Revenues in the Fiscal Year for which the deposit is made.
- B. Withdrawals from the Rate Stabilization Account increase Gross Revenues in the Fiscal Year for which the withdrawal is made.
- C. The District may adjust deposits to and withdrawals from the Rate Stabilization Account for a Fiscal Year at any time prior to the date on which the audit for that Fiscal Year is finalized, up until 60 days after the end of that Fiscal Year.
- D. Earnings on the Rate Stabilization Account shall be credited to the Water Fund.

**Section 6. Rate Covenant; Calculations Relating to Balloon Indebtedness and Interest Subsidy Bonds.**

- 6.1. The District covenants for the benefit of the Owners that it will establish and maintain rates and charges in connection with the operation of the Water System which are sufficient to permit the District to pay all Operating Expenses and all lawful charges against the Net Revenues, and to make all transfers required by this Master Declaration to the Debt Service Account, the Bond Reserve Account and the Subordinate Obligations Account.
- 6.2. The District covenants for the benefit of the Owners of all Bonds that it shall charge rates and fees in connection with the operation of the Water System which, when combined with other Gross Revenues are adequate to generate:
  - A. Coverage Revenues each Fiscal Year at least equal to one hundred fifteen percent (115%) of Annual Bond Debt Service due in that Fiscal Year; and,
  - B. Net Revenues each Fiscal Year at least equal to one hundred twenty-five percent (125%) of Annual Bond Debt Service due in that Fiscal Year.
- 6.3. Not later than six months after the end of each Fiscal Year, the District shall prepare a report that demonstrates whether the District has complied with Section 6.2 during that Fiscal Year and shall file that report in the District records. If the report demonstrates that the District has not complied with Section 6.2 during that Fiscal Year, it shall not constitute a default under this Master Declaration if, within thirty (30) days after the report is filed, the District files a certificate of a District Official that specifies the actions that the District has taken and will take within the next ninety (90) days to permit the District to comply with Section 6.2 for the remainder of the Fiscal Year in which the report is filed, and for the succeeding Fiscal Year, and the District takes the actions specified by the District Official, or actions having a comparable effect.
- 6.4. The Estimated Debt Service Requirement for Balloon Indebtedness shall be calculated in accordance with this Section 6.4.
  - A. For the Rate Covenants: For each Balloon Payment that is Outstanding on May 1 of any Fiscal Year, the District Official shall prepare a schedule of principal and interest

**Commented [PM1]:** Should this be defined in the definition section? Is it pertinent outside of section 6?

If we're looking for a definition, I suggest the District Official be the District's Chief Financial Officer or another District employee so designated by the District's Chief Executive Officer or Board of Commissioners. I suggest it be an employee to prevent a future Board from designating one of its members as the "District Official".

Or maybe it's just the CFO. We have that elsewhere in this document.

payments for a hypothetical Series of Bonds that refunds that Balloon Payment in accordance with Section 6.4.D. The District Official shall prepare that schedule as of that first day of May, and that schedule shall be used to determine compliance with the rate covenant in Section 6.2 for the following Fiscal Year.

- B. For Parity Bonds: Whenever a Balloon Payment will be Outstanding on the date a Series of Parity Bonds is issued, the District Official shall prepare a schedule of principal and interest payments for a hypothetical Series of Bonds that refunds each Outstanding Balloon Payment in accordance with Section 6.4.D. The District Official shall prepare that schedule as of the date the Parity Bonds are sold, and that schedule shall be used to determine compliance with the tests for Parity Bonds in Section 7.1.
  - C. For the Reserve Requirement: Whenever a Series of Bonds that contains a Balloon Payment is issued, the District Official shall prepare a schedule of principal and interest payments for a hypothetical Series of Bonds that refunds each Balloon Payment in that Series in accordance with Section 6.4.D. The District Official shall prepare that schedule as of the date the Series is sold, and that schedule shall be combined with the schedule for payment of any debt service on Bonds that are secured by the same subaccount, and that combined schedule shall be used to determine the Reserve Requirement as long as that Series is Outstanding.
  - D. Each hypothetical Series of refunding Bonds shall be assumed to be paid in equal annual installments of principal and interest that are sufficient to amortize the principal amount of the Balloon Payment over the term selected by the District Official; however, the District Official shall not select a term that exceeds the lesser of: 30 years from the date the Balloon Payment is originally scheduled to be paid; or, the District's estimate of the remaining weighted average useful life (expressed in years and rounded to the next highest integer) of the assets which are financed with the Balloon Payment. The annual installments shall be assumed to be due on the anniversaries of the date the Balloon Payment is originally scheduled to be paid, with the first installment due on the first anniversary of the date the Balloon Payment is scheduled to be paid. Each installment shall be assumed to bear interest at a rate that is estimated by the District from the Bond Buyer Revenue Bond Index (or if the Bond Buyer Revenue Bond Index is not available, a reasonably comparable index selected by the District) for a revenue bond with a term that is equal to the term of the installment. When the District prepares a schedule described in Section 6.4.A, Section 6.4.B or Section 6.4.C, the District shall use the index that is available to the District on the date the District is required to prepare that schedule.
- 6.5. Interest Subsidy Bonds. The amounts assumed to be paid on Interest Subsidy Bonds shall be calculated as follows:
- A. When calculating Annual Bond Debt Service for the rate covenant in Section 6.2, the District shall subtract from interest to be paid on Interest Subsidy Bonds the federal interest subsidies on Interest Subsidy Bonds that the District reasonably expects, at the beginning of the Fiscal Year, to receive during that Fiscal Year.

- B. When calculating Annual Bond Debt Service and Maximum Annual Bond Debt Service for the tests for issuing Parity Bonds in Section 7, the District shall subtract from the scheduled payments of interest on Interest Subsidy Bonds the amount of federal interest subsidies that the District reasonably expects, at the time the Parity Bonds are issued, to receive.
- C. When calculating the greatest amount of principal, interest and premium, if any, required to be paid in any Fiscal Year on a Series of Interest Subsidy Bonds to determine the Tax Maximum for Interest Subsidy Bonds that are secured by a subaccount in the Bond Reserve Account, the District shall subtract from the scheduled payments of interest on Interest Subsidy Bonds the federal interest subsidies that the District reasonably expects, at the time the Series of Interest Subsidy Bonds is issued, to be paid to the District for the Series of Interest Subsidy Bonds. The District shall not be required to increase the amount the District is required to hold in a subaccount in the Bond Reserve Account if federal interest subsidies are not paid when or in the amounts expected. However, if the District reduces the amount it holds in a subaccount of the Bond Reserve Account because Bonds secured by that subaccount have been paid, the District must take into account its reasonable expectations at the time of reduction in determining the amount that the District must retain in a subaccount of the Bond Reserve Account.

**Section 7. Parity Bonds.**

- 7.1. The District may issue Parity Bonds to provide funds for any purpose relating to the Water System, but only if:
  - A. No Event of Default under this Master Declaration or any Supplemental Declaration has occurred and is continuing;
  - B. At the time of the issuance of the Parity Bonds there is no deficiency in the Debt Service Account and all required deposits to all subaccounts in the Bond Reserve Account have been made;
  - C. There shall have been filed with the District either:
    - (i) A certificate of the District Official stating that both:
      - (a) Coverage Revenues (adjusted as provided in Section 7.2) for the Base Period were not less than one hundred fifteen percent (115%) of Maximum Annual Bond Debt Service on all then Outstanding Bonds, calculated as of the date the Parity Bonds are issued and with the proposed Parity Bonds treated as Outstanding; and
      - (b) Net Revenues (adjusted as provided in Section 7.2) for the Base Period were not less than one hundred twenty five percent (125%) of Maximum Annual Bond Debt Service on all then Outstanding Bonds, calculated as of the date the Parity Bonds are issued and with the proposed Parity Bonds treated as Outstanding; or



- (ii) A certificate or opinion of a Qualified Consultant:
  - (a) Stating the amount of the Adjusted Coverage Revenues and the Adjusted Net Revenues for each of the five Fiscal Years after the last Fiscal Year for which interest on the Parity Bonds is, or is expected to be, capitalized, or, if interest will not be capitalized, for each of the five Fiscal Years after the proposed Parity Bonds are issued; and
  - (b) Concluding that the respective amounts of Adjusted Coverage Revenues in each of the first four Fiscal Years described in Section 7.1.C(ii)(a) are at least equal to one hundred fifteen percent (115%) of the Annual Bond Debt Service for each of those respective Fiscal Years on all Outstanding Bonds, with the proposed Parity Bonds treated as Outstanding; and,
  - (c) Concluding that the respective amounts of Adjusted Net Revenues in each of the first four Fiscal Years described in Section 7.1.C(ii)(a) are at least equal to one hundred twenty-five percent (125%) of the Annual Bond Debt Service for each of those respective Fiscal Years on all Outstanding Bonds, with the proposed Parity Bonds treated as Outstanding; and,
  - (d) Concluding that the amount of Adjusted Coverage Revenues in the fifth Fiscal Year described in Section 7.1.C(ii)(a) is at least equal to one hundred fifteen percent (115%) of the Maximum Annual Bond Debt Service, calculated for the period beginning with that fifth Fiscal Year on all then Outstanding Bonds, with the proposed Parity Bonds treated as Outstanding; and,
  - (e) Concluding that the amount of Adjusted Net Revenues in the fifth Fiscal Year described in Section 7.1.C(ii)(a) is at least equal to one hundred twenty-five percent (125%) of the Maximum Annual Bond Debt Service, calculated for the period beginning with that fifth Fiscal Year on all then Outstanding Bonds, with the proposed Parity Bonds treated as Outstanding.

7.2. The District may adjust Coverage Revenues and Net Revenues for purposes of Section 7.1.C(i) by adding any Coverage Revenues or Net Revenues the District Official calculates the District would have had during the Base Period because of increases in Water System rates, fees and charges which have been adopted by the District and are in effect on or before the date the Parity Bonds are issued. The District shall adjust Coverage Revenues and Net Revenues for the Base Period by eliminating the effect of any withdrawals from or deposits to the Rate Stabilization Account.

7.3. The Qualified Consultant shall calculate Adjusted Coverage Revenues for purposes of Section 7.1.C(ii) as provided in this Section 7.3:

A. The District shall provide the Qualified Consultant with the following information:

- (i) The Base Period, the Coverage Revenues and Net Revenues for the Base Period and the amounts of any withdrawals from or deposits to the Rate Stabilization Account for Fiscal Years that are included in the Base Period;
- (ii) Information regarding any Water System utility properties that are being acquired with Parity Bonds and that have an earnings record;
- (iii) Any changes in rates and charges which have been adopted by the District since the beginning of the Base Period and the dates on which they are scheduled to take effect;
- (iv) Any changes in customers since the beginning of the Base Period; and,
- (v) A description of any extensions or additions to the Water System that were in the process of construction at the beginning of the Base Period or commenced construction after the beginning of the Base Period, the expected date of completion of those extensions or additions, the estimated operating and capital costs of those extensions or additions, and any other changes to the Gross Revenues or Operating Expenses that the District reasonably expects to result from the completion and operation of those extensions or additions.

B. Using the information provided by the District pursuant to Section 7.3.A and any additional information the Qualified Consultant determines is necessary, the Qualified Consultant shall adjust the Coverage Revenues and Net Revenues for the Base Period to eliminate the effect of any withdrawals from or deposits to the Rate Stabilization Account in the manner described in Section 7.2 and may adjust the Coverage Revenues and Net Revenues for the Base Period:

- (i) To reflect any changes that the Qualified Consultant projects will result from the acquisition of Water System utility properties that are being financed with the Parity Bonds and that have an earnings record;
- (ii) To reflect any changes in rates and charges which have been adopted by the District and which are scheduled to take effect during the period described in Section 7.1.C(ii)(a), or which increase rates and charges for inflation at a level which the Qualified Consultant determines is reasonable;
- (iii) To reflect any changes in customers of the Water System that occurred after the beginning of the Base Period and prior to the date of the Qualified Consultant's certificate; and
- (iv) To reflect any changes to Coverage Revenues or Net Revenues not included in the preceding paragraphs that are projected to result from the completion and operation of additions and extensions to the Water System that were under construction at the beginning of the Base Period, or commenced construction after the beginning of the Base Period.

- 7.4. The District may issue Parity Bonds to refund Outstanding Bonds without complying with Section 7.1 if the refunded Bonds are legally or economically defeased on the date of delivery of the refunding Parity Bonds and if the Annual Bond Debt Service on the refunding Parity Bonds does not exceed the Annual Bond Debt Service on the refunded Bonds in any Fiscal Year by more than \$5,000.
- 7.5. Bonds shall be treated as “legally defeased” for purposes of Section 7.4 if they are defeased as provided in Section 13. Bonds shall be treated as “economically defeased” for purposes of Section 7.4 if they have been irrevocably called for redemption/prepayment within one year after the date on which the refunding Bonds are issued, and the District has irrevocably deposited money or Government Obligations with the paying agent or Owner for the refunded Bonds, as applicable, or in escrow with an independent trustee or escrow agent, and the money and any amounts to be received from the Government Obligations have been calculated to be sufficient, without reinvestment, to pay the Bonds that are economically defeased.
- 7.6. All Parity Bonds issued in accordance with this Section 7 shall have a lien on the Net Revenues which is equal to the lien of all other Outstanding Bonds.

**Section 8. Subordinate Obligations.**

The District may issue Subordinate Obligations only if:

- 8.1. The Subordinate Obligations are payable solely from amounts permitted to be deposited in the Subordinate Obligations Account pursuant to Section 4.1.E;
- 8.2. The Subordinate Obligations state clearly that they are secured by a lien on or pledge of the Net Revenues which is subordinate to the lien on, and pledge of, the Net Revenues for the Bonds.

**Section 9. Separate Utility System.**

The District may declare property which the District owns and is part of the Water System (but has a value of less than five percent of the Water System at the time of the declaration), and property which the District has not yet acquired but would otherwise become part of the Water System, to be part of a Separate Utility System. The District may pay costs of acquiring, operating and maintaining Separate Utility Systems from Net Revenues, but only if there is no deficit in the Debt Service Account or the Bond Reserve Account. The District may issue obligations which are secured by the revenues produced by the Separate Utility System, and may pledge the Separate Utility System revenues to pay those obligations. In addition, the District may issue Subordinate Obligations to pay for costs of a Separate Utility System, and may pledge the revenues of the Separate Utility System to pay the Subordinate Obligations.

**Section 10. General Covenants.**

The District hereby covenants and agrees with the Owners of all Outstanding Bonds as follows:

- 10.1. The District shall promptly cause the principal, premium, if any, and interest on the Bonds to be paid as they become due in accordance with the provisions of this Master Declaration and any Supplemental Declaration.
- 10.2. The District shall maintain complete books and records relating to the operation of the Water System and all District funds and accounts in accordance with generally accepted accounting principles, shall cause such books and records to be audited annually at the end of each Fiscal Year, and shall have an audit report prepared by the Auditor and made available for the inspection of Owners.
- 10.3. The District shall not issue obligations which have a lien on the Net Revenues that is superior to the lien of the Bonds except for obligations to pay Operating Expenses.
- 10.4. The District shall promptly deposit the Gross Revenues and other amounts described in this Master Declaration into the funds and accounts specified in this Master Declaration.
- 10.5. The District shall work in good faith to cause the Water System to be operated at all times in a safe, sound, efficient and economic manner in compliance with all health, safety and environmental laws, regulatory body rules, regulatory body orders and court orders applicable to the District's operation and ownership of the Water System.
- 10.6. The District shall maintain the Water System in good repair, working order and condition.
- 10.7. The District shall not enter into any new agreements or arrangements or make any new offers to provide Water System products or services at a discount from published rate schedules or provide free Water System products or services except: a) for District-owned facilities, b) in case of emergencies, c) where the District exchanges services with other Water systems, or d) where in the reasonable judgment of the District such action does not materially reduce the Gross Revenues received by the District.
- 10.8. The District shall at all times maintain with responsible insurers all such insurance on the Water System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties.
  - A. The net proceeds of insurance against material accident to or material destruction of the Water System shall be used to repair or rebuild the damaged or destroyed Water System, and to the extent not so applied, will be applied to the payment or redemption/prepayment of the Bonds.
  - B. The insurance described in Section 10.8 shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the District, or in the form of self-insurance by the District. The District shall establish such fund or funds or reserves which it deems are necessary to provide for its share of any such self-insurance.
- 10.9. The District shall not, nor shall it permit others to, sell, mortgage, lease or otherwise dispose of or encumber all or any portion of the Water System except:

**Commented [PM2]:** It appears this does not include a prohibition from discounting the District's SDCs. Thoughts on that?

**Commented [PM3]:** The various IGAs specifically allow leasing. I would assume that leasing facilities is acceptable in that form. Do we need to make that clear?

- A. The District may dispose of all or substantially all of the Water System, only if the District pays all Bonds or defeases them pursuant to Section 13.
- B. Except as provided in Section 10.9.C, the District will not dispose of any part of the Water System in excess of 510% of the value of the Water System in service unless prior to such disposition either:
  - (i) There has been filed with the District a certificate of a Qualified Consultant stating that such disposition will not impair the ability of the District to comply with the rate covenants contained in Sections 6.1 and 6.2 of this Master Declaration; or
  - (ii) Provision is made for the payment, redemption/prepayment or other defeasance of a principal amount of Bonds equal to the greater of the following amounts:
    - (a) An amount which will be in the same proportion to the net principal amount of Bonds then Outstanding (defined as the total principal amount of Bonds then Outstanding less the amount of cash and investments in the Debt Service Account, the Bond Reserve Account, and the Subordinate Obligations Account) that the Gross Revenues attributable to the part of the Water System sold or disposed of for the 12 preceding months bears to the total Gross Revenues for such period; or
    - (b) An amount which will be in the same proportion to the net principal amount of Bonds then Outstanding that the book value of the part of the Water System sold or disposed of bears to the book value of the Water System immediately prior to such sale or disposition.
- C. The District may dispose of any portion of the Water System that has become unserviceable, inadequate, obsolete, or unfit to be used or no longer necessary for use in the operation of the Water System.
- D. If the ownership of all or part of the Water System is transferred from the District through the operation of law, the District shall to the extent authorized by law, reconstruct or replace such transferred portion using any proceeds of the transfer unless the District reasonably determines that such reconstruction or replacement is not in the best interest of the District and the Owners, in which case any proceeds shall be used for the payment, redemption/prepayment or defeasance of the Bonds.

**Commented [PM4]:** Under Oregon law, a city can withdraw part of a special district's service area. The local assets are transferred without payment. How do we allow for that outcome?  
 BTW, we have an agreement with Beaverton that puts Beaverton on the spot for paying a proportionate share of the debt service.

**Commented [PM5]:** This would account for annexations and withdrawals?

**Section 11. Events of Default and Remedies.**

- 11.1. **Continuous Operation Essential.** District Official hereby finds and determines that the continuous operation of the Water System and the collection, deposit and disbursement of the Net Revenues in the manner provided in this Master Declaration and in any Supplemental Declaration are essential to the payment and security of the Bonds, and the failure or refusal of the District to perform the covenants and obligations contained in this Master Declaration or any such Supplemental Declaration will endanger the necessary

continuous operation of the Water System and the application of the Net Revenues to the operation of the Water System and the payment of the Bonds.

11.2. **Events of Default.** The following shall constitute “Events of Default” so long as they are occurring and have not been cured:

- A. If the District shall fail to pay any Bond principal or interest when due.
- B. Except as provided in Section 11.3, if the District shall default in the observance and performance of any other of its covenants, conditions and agreements in this Master Declaration and the default continues for ninety (90) days after the District receives a written notice, specifying the Event of Default and demanding the cure of such default, from a Credit Provider or from the Owners of not less than 25% in aggregate principal amount of the Bonds Outstanding.
- C. If the District shall sell, transfer, assign or convey any properties constituting the Water System in violation of Section 10.9.
- D. If an order, judgment or decree shall be entered by any court of competent jurisdiction:
  - (i) Appointing a receiver, trustee or liquidator for the District or the whole or any part of the Water System;
  - (ii) Approving a petition filed against the District seeking the bankruptcy, arrangement or reorganization of the District under any applicable law of the United States or the State; or
  - (iii) Assuming custody or control of the District or of the whole or any part of the Water System under the provisions of any other law for the relief or aid of debtors and such order, judgment or decree shall not be vacated or set aside or stayed (or, in case custody or control is assumed by said order, such custody or control shall not be otherwise terminated) within sixty (60) days from the date of the entry of such order, judgment or decree.
- E. If the District shall:
  - (i) Admit in writing its inability to pay its debts generally as they become due;
  - (ii) File a petition in bankruptcy or seeking a composition of indebtedness under any state or federal bankruptcy or insolvency law;
  - (iii) Consent to the appointment of a receiver of the whole or any part of the Water System; or
  - (iv) Consent to the assumption by any court of competent jurisdiction under the provisions of any other law for the relief or aid of debtors of custody or control of the District or of the whole or any part of the Water System.

**Commented [PM6]:** With the exception of transferring the assets to a joint venture under which the District retains capacity, etc., and a comparable economic value.

11.3. **Exception.** It shall not constitute an Event of Default under 11.2.B if the default cannot practicably be remedied within ninety (90) days after the District receives notice of the default, so long as the District promptly commences reasonable action to remedy the default after the notice is received, and continues reasonable action to remedy the default until the default is remedied.

11.4. **Remedies.** If an Event of Default occurs, any Owner may exercise any remedy available at law or in equity including mandamus where applicable. However, the Bonds shall not be subject to acceleration.

A. Books of District Open to Inspection.

(i) The District covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the District and all other records relating to the Water System shall at all reasonable times be subject to the inspection and use of any persons holding at least twenty percent (20%) of the principal amount of Outstanding Bonds and their respective agents and attorneys.

(ii) The District covenants that if the Event of Default shall happen and shall not have been remedied, the District will continue to account, as a trustee of an express trust, for all Net Revenues and other amounts, securities and funds pledged under this Master Declaration.

B. Appointment of Trustee. Whenever any Event of Default exists, Owners representing 51 percent or more of the Outstanding Bonds may appoint a commercial bank or other financial institution with a reported capital and surplus in excess of \$50 million as trustee (the "Trustee") to represent the interests of the Owners.

#### 11.5. Trustee Duties Upon Default.

A. Upon the occurrence of an Event of Default the Trustee may pursue any other available remedy at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the outstanding Bonds, and to enforce any rights of the Trustee under or with respect to the Master Declaration.

B. In addition, upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under the Master Declaration, the Trustee will be entitled, as a matter of right to the fullest extent permitted by Oregon law, to the appointment of a receiver or receivers of the Net Revenues and other amounts pledged under the Master Declaration, pending such proceedings, with such powers as the court making such appointment may confer.

C. If an Event of Default has occurred and is continuing and if requested so to do by the Owners of at least 25% in aggregate principal amount of Outstanding Bonds and indemnified as provided in the Master Declaration, the Trustee will be obligated to

exercise any of the rights and powers conferred by this Master Declaration, as the Trustee, being advised by counsel, deems most expedient in the interest of the Owners.

- D. If a Trustee has been appointed pursuant to 11.4.B, no Owner of any Bond shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under the Master Declaration, unless:
- (i) such Owner has previously given to the Trustee written notice of the occurrence of an Event of Default;
  - (ii) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding have requested the Trustee in writing to exercise its powers under the Master Declaration;
  - (iii) said Owners have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and
  - (iv) the Trustee has refused or failed to comply with such request for a period of 60 days after such written request has been received by the Trustee and said tender of indemnity is made to the Trustee.
- E. If the Trustee takes any judicial or other action in an Event of Default the Trustee has full power in its direction with respect to any continuance, discontinuance, withdrawal, compromise, settlement or other disposition of such action, unless opposed by the written request of the Owners of a majority in aggregate principal amount of the Outstanding Bonds. The Trustee is appointed attorney-in-fact of the Owners for the purpose of bringing any suit action or proceedings in an Event of Default.
- F. Waivers of Event of Default.
- (i) No delay or omission of any Owner or of the Trustee to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or to be an acquiescence therein; and every power and remedy given by this Section 11 to the Owners and to the Trustee may be exercised from time to time and as often as may be deemed expedient by the Owners and/or the Trustee as applicable.
  - (ii) The owners of not less than fifty percent (50%) in principal amount of the affected Bonds that are at the time Outstanding, or their attorneys-in-fact duly authorized, or the Trustee may, on behalf of the Owners of all of affected Bonds, waive any past default under this Master Declaration with respect to such Bonds and its consequences, except a default in the payment of the principal of, premium, if any, or interest on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.



- (iii) If a default occurs under Section 6 and that default has not become an Event of Default, that default shall be deemed waived at the end of the first Fiscal Year following that default in which the District has complied with Section 6.

**11.6. Remedies Granted in Master Declaration Not Exclusive.**

No remedy by the terms of this Master Declaration conferred upon or reserved to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Master Declaration or existing at law or in equity or by statute on or after the date of adoption of this Master Declaration. However, the Bonds shall not be subject to acceleration.

**Section 12. Amendment of Master Declaration.**

- 12.1. This Master Declaration may be amended by Supplemental Declaration without the consent of any Owners for any one or more of the following purposes:
  - A. To cure any ambiguity or formal defect or omission in this Master Declaration;
  - B. To add to the covenants and agreements of the District in this Master Declaration, other covenants and agreements to be observed by the District which are not contrary to or inconsistent with this Master Declaration as theretofore in effect;
  - C. To authorize issuance of Bonds or Subordinate Obligations as permitted by this Master Declaration;
  - D. To modify, amend or supplement this Master Declaration or any Supplemental Declaration to qualify this Master Declaration under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of any Bonds for sale under the securities laws of any of the states of the United States of America;
  - E. To confirm, as further assurance, any security interest or pledge created under this Master Declaration or any Supplemental Declaration;
  - F. To make any change which, in the reasonable judgment of the District, does not materially and adversely affect the rights of the owners of any Outstanding Bonds;
  - G. So long as a Credit Facility (other than a Reserve Credit Facility) is in full force and effect with respect to the Bonds affected by such Supplemental Declaration, to make any other change which is consented to in writing by the issuer of such Credit Facility other than any change which:
    - (i) Would result in a downgrading or withdrawal of the rating then assigned to the affected Bonds by the Rating Agencies;
    - (ii) Changes the maturity (except as permitted herein), the Interest Payment Dates, interest rates, redemption/prepayment and purchase provisions, and provisions

regarding notices of redemption/prepayment and purchase applicable to the affected Bonds or diminishes the security afforded by such Credit Facility;

- (iii) Materially and adversely affects the rights and security afforded to the Owners of any Outstanding Bonds not secured by such Credit Facility; or

- H. To modify any of the provisions of this Master Declaration or any Supplemental Declaration in any other respect whatever, as long as the modification shall take effect only after all affected Outstanding Bonds cease to be Outstanding.
- 12.2. This Master Declaration may be amended for any other purpose only upon consent of Owners of not less than fifty-one percent (51%) in aggregate principal amount of the Bonds Outstanding; provided, however, that no amendment shall be valid without the consent of Owners of 100 percent (100%) of the aggregate principal amount of the Bonds Outstanding which:
  - A. Extends the maturity of any Bond, reduces the rate of interest upon any Bond, extends the time of payment of interest on any Bond, reduces the amount of principal payable on any Bond, or reduces any premium payable on any Bond, without the consent of the affected Owner; or
  - B. Reduces the percent of Owners required to approve Supplemental Declarations.
- 12.3. For purposes of Section 12.2, and subject to Section 12.4, the initial purchaser of a series of Bonds may be treated as the Owner of that Series at the time that series of Bonds is delivered in exchange for payment.
- 12.4. Except as otherwise expressly provided in Section 12.5, Section 12.6 or a Supplemental Declaration, as long as a Credit Facility securing all or a portion of any Outstanding Bonds is in effect, the issuer of such Credit Facility shall be deemed to be the Owner of the Bonds secured by such Credit Facility for the purpose of the execution and delivery of a Supplemental Declaration of any amendment, change or modification of this Master Declaration or the initiation by Owners of any action which under this Master Declaration requires the written approval or consent of or can be initiated by the Owners of at least a majority in principal amount of the affected Bonds at the time Outstanding, or following an Event of Default for all other purposes.
- 12.5. The issuer of a Credit Facility shall not be deemed to be an Owner for purposes of any amendment, change or modification of this Master Declaration which:
  - A. Would result in a downgrading or withdrawal of the rating then assigned to the affected Bonds by the Rating Agencies; or
  - B. Changes the maturity (except as expressly permitted herein), the Interest Payment Dates, interest rates, redemption/prepayment and purchase provisions, and provisions regarding notices of redemption/prepayment and purchase applicable to the affected Bonds or diminishes the security afforded by such Credit Facility; or

- C. Reduces the percentage or otherwise affects the classes of affected Bonds, the consent of the Owners of which is required to effect any such modification or amendment.
- 12.6. No issuer of a Credit Facility shall be entitled to act as an Owner during any period in which:
- A. The issuer's Credit Facility is not in full force and effect;
  - B. The issuer of a Credit Facility shall have filed a petition or otherwise sought relief under any federal or state bankruptcy or similar law;
  - C. The issuer of the Credit Facility shall, for any reason, have failed or refused to honor a proper demand for payment under such Credit Facility; or
  - D. An order or decree shall have been entered, with the consent or acquiescence of the issuer of a Credit Facility, appointing a receiver or receivers or the assets of the issuer of a Credit Facility, or if such order or decree having been entered without the consent or acquiescence of the issuer of a Credit Facility, shall not have been vacated or discharged or stayed within ninety (90) days after the entry thereof.
- 12.7. For purposes of determining the percentage of Owners consenting to, waiving or otherwise acting with respect to any matter that may arise under this Master Declaration, the Owners of Bonds which pay interest only at maturity, and mature more than one year after they are issued shall be treated as Owners of Bonds in an aggregate principal amount equal to the accreted value of such Bonds as of the date the notice is sent requesting consent, waiver or other action as provided herein.

**Section 13. Defeasance.**

- 13.1. The District shall be obligated to pay Bonds which are defeased pursuant to this Section solely from the money and Government Obligations deposited with the escrow agent or trustee, and the District shall have no further obligation to pay the defeased Bonds from any source except the amounts deposited in the escrow. Bonds shall be deemed defeased if the District:
- A. Irrevocably deposits money or Government Obligations in escrow with an independent trustee or escrow agent which are calculated to be sufficient without reinvestment for the payment of Bonds which are to be defeased;
  - B. Files with the escrow agent or trustee a certificate from an independent, certified public accountant to the effect that the money and the principal and interest to be received from the Government Obligations are calculated to be sufficient, without further reinvestment, to pay the defeased Bonds when due; and
  - C. Files with the escrow agent or trustee an opinion of nationally recognized bond counsel that the proposed defeasance will not cause interest on the defeased Bonds to be includable in gross income under the Code.

#### **Section 14. BEO System.**

- 14.1. Unless otherwise provided by a Supplemental Declaration, all Bonds shall be subject to the BEO System pursuant to the provisions of this Section 14.1.
- 14.2. The Bonds shall be initially issued as a BEO security issue with no Bonds being made available to the Owners upon the execution and delivery of the letter of representations among the Paying Agent, DTC and the District. Ownership of the Bonds shall be recorded through entries on the books of banks and broker-dealer participants and correspondents that are related to entries on the DTC BEO system. The Bonds shall be initially issued in the form of separate single fully registered typewritten Bonds for each maturity of the Bonds (the "Global Bonds") in substantially the form attached hereto as Appendix A with such changes as the District Official may approve. Each Global Bond shall be registered in the name of CEDE & CO. as nominee (the "Nominee") of DTC (DTC and any other qualified securities depository designated by the District as a successor to DTC, collectively the "Depository") as the "Registered Owner", and such Global Bonds shall be lodged with the Depository until early redemption or maturity of the Bond issue. The Paying Agent shall remit payment for the maturing principal and interest on the Bonds to the Owner for distribution by the Nominee for the benefit of the owners (the "Beneficial Owner" or "Record Owner") by recorded entry on the books of the Depository participants and correspondents. While the Bonds are in BEO form, the Bonds will be available in denominations of \$5,000 or any integral multiple thereof within a maturity.
- 14.3. In the event the Depository determines not to continue to act as securities depository for the Bonds, or the District determines that the Depository shall no longer so act, then the District will discontinue the BEO system with the Depository. If the District fails to designate another qualified securities depository to replace the Depository or elects to discontinue use of a BEO system, the Bonds shall no longer be a BEO issue but shall be registered in the registration books maintained by the Paying Agent in the name of the Owner as appearing on the Bond register and thereafter in the name or names of the Owners of the Bonds transferring or exchanging Bonds.
- 14.4. While the Bonds are in BEO form, the District and the Paying Agent shall have no responsibility or obligation to any participant or correspondent of the Depository or to any Registered Owner on behalf of which such participants or correspondents act as agent for the Owner with respect to:
  - A. The accuracy of the records of the Depository, the Nominee or any participant or correspondent with respect to any ownership interest in the Bonds;
  - B. The delivery to any participant or correspondent or any other person, other than an Owner as shown in the registration books maintained by the Paying Agent, of any notice with respect to the Bonds, including any notice of redemption/prepayment;
  - C. The selection by the Depository of the beneficial interest in Bonds to be redeemed prior to maturity; or

- D. The payment to any participant, correspondent, or any other person other than the owner of the Bonds as shown in the registration books maintained by the Paying Agent, of any amount with respect to principal of or interest on the Bonds.
- 14.5. Notwithstanding the BEO system, the District may treat and consider the Owner in whose name each Bond is registered in the registration books maintained by the Paying Agent as the Owner and absolute owner of such Bond for the purpose of payment of principal and interest with respect to such Bond, or for the purpose of giving notices of redemption and other matters with respect to such Bond, or for the purpose of registering transfers with respect to such Bond, or for all other purposes whatsoever. The District shall pay or cause to be paid all principal and interest on the Bonds only to or upon the order of the Registered Owner, as shown in the registration books maintained by the Paying Agent, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the District's obligation with respect to payment thereof to the extent of the sum or sums so paid.
- 14.6. Upon delivery by the Depository to the District and to the Owner of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, then the word "Nominee" in this Master Declaration shall refer to such new nominee of the Depository, and upon receipt of such notice, the District shall promptly deliver a copy thereof to the Paying Agent. The Depository shall tender the Bonds it holds to the Paying Agent for re-registration.

**Section 15. Redemption of Bonds.**

- 15.1. Unless otherwise provided by a Supplemental Declaration, all Bonds shall be subject to the redemption terms of this Section 15.
- 15.2. The District reserves the right to purchase Bonds in the open market.
- 15.3. If Bonds are subject to mandatory redemption the Paying Agent shall, without further action by the District, select the particular Bonds to be redeemed in accordance with the mandatory redemption schedule, by lot within each maturity, call the selected Bonds, and give notice of their redemption in accordance with this Section 15.
- 15.4. If certain maturities of Bonds are subject to both optional and mandatory redemption, the District may elect to apply the Bonds which it has previously optionally redeemed to any mandatory redemption maturity. In addition, if the District purchases Bonds which are subject to mandatory redemption, the District may elect to apply against the mandatory redemption requirement any such Bonds which it has previously purchased. If the District makes such an election, it shall notify the Paying Agent not less than sixty days prior to the mandatory redemption date to which the election applies.
- 15.5. So long as the BEO System remains in effect with respect to the Bonds, and unless DTC consents to a shorter period, the Paying Agent shall provide not less than 20 days nor more than 60 days' notice of redemption, and shall provide such information in connection therewith as required by the letter of representations submitted to DTC in connection with the issuance of the Bonds.

- 15.6. During any period in which the BEO System is not in effect with respect to the Bonds, unless waived by any Owner of the Bonds to be redeemed, official notice of any redemption of Bonds shall be given by the Paying Agent on behalf of the District by mailing a copy of an official redemption notice by first class mail postage prepaid at least 20 days and not more than 60 days prior to the date fixed for redemption to the Owner of the Bonds to be redeemed, at the address shown on the Bond Register or at such other address as is furnished in writing by such owner to the Paying Agent. All such official notices of redemption shall be dated and shall state:
- A. The redemption date;
  - B. The redemption price;
  - C. If less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed;
  - D. That on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date; and
  - E. The place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Paying Agent.
- 15.7. The District shall deposit with the Paying Agent, on or before the redemption date, an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.
- 15.8. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the District shall default in the payment of the redemption price or unless the notice was conditional as described in Section 15.9) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the Redemption Price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Paying Agent and shall not be reissued. Notwithstanding that any Bonds called for redemption shall not have been surrendered, no further interest shall accrue on any such Bonds. From and after such notice having been given and such deposit having been made, the Bonds to be redeemed shall not be deemed to be Outstanding hereunder, and the District shall be under no further liability in respect thereof.
- 15.9. Any notice of optional redemption given for the Bonds pursuant to this Section 15 may state that the optional redemption is conditional upon receipt by the Paying Agent of amounts sufficient to pay the redemption price of such Bonds or upon the satisfaction of any other condition, and/or that such notice may be rescinded upon the occurrence of any

other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission or of the failure of any such condition shall be given by the Paying Agent to affected owners of the Bonds as promptly as practicable.

**Section 16. Authentication, Registration and Transfer.**

- 16.1. The provisions of this Section 16 apply only if the Bonds cease to be a BEO issue, and unless otherwise specified in a Supplemental Declaration.
- 16.2. No Bond shall be entitled to any right or benefit under this Master Declaration unless it shall have been authenticated by an authorized officer of the Paying Agent. The Paying Agent shall authenticate all Bonds to be delivered at Closing, and shall additionally authenticate all Bonds properly surrendered for exchange or transfer pursuant to this Master Declaration.
- 16.3. All Bonds shall be in registered form. [Insert Name of Paying Agent] is hereby appointed to serve as Paying Agent for the Bonds. A successor Paying Agent may be appointed for the Bonds by ordinance or resolution of the District. The Paying Agent shall provide notice to Owners of any change in the Paying Agent not later than the Bond payment date following the change in Paying Agent.
- 16.4. The ownership of all Bonds shall be entered in the Bond register maintained by the Paying Agent and the District and Paying Agent may treat the person listed as owner in the Bond register as the owner of the Bond for all purposes.
- 16.5. The Paying Agent shall mail each interest payment on the Interest Payment Date (or the next Business Day if the Interest Payment Date is not a Business Day) to the name and address of the Owner, as that name and address appear on the Bond register as of the Record Date. If payment is so mailed, neither the District nor the Paying Agent shall have any further liability to any party for such payment.
- 16.6. Bonds may be exchanged for an equal principal amount of Bonds of the same Series and maturity which are in different authorized denominations, and Bonds may be transferred to other owners if the Owner submits the following to the Paying Agent:
  - A. Written instructions for exchange or transfer satisfactory to the Paying Agent, signed by the Owner or his attorney in fact and guaranteed or witnessed in a manner satisfactory to the Paying Agent; and
  - B. The Bonds to be exchanged or transferred.
- 16.7. The Paying Agent shall not be required to exchange or transfer any Bonds submitted to it during any period beginning with a Record Date and ending on the next following payment date; however, such Bonds shall be exchanged or transferred promptly following the payment date.

- 16.8. The Paying Agent shall not be required to exchange or transfer any Bonds which have been designated for redemption if such Bonds are submitted to it during the fifteen-day period preceding the designated redemption date.
- 16.9. For purposes of this Section, Bonds shall be considered submitted to the Paying Agent on the date the Paying Agent actually receives the materials described in Section 16.6.
- 16.10. The District may alter these provisions regarding registration and transfer by mailing notification of the altered provisions to all Owners. The altered provisions shall take effect on the date stated in the notice, which shall not be earlier than 45 days after notice is mailed.

**Section 17. The Series [2019] Bonds. [To be completed/adjusted]**

- 17.1. Pursuant to the authority of the Ordinance and this Master Declaration, the District has issued its Water Revenue Bonds, Series [2019], in the aggregate principal amount of \$[[Principal Amount]]. The Series [2019] Bonds shall be Bonds as defined in this Master Declaration. The Series [2019] Bonds shall bear interest payable on \_\_\_\_\_ and \_\_\_\_\_ of each year at the following rates, commencing \_\_\_\_\_, \_\_\_\_\_, and shall mature in the following years in the following principal amounts:

<b>Maturity Date</b> (_____)	<b>Principal Amount (\$)</b>	<b>Interest Rate (%)</b>	<b>CUSIP No.</b> (Base_____)
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- 17.2. The Series [2019] Bonds are subject to redemption at the option of the District prior to their stated maturity dates at any time on or after \_\_\_\_\_, 20\_\_\_\_, as a whole or in part, and if in part, with maturities to be selected by the District at a price of par, plus accrued interest, if any, to the date of redemption. For as long as the Series [2019] Bonds are in book-entry only form, if fewer than all of the Series [2019] Bonds of a maturity are called for redemption, the selection of Series [2019] Bonds within a maturity to be redeemed shall be made by DTC in accordance with its operational procedures then in effect. If the Series [2019] Bonds are no longer held in book-entry only form, then the Paying Agent would select Series [2019] Bonds for redemption by lot.
- 17.3. The Series [2019] Bonds shall be special obligations of the District, and shall be payable solely from the Net Revenues and amounts required to be deposited in the Debt Service Account as required and as provided by this Master Declaration. The Series [2019] Bonds are not general obligations of the District and are payable solely from the amounts described in the previous sentence. [The Series [2019] Bonds are not secured by the Bond Reserve Account or any subaccount therein.]

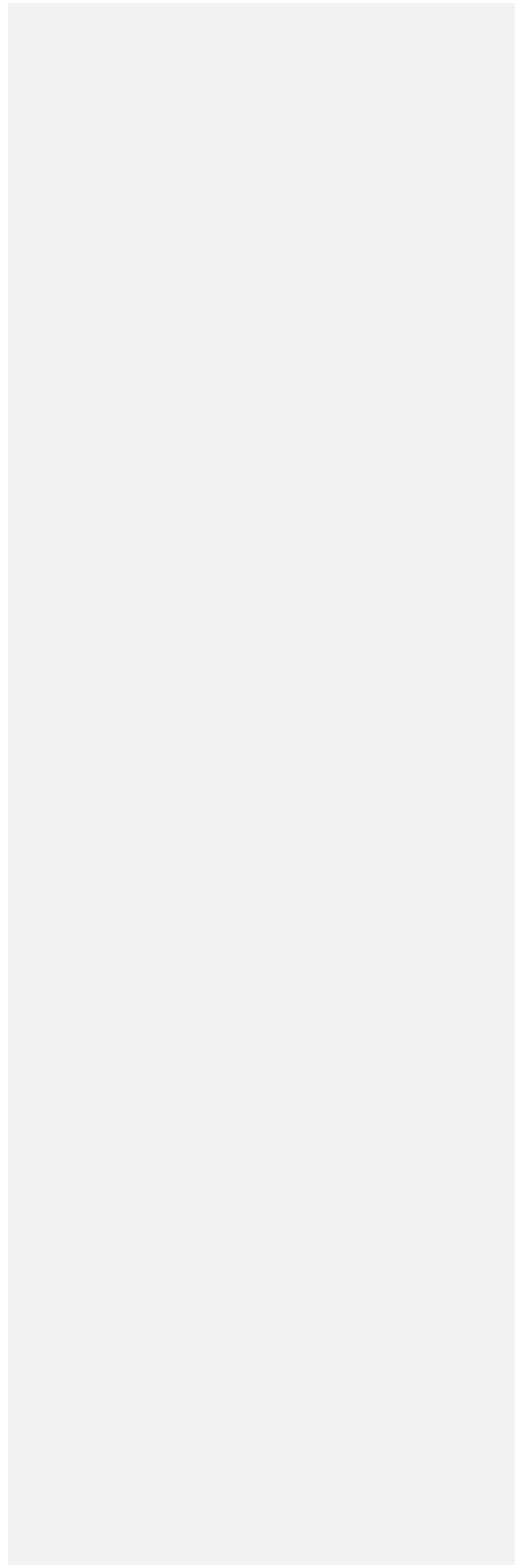


- 17.4. The Series [2019] Bonds shall be in substantially the form attached as Appendix A and shall be signed with the facsimile or manual signature of an authorized District Official.
- A. The Series [2019] Bond proceeds shall be used to finance the projects described in the Ordinance and to pay costs incurred in connection with the issuance of the Series [2019] Bonds.

EXECUTED ON BEHALF OF THE TUALATIN VALLEY WATER DISTRICT BY AN  
AUTHORIZED DISTRICT OFFICIAL AS OF THE \_\_ day of \_\_\_\_\_, \_\_.

**Tualatin Valley Water District, Oregon**

By: \_\_\_\_\_  
Authorized Officer





The Series [2019] Bonds are subject to redemption as described in the Master Declaration and the Official Statement for the Series [2019] Bonds.

Unless the book-entry-only system is discontinued, notice of any call for redemption shall be given as required by the Blanket Letter of Representations to The Depository Trust Company, as referenced in the Master Declaration. Interest on any Series [2019] Bond so called for Rule 15c2-12 of the Securities and Exchange Commission, adopted under the Securities Exchange Act of 1934 shall cease on the redemption date designated in the notice unless the notice is conditional, as permitted by the Master Declaration. The Paying Agent will notify The Depository Trust Company of any Series [2019] Bonds called for redemption not less than 20 days prior to the date fixed for redemption unless DTC consents to a shorter period. If the book-entry-only system is discontinued, notice of redemption shall be given by first-class mail, postage prepaid at least 20 days and not more than 60 days prior to the date fixed for redemption to the registered owner of each Series [2019] Bond to be redeemed at the address shown on the Series [2019] Bond register.

Any exchange or transfer of this Series [2019] Bond must be registered, as provided in the Master Declaration, upon the Series [2019] Bond register kept for that purpose by the Paying Agent. The exchange or transfer of this Series [2019] Bond may be registered only by surrendering it, together with a written instrument of exchange or transfer which is satisfactory to the Paying Agent and which is executed by the registered owner or their duly authorized attorney. Upon registration, a new registered Series [2019] Bond or Series [2019] Bonds, of the same series and maturity and in the same aggregate principal amount, shall be issued to the transferee as provided in the Master Declaration. The Paying Agent and the District may treat the person in whose name this Series [2019] Bond is registered as its absolute owner for all purposes, as provided in the Master Declaration.

**Unless this Series [2019] Bond is presented by an authorized representative of The Depository Trust Company to the issuer or its agent for registration of transfer, exchange or payment, and any Series [2019] Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.**

This Series [2019] Bond shall remain in the Paying Agent's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Paying Agent and The Depository Trust Company.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and things required to exist, to happen, and to be performed precedent to and in the issuance of this Series [2019] Bond have existed, have happened, and have been performed in due time, form, and manner as required by the Constitution and Statutes of the State of Oregon; that the issue of which this Series [2019] Bond is a part, and all other obligations of such District, are within every debt limitation and other limits prescribed by such Constitution and Statutes.

IN WITNESS WHEREOF, the Board of Commissioners of the Tualatin Valley Water District, Oregon, has caused this Series [2019] Bond to be signed by facsimile signature of an authorized District Official as of the date indicated above.

**Tualatin Valley Water District, Oregon**

\_\_\_\_\_  
Authorized Officer

THIS SERIES [2019] BOND SHALL NOT BE VALID UNLESS PROPERLY AUTHENTICATED BY THE PAYING AGENT IN THE SPACE INDICATED BELOW.

CERTIFICATE OF AUTHENTICATION

This Series [2019] Bond is one of a series of \$[[Principal Amount]] aggregate principal amount of Water Revenue Bonds, Series [2019], of the District, issued pursuant to the Master Declaration described herein.

Date of authentication: [Insert Date of Master].

[Insert Name of Paying Agent], as Paying Agent

\_\_\_\_\_  
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto: \_\_\_\_\_

(Please insert social security or other identifying number of assignee)

this Series [2019] Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ as attorney to transfer this Series [2019] Bond on the books kept for registration thereof with the full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of this Series [2019] Bond in every particular, without alteration or enlargement or any change whatever.

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company

Signature Guaranteed

\_\_\_\_\_  
(Bank, Trust Company or Brokerage Firm)

\_\_\_\_\_  
Authorized Officer

The following abbreviations, when used in the inscription on the face of this Series [2019] Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

- TEN COM -- tenants in common
- TEN ENT -- as tenants by the entireties
- JT TEN -- as joint tenants with right of survivorship and not as tenants in common
- OREGON CUSTODIANS use the following:
  - \_\_\_\_\_ CUST UL OREG \_\_\_\_\_ MIN
  - as custodian for \_\_\_\_\_ (name of minor)
  - OR UNIF TRANS MIN ACT
  - under the Oregon Uniform Transfer to Minors Act

Additional abbreviations may also be used though not in the list above.



# FINANCIAL MANAGEMENT POLICIES

Tualatin Valley Water District

[Overview](#)

January 29, 2019

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## **1 INTRODUCTION**

### **1.1 PURPOSE**

The purpose of these Financial Management Policies (“Policies and/or Policy”) is to guide the Tualatin Valley Water District’s (District’s) financial management efforts, including policies related to financial planning, budgeting, debt management, accounting and reporting, business case evaluations, and related matters. These policies affirm the commitment of the District’s Board of Commissioners (the “Board”) to the practices of sound financial management.

The Government Finance Officers Association (GFOA) recommends adopting financial management policies as a best practice. The GFOA states:

*Financial policies are central to a strategic, long-term approach to financial management. Some of the most powerful arguments in favor of adopting formal, written financial policies include their ability to help governments:*

- 1. Institutionalize good financial management practices. Formal policies usually outlive their creators, and, thus, promote stability and continuity. They also prevent the need to re-invent responses to recurring issues.*
- 2. Clarify and crystallize strategic intent for financial management. Financial policies define a shared understanding of how the organization will develop its financial practices and manage its resources to provide the best value to the community.*
- 3. Define boundaries. Financial policies define limits on the actions staff may take. The policy framework provides the boundaries within which staff can innovate in order to realize the organization's strategic intent.*
- 4. Support good bond ratings and thereby reduce the cost of borrowing.*
- 5. Promote long-term and strategic thinking. The strategic intent articulated by many financial policies necessarily demands a long-term perspective from the organization.*
- 6. Manage risks to financial condition. A key component of governance accountability is not to incur excessive risk in the pursuit of public goals. Financial policies identify important risks to financial condition.*
- 7. Comply with established public management best practices. The Government Finance Officers Association (GFOA), through its officially adopted Best Practices endorsement of National Advisory Council on State and Local Budgeting (NACSLB) budget practices and the GFOA Distinguished Budget Presentation Award Program, has recognized financial policies as an essential part of public financial management.*

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### **1.2 GOALS AND OBJECTIVES**

These Policies sets forth the guidelines for the management of the District's financial affairs. These Policies establish requirements that recognize the District's specific financial, capital, and accounting requirements, its ability to fulfil its financial obligations, and the existing legal, economic, financial conditions. Specifically, the Policies are intended to assist the District in the following:

- a) Establishing accounting procedures;
- b) Making business decisions for operations and capital expenditures;
- c) Evaluating available debt issuance options;
- d) Protecting the District's financial resources;
- e) Maintaining appropriate capital assets for present and future needs;
- f) Promoting sound financial management through accurate and timely information on financial conditions;
- g) Protecting and enhancing the District's credit rating(s);
- h) Controlling appropriations processes by developing budgets consistent with Oregon local budget law; and
- i) Protecting the legal use of the District's financing authority through an effective system of internal controls.

The District's investment policy is maintained separately and approved separately by the Board as required by Oregon law.

### **1.3 ROLES AND RESPONSIBILITIES**

The Chief Financial Officer (CFO) is the designated administrator of these Policies. The CFO shall have the day-to-day responsibility and authority for implementing and managing the District's accounting, debt, and finance programs.

The Board acknowledges that changes in the accounting standards, capital markets and other events may create situations and opportunities that are not contemplated by these Policies. These unexpected events may require adjustments or exceptions to the guidelines of these Policies. In such circumstances, the ability of the District to be flexible is important; however, any authorization granted by the Board to proceed with using a debt instrument not expressly permitted by the Policies must be approved by the Board before the action is taken by the District.

The Board shall review and adopt these Policies at least biennially.

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## **2 LONG-RANGE FINANCIAL PLAN**

### **2.1 PURPOSE**

This Policy provides guidance on conducting the District's long-range financial plan (Financial Plan). The Policy includes specific limits and requirements to guide the District's long-range financial plan.

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Long-term financial planning combines financial forecasting with strategic planning. The process of developing a long-range financial plan is a highly collaborative and considers future scenarios and helps the District navigate challenges. Long-term financial planning works best as part of an overall strategic plan.

Financial forecasting is the process of projecting revenues and expenditures over a long period, using assumptions about economic conditions, future spending scenarios, and other important variables. Long-term financial planning is the process of aligning financial capacity with long-term service objectives. Financial planning uses forecasts to provide insight into future financial capacity so that strategies can be developed to achieve long-term sustainability considering the District's service objectives and financial challenges.

### **2.2 GOALS**

The District's long-term financial planning process is intended to stimulate discussion and create a long-range perspective for the Board and other decision makers. The Financial Plan assists in avoiding financial challenges; stimulating long-term and strategic thinking; creating a consensus on long-term financial direction; and communicating with internal and external stakeholders.

This Policy sets forth the guidelines for the development and maintenance of the District's Financial Plan. The Policy establishes parameters which recognize the District's specific financial situation and long-term goals. Specifically, the Policy is intended to assist the District in the following:

1. Setting water rates over the long term, thereby avoiding unnecessary and/or unexpected large increases in rates and customer bills.
2. Providing the Board, customers, and the debt market insight into the District's long-term financial needs.
3. Promoting sound financial management through long-range planning.
4. Contributing to the preservation or enhancement of the District's credit rating(s).
5. Informing the biennial operating and capital budget development process by identifying current budgetary needs and considering the phasing of changes to service levels, particularly capital improvement projects.

### **2.3 REQUIREMENTS**

#### **2.3.1 Biennial Preparation of Financial Plan**

At least biennially, the CFO shall work with the District's Chief Executive Officer (CEO), Chief Engineer, and other managers to update the District's Financial Plan that forecasts the District's financial needs and financial results for no fewer than 10 years. Once prepared, the CFO shall present the proposed Financial Plan to the Board for its consideration and approval. Once approved, the CFO shall update Appendix A of this document to reflect the financial planning assumptions contained in the Board-approved Financial Plan.

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The Financial Plan should consider new and updated information contained in other planning documents such as the District's Water Master Plan, Capital Improvement Plan, and biennial Budget as described further under section 3.4.6 below.

### **2.3.2 Required Components of Financial Plan**

At a minimum, the Financial Plan shall include:

1. Forecast of sources and uses of funds.
2. Forecast of operating expenses.
3. Forecast of capital expenditures.
4. Forecast the use of cash ("pay as you go") and debt issuance for capital needs
5. Forecast of debt service requirements for existing debt and planned debt.
6. Project the impact of new capital projects on the District's debt.
7. Designated levels of cash reserves and/or assumptions regarding external credit facilities (e.g., bank lines of credit) in lieu of (or in addition to) cash reserves.
8. Forecast compliance with debt covenants (e.g., additional bonds tests, debt service coverage ratios)
9. Forecast of growth in customers and demands.
10. Forecast of future rate increases and revenues.

### **2.3.3 Financial Planning Assumptions**

Appendix A presents the assumed values to be used in the District's Financial Plan until another Board-approved financial plan results in its revision. This Appendix will be updated as described in Section 2.3.1 above.

---

## **3 DISTRICT BUDGET**

### **3.1 PURPOSE**

The District makes program and service decisions to allocate scarce resources for operational and capital needs through its budget process. As a result, the budget process is one of the most important activities undertaken by the District. The quality of decisions resulting from the budget process and the level of their acceptance depends on the budget process that is used.

### **3.2 GOALS**

The District's budget is intended to help decision makers (including the Board and Budget Committee) make informed choices about the provision of services and capital projects and to promote participation by the District's stakeholders in the process. The District's budget provides guidance to the management of the District by:

1. Establishing priorities for work during the budget period.
2. Establishing the legal spending limits for achieving those priorities.

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### **3.3 RESPONSIBILITIES**

The Board shall appoint the District's Budget Officer by resolution. The Budget Officer is responsible for the preparation of the District's budget in compliance with Oregon local budget law.

### **3.4 REQUIREMENTS**

#### **3.4.1 Biennial Budget Process**

The District shall adopt a biennial budget (Budget) consistent with Oregon law. The Budget provides a short-term financial expenditure plan and promote efficiencies. The Budget shall be prepared and adopted in accordance with State legal requirements and conform to standards consistent with nationally recognized practices.

#### **3.4.2 Citizens Budget Committee**

Oregon law requires the District to have a citizens' budget committee (Budget Committee). The Budget Committee consists of 10 members: Five citizen members appointed by the Board of Commissioners, and the five commissioners.

The citizen members of the Budget Committee shall be appointed for a term of 4 years. The appointments will be offset by two years so that at most three committee positions will have their terms end at once.

As required by Oregon law, the citizen members of the Budget Committee must be electors of the District. Should a citizen member of the Budget Committee resign, or otherwise become ineligible to serve as a citizen member, the Budget Officer shall notify the Board President of such vacancy. The Board may direct the Budget Officer, the CEO, or the CFO to undertake an effort to fill the vacant position. Vacancies in citizen member positions of the Budget Committee shall be filled by vote of the Board.

Citizen members of the Budget Committee whose term is expiring may elect to reapply to the Budget Committee. The Budget Officer shall advise the Board President of such elections and the Board shall direct the Budget Officer, the CEO, or the CFO to undertake an effort to find candidates for expiring positions. Consistent with Oregon law, the appointment of the citizen members of the Budget Committee is by official action of the Board.

#### **3.4.3 Balanced Budget**

The Budget proposed by the Budget Officer to the Budget Committee must present a balance of resources and requirements as required by Oregon law.

#### **3.4.4 Basis of Budgeting**

The District prepares its budget on a modified accrual basis. For budget purposes, the District recognizes revenues when they are both measurable and available. Measurable means the amount of the transaction can be determined and revenues are considered available when they are collected within the current period or expected to be collected soon enough thereafter to be used to pay liabilities of the current period. Expenses are recognized when the liability is

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incurred. An exception to this rule on recognizing expenses is debt service. The payment of debt service is recognized when payments are due. Other accounting treatments under generally accepted accounting principles (GAAP) such as depreciation, are not considered expenses under the District's budgetary basis.

### **3.4.5 Sufficiency of Operating Revenues**

The District's budget shall require that operating revenues be sufficient to cover operating expenses (excluding depreciation), and that net revenues are sufficient to comply with bond covenant requirements each year. Sufficiency of operating revenues shall be included in determining water rates, fees, and charges, as described in Sections 4.3.2, 4.3.4, and 4.3.5 below.

### **3.4.6 Capital Planning**

The District shall periodically review and update its Water System Master Plan and Water Management and Conservation Plan to satisfy the requirements for these plans under Oregon administrative rules and statutes. The review and update should consider information contained in other planning documents and provide the District with a coordinated capital plan for system development and an overview of source options to meet growth needs.

Each biennium, the District shall develop and adopt a six-year Capital Improvement Plan (CIP) that details capital projects and fixed asset acquisitions for the District consistent with its Water System Master Plan, Financial Plan (as described in section 2 above), fleet and facility plans, and capital plans prepared by other agencies with whom the District has contractual or other legal obligations (e.g., the District's joint ventures). The District's Chief Engineer will prioritize the projects in the CIP according to need, and identify significant operating expenses associated with each project that will be required when the asset is placed into service.

Where practical and in the District's best interest, the District may use a blend of cash and debt funding for capital infrastructure. Normal repair and maintenance will be funded only with cash from operations. Debt will be considered as an optional financing mechanism for long-lived improvements and expansions or one-time major system component replacements. As part of the CIP process, the CFO will analyze the proposed capital projects so that each project is funded from an appropriate revenue source.

### **3.4.7 Supplemental Budgets**

When necessary, the Budget Officer may notify the Board of the need to consider a supplemental budget. Supplemental budgets will be prepared and propose action shall be noticed as required by Oregon local budget law.

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## **4 WATER RATES, FEES, AND CHARGES**

### **4.1 PURPOSE**

This Policy provides guidance on setting the District's water rates, fees, and charges. The Policy describes the Board's general rate-setting goals and directives.

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### **4.2 GOALS**

The District recovers its costs from water sales and other fees and charges assessed on customers. Setting rates, fees, and charges includes a combination of technical analysis and policy implementation. The goal of this Policy is to provide the District's management guidance in setting rates, fees, and charges consistent with the Board's Policy direction.

### **4.3 REQUIREMENTS**

#### **4.3.1 Cost-of-Service Framework**

The District's water rates, fees, and charges should reflect the costs of providing the various services to the District's customers, following generally accepted ratemaking methodologies. The cost of service should include operating and capacity costs and send appropriate price signals to customers to encourage the wise use of water.

#### **4.3.2 Water Rates**

Water rates should be adjusted annually, with those annual adjustments adopted on a biennial or annual basis depending on financial planning needs (e.g. projected revenue requirements) or specific direction from the Board. The proposed water rate increases will be consistent with the Board-approved Financial Plan discussed in Section 2.3.1 above.

To the extent possible, the District should use the financial planning process to anticipate increases in costs for future years to avoid sudden and/or unexpected rate increases. The District should use the Financial Plan described in Section 2 above to inform its rate-setting process.

Consistent with Oregon law, the District will set its rates by resolution or ordinance after conducting a public hearing, if required.

#### **4.3.3 System Development Charges**

System development charges (SDCs) are intended to implement the cost-of-service framework for new and existing customers. SDCs are one-time charges made to new connections to the District's water system to recover growth-related costs.

SDCs may be updated consistent with Oregon law. SDCs will generally be updated each year during the Board's regular meeting in February with an effective date of March 1<sup>st</sup>. Unless increased pursuant to a formal SDC study, the District may increase the SDC as allowed under Oregon law based on changes to the *Engineering News Record* Construction Cost Index for Seattle (ENR CCI) as published for the December prior to the SDC adoption. If SDCs are adopted to have an effective date other than March 1, the ENR CCI for another more appropriate month may be used.

#### **4.3.4 Services Provided to Other Utilities**

When in the interest of the District's customers, the District may provide services, including the provision of wholesale water, utility billing, meter reading or other water-related services, to other utilities, including joint ventures. In such cases, the rates and fees charged to the other utilities should, at a minimum, recover the estimated cost of providing those services. The



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provision of services to other utilities will require Board approval, normally through approving the signing of an intergovernmental agreement.

### **4.3.5 Miscellaneous Fees and Charges**

The District assesses many fees and charges for miscellaneous services to customers and meter and service installations. In addition, the District may assess fees for development plan review and inspection, fire hydrant use permits, and penalty fees for non-payment of utility bills and unauthorized use of water or firelines. These charges should be reviewed at least biennially to reflect the cost of providing the services. When the costs of service have changed a material amount, the CFO shall propose changes to the miscellaneous fees and charges to the Board for its consideration. Fees and charges shall be set by the Board by resolution or ordinance.

### **4.3.6 Forgiveness of Fees and Charges**

The CEO or designee may waive all or a portion of *Other Service Charges & Penalties*, as adopted by the Board, if the CEO or designee determines that it is in the equitable and best interest of the District considering the particular circumstances involved in each case.

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## **5 MINIMUM FUND BALANCES AND RESERVES**

### **5.1 PURPOSE**

Maintaining fund balances is an important function for the District to operate efficiently over the long run. This policy guides the development of minimum cash balances that directly affect the District's Financial Plan (See Section 2 above), rates and charges (see Section 4 above), and budget (see Section 3 above). The accumulation or use of fund balances and reserves is one mechanism that financial decision in one year can affect future years. This policy provides guidance on making those decisions.

### **5.2 GOALS**

The decision to retain financial resources in fund balance or reserves directly affects:

1. Financial risks to the District from unexpected disruptions to revenue or unexpected expenditures.
2. Water rates required in the current and future years.
3. The District's credit rating(s).
4. Other financial related matters.

Because of the nature of these effects, these Policies provide management guidance from the District's Board in developing the various plans proposed to the Board.

### **5.3 REQUIREMENTS**

#### **5.3.1 Working Capital**

As an enterprise fund, the District separately measures its current and non-current assets and liabilities. The District can use this distinction to calculate working capital (i.e., current assets less current liabilities). The measure of working capital indicates the relatively liquid portion of the District's capital, which constitutes a margin or buffer for meeting obligations.

The District should maintain an adequate level of working capital to mitigate current and future risks (e.g., revenue shortfalls and unanticipated expenses) and to provide stable services and fees. Working capital is a crucial consideration, too, in the Financial Plan (See Section 2 above.) Credit rating agencies consider the availability of working capital in their evaluations of the District's creditworthiness.

The District shall maintain working capital consistent with the levels of working capital presented in Appendix A, as revised in the future. Working capital shall be at least equal to the two months' operations and maintenance expense (i.e., 60 days cash on hand).

#### **5.3.2 Capital Reserves**

The District's rate setting goals include a preference to avoid sudden and/or unexpected rate increases for customers. Capital reserves are one mechanism the District can use to lower the overall costs of acquiring capital assets by saving money early in the planning process.

Capital reserve levels shall be determined through the financial planning process and identified in the District's Financial Plan (see Section 2.3.1 above).

#### **5.3.3 Debt Service Reserves**

Debt Service Reserves shall be treated as described in Section 6.3.4.5 below.

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## **6 DEBT FINANCING**

### **6.1 PURPOSE**

These Policies provide guidance on the issuance, structure, and management of the District's long- and short-term debt.

### **6.2 GOALS**

The Policy sets forth the guidelines for the issuance of debt and the management of outstanding debt. The Policy establishes certain limits which recognize the District's capital requirements, its ability to repay financial obligations, and the existing legal, economic, financial, and debt market conditions. Specifically, the Policy is intended to assist the District in the following:

1. Evaluating available debt issuance options;
2. Maintaining appropriate capital assets for present and future needs;
3. Promoting sound financial management through accurate and timely information on financial conditions;

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4. Protecting and enhancing the District's credit rating(s); and
5. Safeguarding the legal use of the District's financing authority through an effective system of internal controls.

### **6.3 REQUIREMENTS**

#### **6.3.1 Type and Use of Debt**

The District shall comply with the all debt limitations imposed by the Oregon constitution, Oregon Revised Statutes (ORS), and Oregon Administrative Rules (OAR). The District will further comply with Security and Exchange Commission (SEC) and Municipal Securities Rulemaking Board (MSRB) rules regarding debt issuance, and with IRS regulations for tax-exempt or tax-advantaged debt.

Long-term obligations will not be used to fund operations of the District. The scope, requirements, and demands of the budget, reserve levels, the Financial Plan, and the ability or need to expedite or maintain the programmed schedule of approved capital projects, will also be considered when deciding to issue long-term debt. All borrowings will be authorized by the District's Board.

The District is authorized to issue general obligation bonds and revenue bonds. Except in unique circumstances, the District will primarily rely on revenue bonds to fulfill its debt issuance needs.

##### **6.3.1.1 Revenue Bonds**

Revenue bonds are obligations payable from the net revenues of the District's operations. As users of the District facilities will benefit from long-term capital investments in future years, it is appropriate that future revenues pay a share of the costs and more closely match the term of repayment to the expected economic useful life of the project being financed.

Long-term revenue bonds issued by the District shall only be used to finance and refurbish capital facilities, projects and certain equipment where it is determined to be cost effective and fiscally prudent. Revenue bonds will be structured to achieve the lowest possible net cost to the District considering market conditions, terms that are advantageous to the District, risks, the Financial Plan, and the nature and type of security to be provided.

Although revenue bonds are not subject to constitutional or statutory debt limits, the District's debt will not exceed legal or contractual limitations, such as rate covenants or additional bonds tests imposed by then-existing financing covenants. Prior to the issuance of any new revenue bonds, the CFO will cause the impact of future debt service payments on total annual fixed costs to be analyzed.

In addition to the legal and/or contractual requirements associated with revenue bonds, the District will strive to maintain a minimum annual debt service coverage ratio of 2.0 times average annual debt service or another ratio when included in Appendix A.

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### **6.3.1.2 General Obligation Bonds**

General obligation bonds are payable from a dedicated tax levy and subject to voter approval. The District shall not generally use general obligation bonds to finance projects, other than projects of a general public nature. In no cases shall the District's outstanding general obligation debt exceed the statutory debt limit. General obligation bonds will mature no later than 30 years from their issue date.

### **6.3.1.3 Variable Rate Obligations**

The District will generally seek to obtain financing through fixed rate obligations. When appropriate, however, the District may choose to issue variable rate obligations. Such variable rate obligations may pay a rate of interest that varies according to a predetermined formula or a rate of interest that is based on a periodic remarketing of securities.

Types of variable rate obligations may include variable rate demand obligations, commercial paper, and floating-rate notes. Each type of variable rate obligation carries its own risks and considerations. Prior to issuing any variable rate debt, the CFO will consult with the District's Municipal Advisor to evaluate the risks and benefits of a particular type of debt. The Municipal Advisor will also provide a formal recommendation to the Board.

The maximum level of net variable rate obligations incurred shall not exceed the lessor of the District's unrestricted reserves or 20% of outstanding debt. In calculating "net" variable rate debt, the District will consider interest-rate swaps. Prior to considering any interest rate swaps, the District will establish a separate swaps policy.

### **6.3.1.4 Anticipation Notes**

The District may issue short-term notes to be repaid with the proceeds of state or federal grants/loans or other anticipated one-time revenue sources if appropriate for the project and in the best interest of the District. Generally, such grant or revenue anticipation notes ("GANs" or "RANs") will only be issued if there is no other viable source of up-front cash for the project, although the District may elect to utilize such notes if they provide a financial benefit under the Financial Plan. Anticipation notes may be secured by a revenue pledge on parity with or subordinate to the District's long-term revenue bonds. Prior to embarking on selling anticipation notes the District must identify a secondary source of repayment for the notes if expected grant/loan funding does not occur.

### **6.3.1.5 Lease Financings**

Lease obligations are a routine and can be an appropriate means of financing certain types of equipment. Generally, however, leases are not appropriate for long-term financing of capital assets such as land or facilities. The CFO should consider leases where lease financing will be more beneficial than funding from reserves or current revenues. The useful life of capital equipment, the term and conditions of the lease, the direct impact on debt capacity and budget flexibility will be evaluated prior to the implementation of a lease program. Cash flow sufficiency, capital program requirements, lease program structures and cost, and market factors will be considered by the CFO in conjunction with "pay-as-you-go" strategies in lieu of lease financing.

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### **6.3.2 Federal, State, or Other Loan Programs**

To the extent it benefits the District, the District may participate in federal, state, or other loan programs. The CFO shall evaluate the requirements of these programs to determine if the District is well served by employing them.

For purposes of this Policy, the District shall treat and report these obligations in a manner consistent with other similar debt instruments. To the extent required by the loans or other outstanding debt agreements, the District shall include the financial requirements of these obligations when determining additional bonds test, coverage requirements, etc.

### **6.3.3 Debt Refinancing**

Refunding obligations may be issued to retire all or a portion of an outstanding debt issue. Economic refundings may refinance high-coupon debt at lower interest rates to effectuate debt service savings. Alternatively, the District may conduct a refunding for reasons other than cost savings, such as to restructure debt service payments, to change the type of debt instruments, to release restricted revenues, to ease administrative requirements, or to remove undesirable covenants.

The District will target current refundings (refundings within 90 days of the call date) that produce net present value savings of at least 3% of the refunded par amount of each maturity being refunded. Refundings producing less than 3% net present value savings for each maturity being refunded will be considered for other purposes, such as to restructure debt service payments, to change the type of debt instruments, to release restricted revenues, to ease administrative requirements, or to remove undesirable covenants.

The District will target advance refundings (refundings that occur more than 90 days prior to the call date of the refunded bonds) that produce net present value savings (including cash contributions and foregone interest earnings) of at least 5% of the refunded par amount of each maturity being refunded, and achieve at least 50% escrow efficiency (where escrow efficiency is defined such that negative arbitrage does not exceed 50% of net present value savings). Refundings producing less than 5% net present value savings for each maturity being refunded may be considered for other purposes, such as to restructure debt service payments, to change the type of debt instruments, to release restricted revenues, to ease administrative requirements, or to remove undesirable covenants. (As of January 2018, advance refundings may no longer be issued on a tax-exempt basis.)

The District may also consider alternatives to current and advance refundings (e.g., delayed-delivery refundings) in consultation with its Municipal Advisor and bond counsel. In evaluating such alternatives, the CFO will consider the proposed structure, and establish a required threshold of interest rate savings.

The CFO will monitor refunding opportunities for all outstanding debt obligations on a periodic basis applying established criteria in determining when to issue refunding debt and bring forth the recommended opportunities with appropriate Board actions and related documentation.

### **6.3.4 Debt Structure Considerations**

#### **6.3.4.1 Maturity of Debt**

The final maturity of the debt shall not exceed, and preferably be less than, the remaining useful life of the assets being financed, and to comply with Federal tax regulations, the average life of a financing shall not exceed 120% of the average life of the assets being financed.

#### **6.3.4.2 Debt Service Structure**

Debt service payments for any new money debt issue will generally be structured to create approximately level debt service payments over the life of the debt. Exceptions are permitted for refunding debt that will have varying principal repayments structured to fill in the gaps created by refunding specific principal maturities. The CFO may also structure the amortization of principal to wrap around existing obligations or to achieve other financial planning goals. Deferring the repayment of principal should be avoided except in select instances where it will take time before project revenues are sufficient to pay debt service.

#### **6.3.4.3 Lien Structure**

Senior and subordinate liens may be used to maximize the most critical constraint, either cost or capacity, thus allowing for the most beneficial leverage of revenues.

#### **6.3.4.4 Capitalized Interest**

The District may elect to fund capitalized interest in connection with the construction of certain projects, if revenue from such projects is not initially available to pay debt service on related debt. Additionally, the District may consider funding capitalized interest if such a strategy will minimize the financial impact to of such borrowing on District ratepayers.

#### **6.3.4.5 Reserve Funds**

A reserve fund for a debt issuance may be required for credit rating or marketing reasons. If required, such reserve fund can be funded with:

1. The proceeds of a debt issue,
2. The reserves of the District, or
3. A surety policy.

A cash reserve fund will be invested pursuant to the investment restrictions associated with the respective financing documents and the District's separate investment policy. For each debt issue, the CFO will evaluate whether a reserve fund is required for credit rating or marketing purposes and the benefits of funding or maintaining the reserve requirement with cash or a surety policy, in addition to determining the benefits of borrowing the necessary funds or using cash reserves.

#### **6.3.4.6 Redemption Provisions**

In general, the District will have the right to optionally redeem debt at par no later than 10 1/2 years after issuance. Redemption provisions will be established on a case-by-case basis, taking into consideration market conditions and the results of a call option analysis prior to the time of

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sale. Because the issuance of non-callable debt may restrict future financial flexibility, cost will not be the sole determinant in the decision to issue non-callable debt.

### **6.3.4.7 Credit Enhancement**

Credit enhancement (e.g., bond insurance or letters of credit) on District financings will only be used when net debt service is reduced by more than the cost of the enhancement. The District will evaluate the availability and cost/benefit of credit enhanced debt versus unenhanced debt prior to issuing any debt.

### **6.3.5 Method of Sale**

The District will select a method of sale that is the most appropriate when considering the financial, market, transaction-specific and District-specific conditions and advantages. There are three basic methods of sale: Competitive Sale, Negotiated Sale, and Direct Placement. Each type of debt sale has the potential to provide the lowest cost given the right conditions. The CFO will select the most appropriate method of sale considering the prevailing financial, market and transaction-specific conditions. If a negotiated sale is expected to provide overall benefits, the senior managing underwriters and co-managers shall be selected through the process described below.

### **6.3.6 Investment of Proceeds**

Investment of proceeds are subject to the District's separately adopted Investment Policy. The District shall competitively bid the purchase of securities, investment agreements, float contracts, forward purchase contracts and any other investment products used to invest proceeds of a financing. The District shall comply with all applicable Federal, State, and contractual restrictions regarding the use and investment of financing-related funds. The primary investment objectives are safety, liquidity, and yield. The District's independent investment advisor must be a registered Investment Advisor. The District shall diversify invested proceeds to reduce risk exposure to providers, types of investment products and types of securities held. The District will require that all fees resulting from investment services or sale of products to the District be fully disclosed to the District (including fees paid by third parties) to avoid actual or perceived conflicts of interest on whether the investments are being purchase at a fair market price, consistent with the District's Investment Policy.

### **6.3.7 Credit/Ratings Objectives**

The District's objective is to maintain an appropriate credit rating (or ratings) considering the District's financial condition as a way of balancing financing costs and cash flow. The CFO shall be responsible for implementing and managing the District's credit rating agencies relations program. This effort shall include providing the rating agencies with the District's annual budget, financial statements and other information they may request. Full disclosure of operations will be made to the credit rating agencies. The CFO shall also coordinate periodic meetings with the rating agencies and communicate with them prior to each debt issuance. The District will evaluate the benefits of a higher rating at lower debt cost versus a lower rating that provides more debt capacity and flexibility.



### **6.3.8 Investor Relations**

The CFO shall be responsible for implementing and managing the District's investor relations program. The CFO will also be responsible for responding to inquiries from institutional and retail investors, and for proactively communicating with such investors if necessary. Such communication shall be made only as permitted under applicable federal securities laws, in consultation with the District's bond counsel.

### **6.3.9 Tax and Arbitrage Rebate Compliance**

The District will comply with all financing covenants to maintain the validity of the issuance of debt, including, but not limited to tax-exemption, Arbitrage Rebate compliance, insurance provisions, reporting and monitoring requirements. Any instance of noncompliance will be reported to the Board.

#### **6.3.9.1 Post Issuance Tax Compliance**

##### **6.3.9.1.1 External Advisors and Documentation**

The District shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the debt issuance process to identify requirements and to establish procedures necessary or appropriate so that the bonds or other obligations will continue to qualify for tax-exempt status, if applicable. Those requirements and procedures shall be documented in the tax certificate and agreement ("Tax Certificate") and/or other documents finalized at or before issuance of the bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and certain other applicable post-issuance requirements of federal tax law throughout (and, in some cases, beyond) the term of the bonds. This shall include, without limitation, consultation in connection with any potential changes in use of bond-financed or refinanced assets.

The District may engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of bond proceeds, unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of bonds. Unless otherwise provided by the transaction documentation relating to the bonds, unexpended bond proceeds shall be segregated from other funds of the District, and the investment of bond proceeds shall be managed by the District. The District shall prepare (or cause to be prepared) regular, periodic statements regarding the investments and transactions involving bond proceeds.

##### **6.3.9.1.2 Arbitrage Rebate and Yield**

Unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of bonds, the CFO, or persons reporting to the CFO, shall be responsible for:

1. Either (1) engaging the services of a Rebate Service Provider and, prior to each rebate calculation date, causing the trustee or other financial institution to deliver periodic statements concerning the investment of bond proceeds to the Rebate Service Provider, or (2) undertaking rebate calculations themselves and retaining and obtaining periodic statements concerning the investment of bond proceeds;



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2. Providing to the Rebate Service Provider additional documents and information reasonably requested;
3. Monitoring efforts of the Rebate Service Provider;
4. Assuring payment of required rebate amounts, if any, no later than 60 days after each five-year anniversary of the issue date of the bonds, and no later than 60 days after the last bond of each issue is redeemed;
5. During the construction period of each capital project financed in whole or in part by bonds, monitoring the investment and expenditure of bond proceeds and consulting with the Rebate Service Provider to determine compliance with any exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months, or two years, as applicable, following the issue date of the bonds; and
6. Retaining copies of all arbitrage reports, investment records, and trustee statements.

### 6.3.9.1.3 Use of Bond Proceeds and Bond-Financed or Refinanced Assets

The CFO, or persons under the supervision of the CFO, shall be responsible for:

1. Monitoring the use of bond proceeds (including investment earnings and reimbursement of expenditures made before bond issuance) and the use of the financed asset throughout the term of the bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the bonds;
2. Maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of bonds (including investment earnings and reimbursement of expenditures made before bond issuance), including a final allocation of the bond proceeds documented on or before the later of 18 months after an expenditure is paid or the related project is placed in service, and in any event before the fifth anniversary of the bond issuance;
3. consulting with bond counsel, other legal counsel, and other advisors in the review of any change in use or transfer of bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the bonds;
4. To the extent the District discovers that any applicable tax restrictions regarding use of bond proceeds and bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel, other legal counsel, and other advisors to determine a course of action to preserve the tax-exempt status of the bonds (if applicable).

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### **6.3.10 Disclosure Documents**

The District is required to provide disclosure, generally in the form of an official statement, relating to each public offering of debt. The District is responsible for providing complete and accurate information to be included in the official statement and is responsible for the overall content of the document, although it may rely on an external party (e.g., bond counsel or disclosure counsel) to assist in the creation of the document.

#### **6.3.10.1 Primary Disclosure Policies**

The CFO will serve as the focal point for information requests relating to official statements to be used in the initial offering of the District's borrowings. The CFO will request information required for disclosure to investors and rating agencies from relevant departments and will sign a statement attesting to the accuracy and completeness of the information therein. The Board will be provided with a copy of the official statement for each issue of debt.

#### **6.3.10.2 Continuing Disclosure Policies**

Under Rule 15c2-12 of the Securities and Exchange Commission, adopted under the Securities Exchange Act of 1934, the District is required to enter into a contract to provide "secondary market disclosure" relating to each publicly offered bond issue (referred to as an "undertaking"). The CFO shall review any proposed undertaking to provide secondary market disclosure and negotiate any commitments therein. Additionally, bonds sold via the direct placement method may have specific disclosure requirements required by the purchaser.

The District will ensure compliance with all continuing disclosure requirements as part of its ongoing debt program. The CFO, or persons under the supervision of the CFO, shall have a clear understanding of the continuing disclosure requirements for each bond transaction.

Internal procedures shall be developed that identify the information that is obligated to be submitted in an annual filing, the dates on which filings are to be made, list the events required to be disclosed, and identify the person responsible for making the filings.

The Comprehensive Annual Financial Report (CAFR) may fulfill annual financial information filing obligations. The information provided in a CAFR does not have to be replicated when filing with the Electronic Municipal Market Access (EMMA) portal. If the District agrees to furnish information that is outside the scope of its CAFR, that information may be included as a supplement to the CAFR when filing with EMMA. On its completion, the CAFR should be immediately submitted to EMMA.

Each time the District issues new bonds, the CFO (in consultation with bond counsel and the municipal advisor) will review the District's compliance with prior continuing disclosure undertakings and make any necessary corrective filings.

In addition to continuing disclosure undertakings associated with public bond offerings as required by SEC Rule 15c2-12, the District may also be subject to ongoing reporting requirements associated with other debt obligations, such as bank loans. The CFO shall also be responsible for ensuring compliance with such reporting requirements.

### **6.3.11 Consultants and Advisors**

#### **6.3.11.1 Municipal Advisor**

The District will retain an independent registered municipal advisor (MA) through a competitive process administered by the CFO at least every five years. Selection of the District's MA should be based on the following:

1. Experience in providing consulting services to issuers similar to the District;
2. Meets all regulatory requirements;
3. Knowledge and experience in structuring and analyzing large complex debt issues;
4. Ability to conduct competitive selection processes to obtain related financial services (including underwriters and other service providers);
5. Experience and reputation of assigned personnel; and
6. Fees and expenses.

The District expects that its MA will provide objective advice and analysis, maintain confidentiality of District financial plans, and fully disclose any potential conflicts of interest.

#### **6.3.11.2 Bond Counsel**

For all debt issues, the District will engage and retain an external bond counsel through a competitive process administered by the CFO at least every five years. Where required by the lender and/or investors, debt issued by the District will include a written opinion by a nationally recognized bond counsel affirming that the District is legally authorized to issue the debt, stating that the District has met all state constitutional and statutory requirements necessary for issuance, and determining the debt's federal income tax status. Bond Counsel may also draft the Official Statement in lieu of having a separate disclosure counsel.

#### **6.3.11.3 Disclosure Counsel**

The District may engage and retain, when appropriate, Disclosure Counsel through a competitive process administered by the CFO to prepare official statements for debt issues. Disclosure Counsel will be responsible for providing that the official statement complies with all applicable rules, regulations, and guidelines. Disclosure Counsel will be a nationally recognized firm with extensive experience in public finance.

#### **6.3.11.4 Underwriters**

For negotiated sales, underwriters will be required to demonstrate sufficient capitalization and experience related to the debt issuance. The CFO will establish a pool of qualified underwriters through a competitive process at least every five years and may designate one or more firms as eligible to be senior managers and one or more firms as eligible to be co-managers. Criteria to be used in the appointment of qualified underwriters will include:

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1. Quality and applicability of financing ideas;
2. Demonstrated ability to manage complex financial transactions;
3. Demonstrated ability to structure debt issues efficiently and effectively;
4. Demonstrated ability to sell debt to institutional and retail investors;
5. Demonstrated willingness to put capital at risk;
6. Experience and reputation of assigned personnel;
7. Past performance and references; and
8. Fees and expenses.

If an underwriting pool is established, the CFO will regularly monitor the performance of the members of the underwriting pool and recommend changes as appropriate.

### **6.3.12 Reporting Requirements**

The CFO will report to the Board on a quarterly basis the following information:

1. A summary of outstanding debt obligations to include the series name, original amount of issuance, outstanding principal amount, issue date, maturity dates, interest rates, and annual debt service;
2. The amount of the net variable rate obligation and percentage as compared to outstanding debt, if applicable;
3. Other considerations if applicable, including (but not limited to): refunding opportunities, performance of variable rate obligations, and/or proposed new debt issuances.

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## **7 ACCOUNTING STANDARDS AND FINANCIAL REPORTING**

### **7.1 PURPOSE**

This Policy provides guidance to management on the accounting standards to be used by the District and the expectations for financial reporting.

### **7.2 GOALS**

Providing accurate, transparent, and reliable accounting of the District's financial performance is important to the public, investors, and other District stakeholders. Furthermore, the timely disclosure of the District's financial performance helps those stakeholders better assess the

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District's financial condition. These policies will provide management guidance it needs to produce and disseminate timely financial statements that meet those needs.

### **7.3 REQUIREMENTS**

#### **7.3.1 Basis of Accounting**

The District's financial statements are maintained on the flow of economic resources measurement focus using the accrual basis of accounting and accounting principles applicable to governmental enterprise funds. Under the accrual basis of accounting, revenues are recognized when earned and expenses are recognized when liabilities are incurred.

The District shall prepare its financial statements using the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (generally accepted accounting principles or "GAAP") issued by the Governmental Accounting Standards Board (GASB) applicable to governmental entities that use proprietary fund accounting.

#### **7.3.2 Reporting Entity**

GAAP require that the reporting entity include: (1) the primary government, (2) organizations for which the primary government is financially accountable, and (3) other organizations for which the nature and significance of their relationship with the primary government are such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

The District is governed by its Board of Commissioners whose members are elected directly by the citizens residing within the District. As such, the District is, by definition, a primary government.

#### **7.3.3 Capitalization Standards**

The District capitalizes expenditures on assets that have a useful life exceeding one year and an original cost of \$7,500 or more. To be capitalized, an expenditure must meet the other capital-asset requirements under GAAP.

#### **7.3.4 Depreciable Lives and Depreciation Rates**

The District shall determine depreciation rates for classes of assets and, when appropriate, individual assets, based on the expected useful lives of the assets considering local conditions within the District. Estimates of the depreciable lives shall be based on engineering assumptions for the District and operational experience. Unless otherwise more appropriate, the depreciation rates shall be calculated to recover the original costs using a straight-line basis over the depreciable life of an asset.

#### **7.3.5 Accounting for Joint Ventures**

The District participates in various joint ventures with neighboring water providers. In some cases, the District acts as the managing agency for joint ventures. When acting as the managing agency and authorized by the intergovernmental agreement (IGA) that forms the joint venture,

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the District will prepare separate financial statements for the joint venture. When appointed as the managing agency and required by the IGA that forms the joint venture, the District's Board and Budget Committee will also serve as the local budget law authority for the joint venture. In those cases, the Board will adopt budgets consistent with the requirements of the joint venture(s) to enable the District to fulfill its duties and the managing agency.

### **7.3.6 Valuation of Inventory**

Inventory of materials and supplies is stated at cost using average cost and is charged against operations as used.

### **7.3.7 Indirect Cost Allocation Plan**

The CFO will cause the District to maintain an indirect cost allocation plan suitable for allocating overhead costs to the various joint ventures and contracts the District manages and the capital projects it undertakes. The CFO may engage the services of professional consultants from time-to-time to review and update the indirect cost allocation plan.

### **7.3.8 Financial Reports**

#### **7.3.8.1 Monthly Financial Reports**

The CFO shall provide the Board with unaudited reports on the District's financial performance each month. These reports shall be available to the Board within 30 days of the close of the month. Subsequent adjustments to prior months financial reports are expected to account for routine month-end and year-end closing activities.

#### **7.3.8.2 Comprehensive Annual Financial Report**

Although not required by law, the District embraces the recommendation of the Government Finance Officers Association recommendation to issue its financial reports in the form of a Comprehensive Annual Financial Report (CAFR) within 180 days of the close of the fiscal year.

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## **8 INTERNAL CONTROLS**

### **8.1 PURPOSE**

Internal controls are those management means used to mitigate the risk that the District's economic resources are not properly used. Internal controls focus on operational effectiveness and efficiency, fraud preventions, reliable financial reporting, and compliance with laws, regulations, and policies. Policies on internal controls are important to managing the District's risks.

### **8.2 GOALS**

The goals of these Policies are to:

1. Manage the risk that financial transactions bring to the District.
2. Establish the legal authority of the procurement function within the District.

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3. Simplify, clarify, and reflect the District's approach to maintaining internal controls.
4. Enable uniform internal controls throughout the District.
5. Build public confidence in the District's stewardship of its economic resources and management of its risks.
6. Safeguard the integrity of the District's procurement and accounting systems and protect against corruption, fraud, waste, and abuse.

### **8.3 REQUIREMENTS**

#### **8.3.1 Purchasing Goods and Services for the District**

The District purchases various goods and services from many vendors with differing business models. The District's internal controls are intended to govern those procurement matters subject to the District's Local Contract Review Board Rules. The procurement rules and the internal controls that assess compliance with those rules are intended to:

1. Provide for the fair and equitable treatment of everyone who deals with procurement.
2. Increase efficiency, economy, and flexibility in the District's internal controls activities and maximize the District's purchasing power.
3. Foster effective broad-based competition from the District's suppliers.

There are three requirements to procure goods or services for the District. These requirements are:

1. Compliance with formal procurement rules. To achieve compliance with state law and the Local Contract Review Board Rules, all purchases must follow District procurement rules.
2. Proper authorization for the purchase. The District has established dollar limits that provide varying levels of authorization for employees to purchase on behalf of the District. This Policy formalizes the requirements for receiving and/or confirming the authorization for purchase.
3. Approval requirements for payments. These policies set forth the approval requirements.

The CFO shall maintain and publish guidelines and rules to facilitate the above-listed objectives.

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### **8.3.1.1 Purchasing Limits**

#### **8.3.1.1.1 Authorization for Purchases**

In consultation with the CEO, the CFO shall periodically establish and publish purchasing limits for employees within the District. The purchasing limits will include the limits for purchases by contract, purchasing card, petty cash, and all other payment methods.

#### **8.3.1.1.2 Approval of Purchases**

All purchases are to be approved by the supervisor or manager of the purchaser, including petty cash reimbursements, unless the purchase is being charged to the budget of another department. In that case, the supervisor or department manager that is responsible for the budget shall approve the request.

Supervisors and managers have approval authority to the limits as published by the CFO. If the supervisor is unavailable, another supervisor in the department can approve. If the department manager or another supervisor within the department is unavailable, another department manager can approve the purchase request. Any transaction exceeding the approval authority of the department manager must be approved by the CEO or by the manager acting in capacity (AIC) for the CEO. The CFO will serve as the approval authority for all purchases of the CEO.

Master service agreements, task-order agreements, indefinite delivery/indefinite quantity agreements, and other similar agreements that do not have a specific dollar amount must be approved by the CEO. Approval authority for task orders issued based on these agreements are established by the purchasing limits published by the CFO.

#### **8.3.1.2 Purchase Orders**

Purchase orders are required for all purchases more than \$1,000 unless otherwise authorized in advance by the CFO or CEO.

#### **8.3.1.3 Splitting of Purchases**

Purchases may not be split into multiple transactions to avoid the application of these Policies. Splitting a purchase is the act of creating two purchases that have one purpose with the intent of avoiding requirements of these Policies and the associated management controls. Intentionally splitting a purchase to defeat the internal controls can be gross misconduct and subject the offender to sanctions up to, and including, termination for dishonesty.

### **8.3.2 Obligations (Contracts, Leases, Etc.)**

The District is required to track its contracts, leases, and other obligations as part of its financial reporting requirements. The CFO shall develop and maintain a process of recording these obligations with sufficient detail to report the District's obligations.

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## **9 BUSINESS CASE EVALUATIONS**

### **9.1 PURPOSE**

The District strives to reduce costs and improve service quality. A proper evaluation of how to commit the District's resources in an alternative manner has the potential to both reduce costs and improve service quality.



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Often there are multiple options for delivering a service. The business case evaluation for service delivery alternatives should be done thoroughly and objectively with the goal of acting as a steward for the public financial resources.

A business case evaluation captures the rationale for undertaking a specific project or task. It should be presented in a well-structured written document but may also be a short verbal agreement or presentation. Business case evaluations are used to guide the expenditure of resources, so that the expenditures are known or expected to support a commensurate business need of the District.

### **9.2 GOALS**

The goal of these Policies is to promote efficient resource allocation through well-informed decision-making by the District. These Policies shall provide guidance for conducting benefit-cost and cost-effectiveness analyses. These Policies shall also provide specific guidance on the discount rates to be used in evaluating alternative programs at the District whose benefits and costs are distributed over time.

The economic resource available to the District are public resources that require prudent management. The Policies on business case evaluations are intended to:

1. Protect the District's economic resources by forecasting the expected returns from the District's efforts and investments.
2. Provide a common framework for evaluating business decisions throughout the District consistent with the District's fundamental economic and financial circumstances.

### **9.3 REQUIREMENTS**

#### **9.3.1 Business Case Evaluation Guidelines**

The CFO shall periodically publish guidelines for the conduct of business case evaluations at the District. These guidelines shall provide a framework for the consistent evaluation of alternatives throughout the District and require the use of appropriate financial and economic techniques.

#### **9.3.2 Least-Cost Requirement**

As part of its business case evaluation, the District shall evaluate alternatives to identify the alternative that meets the service level at the least cost. In cases where the service level can vary, the District shall consider both the costs and the benefits in its evaluation.

The guidelines published by the CFO described in Section 9.3.1 above may exclude certain fixed costs of the District from the evaluation when including those fixed costs would result in an improper business decision based on the District's least-cost requirement Policy.

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### **9.3.3 Discount Rates**

The CFO shall periodically publish appropriate Discount rates to be used in conducting business case evaluations. The Discount rates shall reflect the CFO's best estimate of the District's cost of capital for varying terms.

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## **10 OTHER BOARD FINANCIAL GOALS AND OBJECTIVES**

### **10.1 PURPOSE**

The Board has adopted other financial goals and objectives that do not fall within one of the categories listed above. The Policies related to those goals and objectives are included in this section.

### **10.2 GOALS**

These Policies provide additional guidance to management on other Board financial goals and objectives.

### **10.3 REQUIREMENTS**

#### **10.3.1 Water Supply**

##### **10.3.1.1 Purchased Water**

The District shall purchase water for distribution in a manner that balances the need to minimize cost and maximize water quality and reliability for its customers.

##### **10.3.1.2 Multiple Sources of Water Supply**

The District is committed to resiliency and reliability of service. In achieving that goal, the District will have access to multiple sources of supply with the goal to provide redundant supplies to all customers.



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1. 2.0x by including SDCs in gross revenues.
2. 1.5x by excluding SDCs in gross revenues.

### **ADDITIONAL BONDS TEST**

The Financial Plan shall use an additional bonds test ratio of 1.3x by including SDCs in gross revenues and 1.15x by excluding SDCs from gross revenues.

### **MINIMUM CASH BALANCES**

The Financial Plan shall include 250 days of forecast operations and maintenance expense as the minimum cash balances. The minimum is in addition to any balances in a debt service reserve account.

DRAFT

# Tualatin Valley Water District



Delivering the Best Water 💧 Service 💧 Value

Finance Committee Meeting  
February 26, 2019

## Meeting Notes

Attendees: Commissioners Bagnall and Duggan

Staff Present: Mark Knudson, PE, Chief Executive Officer; Paul Matthews, Chief Financial Officer; Carrie Pak, PE, Chief Engineer; Andrew Carlstrom, Customer Service Manager; Katherine Lipari DeSau, Executive Assistant

### 1. Customer Information System Update

Mr. Carlstrom provided an update on the Customer Information System (CIS) project (see attached presentation).

In response to questions, he conveyed the following:

- Professional services vendor, AAC Utility Partners, has a grading system for gaps identified during the gap analysis.
- AAC Utility Partners informed TVWD that parallel testing will result in different outcomes; an analysis will be conducted to identify the cause(s).

Staff highlighted the efforts to mitigate risk including targeted communication (both internally and externally), Board and executive leadership support, cross-sectional staff support (including Business Analyst leadership), professional services expertise and a focus on configuration as opposed to customization. The need for interim, limited term staff during the project will be proposed as part of the upcoming budget process.

### 2. Bond Issuance Ordinance, Master Revenue Bond Declaration Resolution and Master Water System Revenue Bond Declaration

The following draft documents were distributed to attendees and will be included in the meeting materials for the March 5 Board work session:

- An ordinance of the Tualatin Valley Water District, Oregon, authorizing the issuance of water revenue bonds;
- A resolution of the Tualatin Valley Water District, Washington County, Oregon, approving a master revenue bond declaration; and
- Form of master water system revenue bond declaration.

Mr. Matthews explained the purpose of each of the documents and the timeline. He conveyed that the revenue bonds will be issued to fund capital assets of the Willamette Water Supply System (WWSS) and, if needed, in-District capital improvements.

## Tualatin Valley Water District



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In response to questions, staff stated the following:

- Hillsboro's credit rating is AA+.
- The WWSS intergovernmental agreement includes a provision for partnership joint debt; however, it is unlikely to be used in the foreseeable future.
- TVWD needs to proceed with approving these documents for Water Infrastructure Finance and Innovation Act funding purposes.

Additional staff assignments include drafting Finance Committee recommendations to be included in the March regular meeting staff reports and drafting speaking points for the Finance Committee members' report at the Board meeting.

## ***CIS Update for Board Finance Committee***

Andrew Carlstrom  
Customer Service Manager  
February 26, 2019

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### ***Review: What is a Customer Information System?***

An application providing utilities an integrated environment to perform functions of the meter to cash cycle, i.e.:

- Enroll new customers
- Generate billings
- Manage credit and collections
- Track water consumption
- Track and manage meters
- Handle customer inquiries/complaints/service orders
- Provide call center support

*Source: Water Research Foundation, Report #4583*



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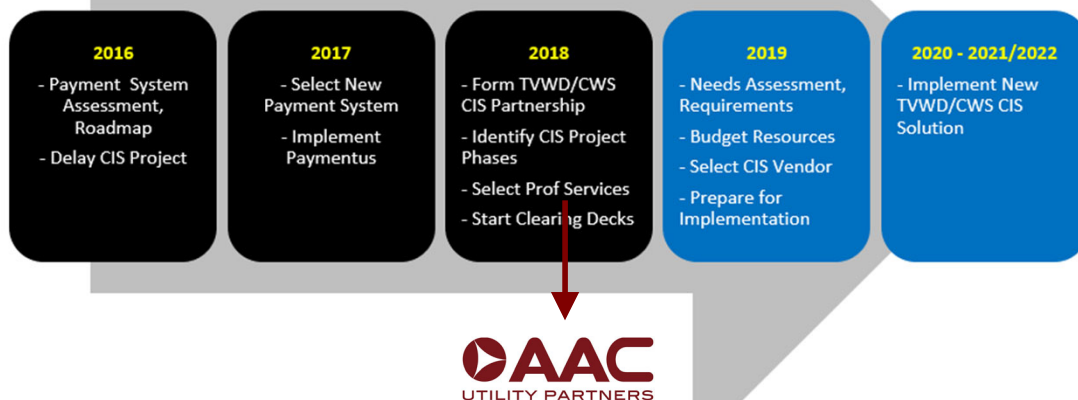
2

## Customer Information System (CIS) Project

### Project Purpose & Approach

- **Replace TVWD's aging, customized Utility Billing ("UB") system with a commercial, off-the-shelf Customer Information System (CIS).**
  - Multi-year, multi-phase project.
  - Joint venture between TVWD and Clean Water Services.
  - TVWD is project managing agency.
  - Three phases, three agreements.
  - Configuration, not customization of new system.
  - Strong staff engagement – Core Team + SMEs.
  - Reliance on external expertise.
  - Learn from other utilities' CIS experiences.

### TVWD's CIS Progress...





## *CIS Professional Services*

### **Selection Process**

- Proposal evaluation – core team + SMEs
- Four proposers
- Award: AAC Utility Partners

### **Vendor Differentiation**

- Rigor – evaluation process, tools/methodologies
- Strong references

### **Contract**

- Selection Phase: milestone-based
- Implementation phase: monthly charge / PM services

## *Selection Phase Deliverables: Through Needs Assessment*

1. Charter/strategy document
2. Project plan
3. Project kickoff presentation
4. CIS industry workshop
5. Requirements catalog template
6. Client-specific CIS business requirements template
7. Organizational staffing assessment
8. **Needs assessment report**

< **GO / NO GO DECISION GATE** >

### ***Deliverable #8: Needs Assessment Report and Presentation***

- **CIS needs assessment findings and recommendations:**
  - Process, system, internal control, and data integrity
  - Gap analysis (functional – current UB vs. future CIS)
  - Risks – including typical data migration approaches
- **Organizational staffing and future state options**
  - Strengths, weaknesses, timelines, estimated costs, benefits
- **Overview of proposed vendor procurement process**

### ***CIS Professional Services Background***

- **TVWD Logic:** *Audit will review District's "meter to cash" business processes, systems, and internal controls, as well as compare District practices to utility industry best practices.*
- **Processes/Internal Controls/Ind. Best Practices Considerations:**
  - Functional requirements development, functional gap analysis  
>> Assessment Report
- **Billing Accuracy Reality:**
  - AAC focus on developing requirements of new system
  - UB accuracy: reflected in testing, including parallel testing
  - TVWD IT assessing data-related staffing needs for project

### ***Selection Phase Deliverables: Through Vendor Short List***

9. RFP template document
10. Scoring work sheet
11. Final RFP document
12. Base product demo scripts
13. Vendor/SI discovery sessions
14. Clarification document
15. Functional scores, project solution costs
16. Selection of vendor finalist based on scores
17. Steering Committee presentation
18. Executive management presentation

**< GO/ NO GO DECISION GATE >**

### ***Selection Phase Deliverables: Through Vendor Short List***

19. Client-specific product demo scripts
20. Demonstration agenda, schedules
21. Completion of vendor / SI demonstrations
22. Reference checks
23. Summarization score ranking of vendor / SI
24. Selection of preferred of preferred vendor / SI
25. Scoring matrix
26. Preferred vendor / SI confirmation
27. Solution cost summary
28. Site visits
29. Negotiation strategies workshop

**30. Governing body presentation**

## *Selection Phase Deliverables: Vendor Contract Negotiation*

31. Contract key issues

32. Development and negotiation of statement of work with vendor

< **VENDOR CONTRACT / END OF SELECTION PHASE** >

## *AAC Onsite Visit #1*

- **February 5 – 7, in Dedicated Project Space (CUBE)**
  - Core Team Orientation
  - Initial Core Team Assignments
  - iCue Training
  - Review Draft Project Charter
  - CIS Industry Presentation
  - Develop Initial Selection Phase Schedule
    - Vendor RFP Publication: June 20
- **AAC Onsite Visit #2: February 26 – 28**



## AAC Onsite Visit #2

February 26 – 28, in CUBE

- Begin functional requirements review
- Work on project scope and charter
- Discuss procurement
- Project budget presentation/discussion
- Discuss Cloud strategy



*Note: approaching end of operational analysis – project staffing needs*



### ***The Top 10 Reasons CIS Projects Fail***

1. Lack of strong executive involvement, project sponsorship
2. Contracts awarded without sufficient due diligence on responses
3. Inability of utility to adequately staff project
4. Inability of vendor to adequately staff the project with experienced and qualified resources
5. Third party implementers, consultants do not have sufficient knowledge/experience with CIS product
6. Lack of experienced project management, comprehensive project work plan

### ***The Top 10 Reasons CIS Projects Fail (continued)***

7. Customization of product solution (use configuration with goal of minimal to zero software modifications)
8. Unwillingness to modify business processes
9. Lack of comprehensive, ongoing training and education program
10. Utility goes live with new CIS before system and business are ready for production

# Questions?

# Board Goals Update

*TVWD Board Work Session  
March 5, 2019*

**Mark Knudson, P.E.**  
Chief Executive Officer



## Board Action Plan for 2018-2019 Status Update

Goal	Description	Target Date	Status	Status
1	Rates and Affordability	Completed	C	✓
2	District Regional Leadership, Relationships and Reputation	Dec-19	G	●
3	Board Engagement with the Community	Dec-19	G	●
4	The 2019-21 Budget Process	Jun-19	G	●
5	Continuity of Board Leadership / Strategy for Board Legacy	Completed	C	✓
6	Continuity of District Management Leadership	Dec-19	G	●

On Schedule	G	●
Some issues slowing this down	Y	●
Significantly off schedule	R	●
Not yet begun / not yet reported	B	●
Completed	C	✓



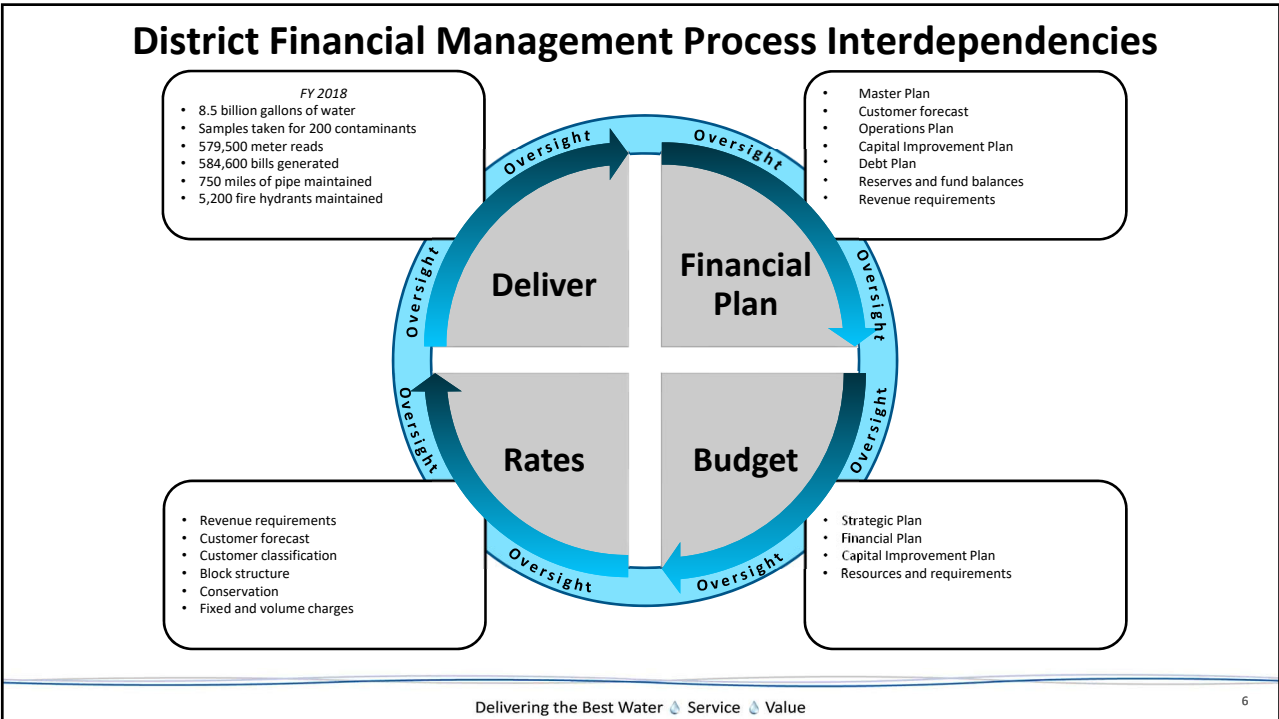
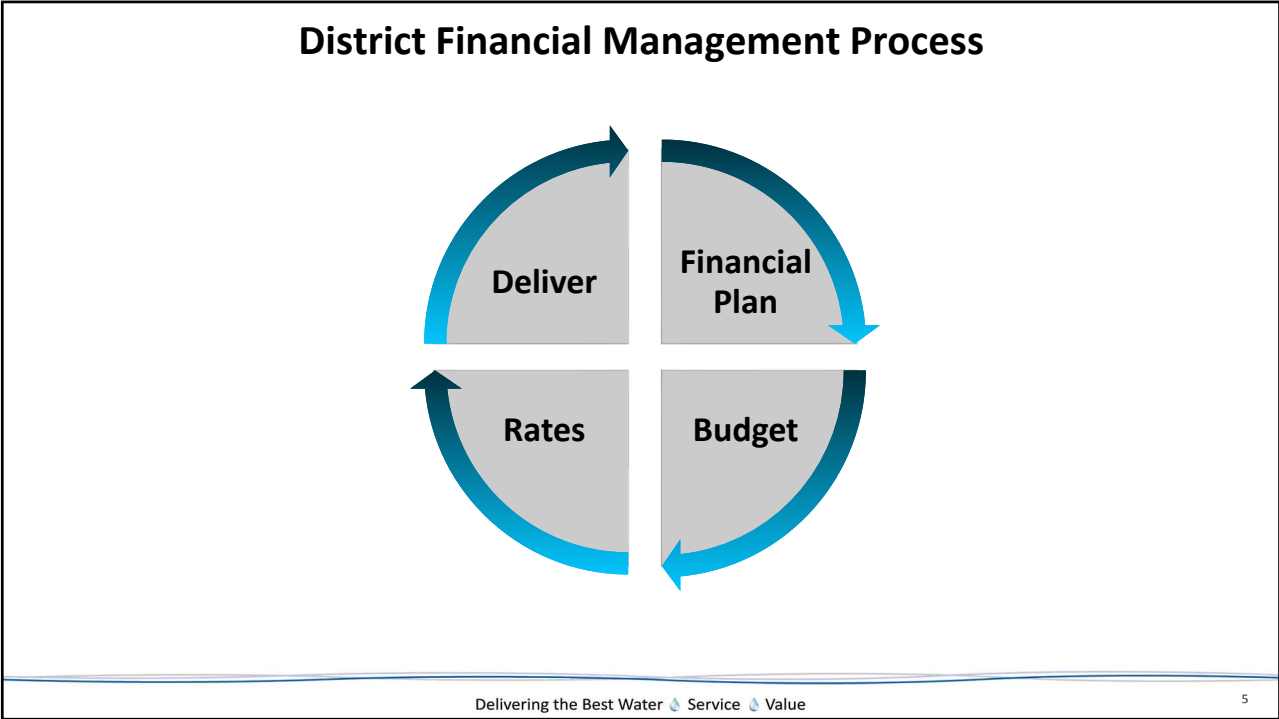
# Financial Plan and Performance Update

**Paul L. Matthews**  
Chief Financial Officer

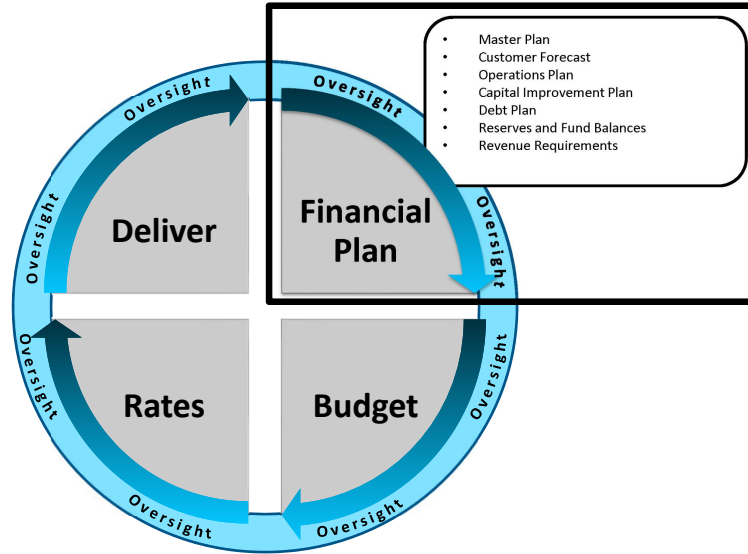


## Tonight's Presentation

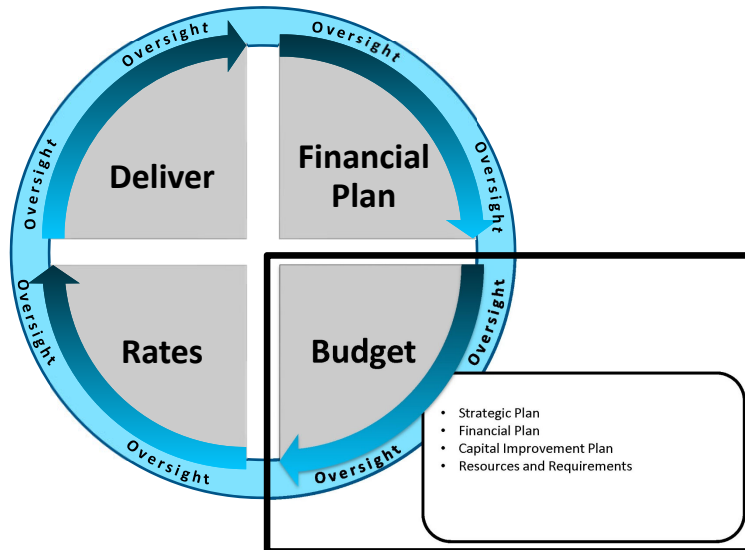
- Update on District's financial performance
- Review of financial plan scenarios
  - Three Capital Improvement Plan (CIP) alternatives
  - Two rate timing options



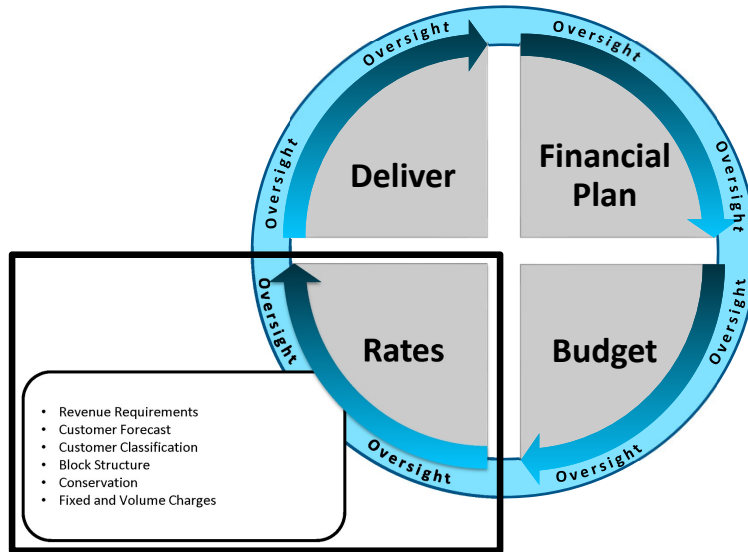
### District Financial Management Process



### District Financial Management Process



## District Financial Management Process



## Financial Plan and Performance Update

### *District's Financial Performance*

**Paul L. Matthews**

Chief Financial Officer

**Tualatin Valley Water District**

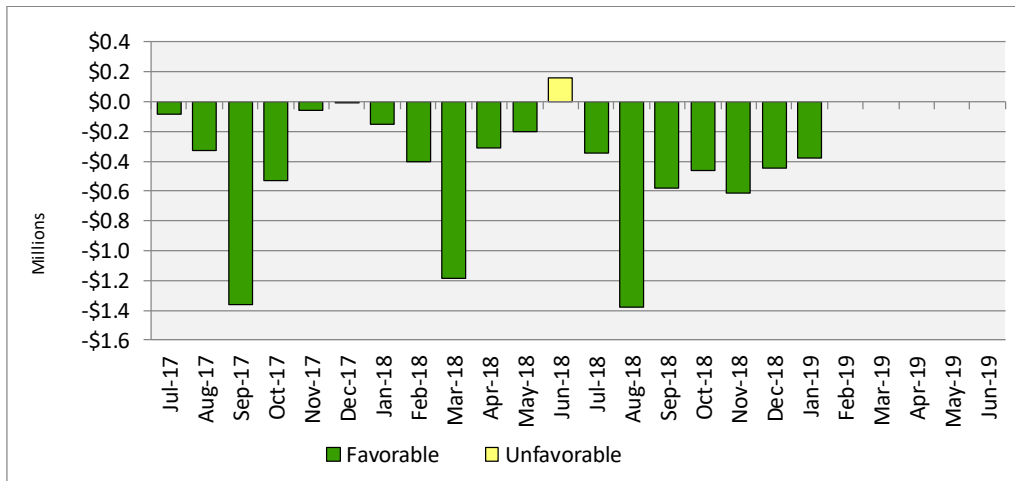


Delivering the Best Water Service Value

### Elements of Financial Performance

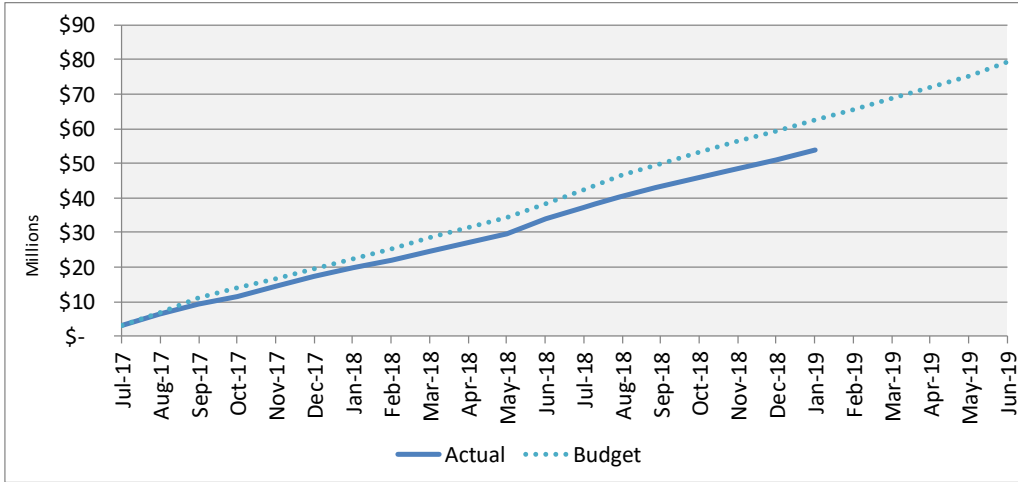
Expenditures	Revenue	Cash Position
<ul style="list-style-type: none"> <li>• Operating expenditures</li> <li>• Capital expenditures</li> <li>• Debt service</li> </ul>	<ul style="list-style-type: none"> <li>• Water rates and other operating revenue</li> <li>• System Development Charges</li> </ul>	<ul style="list-style-type: none"> <li>• Working capital</li> <li>• Capital reserves</li> </ul>

### Monthly Operating Expenditures Variance



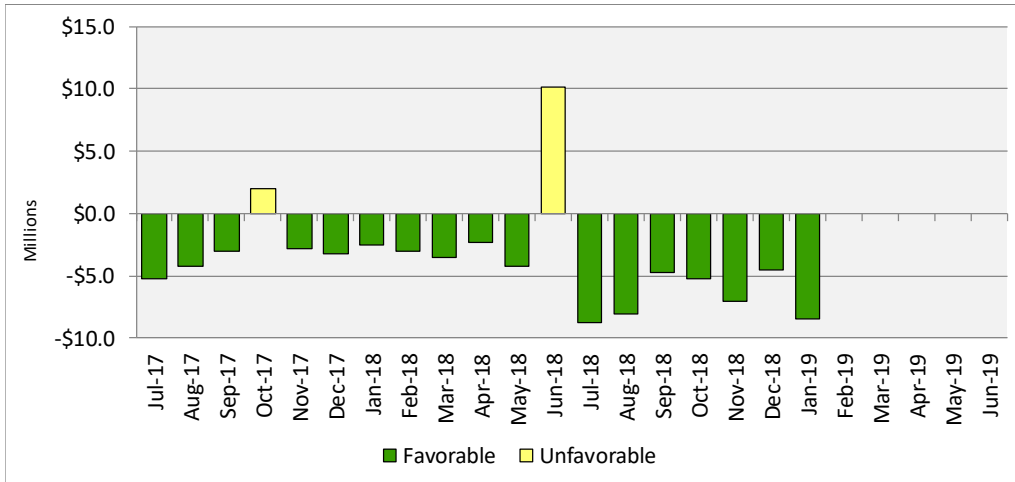
Note: These graphs are based on unaudited estimates.

### Cumulative Operating Expenditures



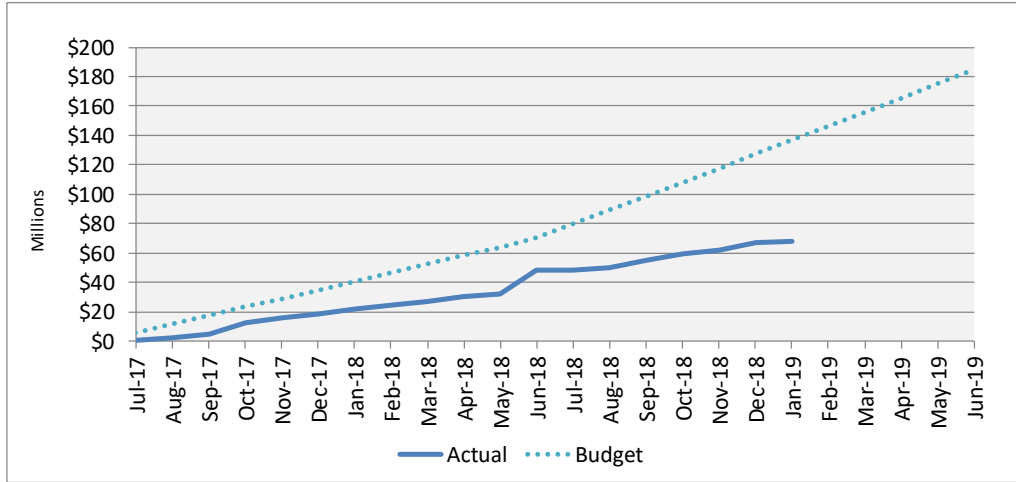
Note: These graphs are based on unaudited estimates.

### Monthly Capital Expenditure Variance



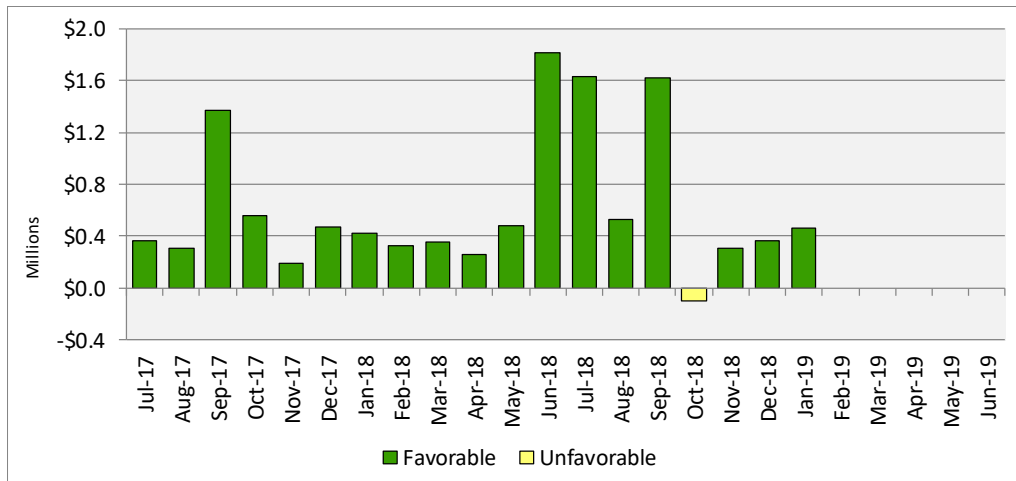
Note: These graphs are based on unaudited estimates.

### Cumulative Capital Expenditures



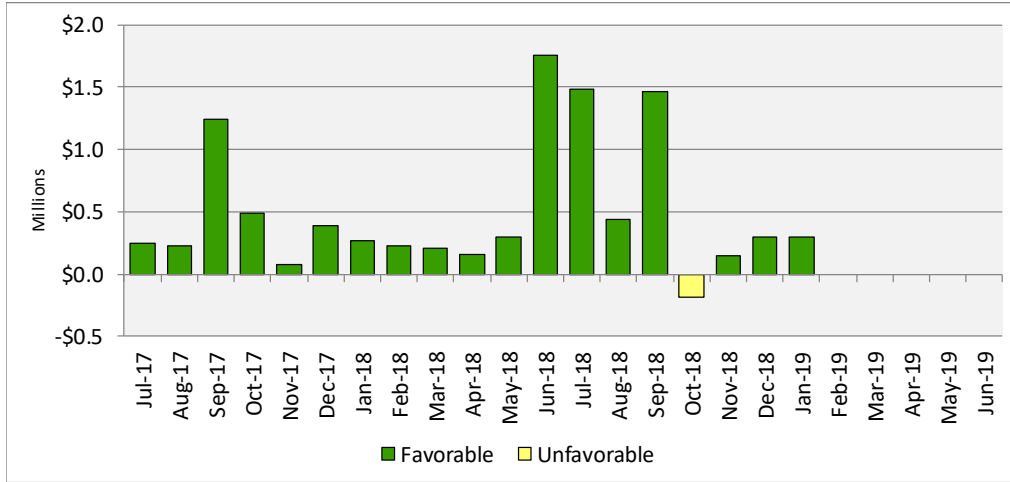
Note: These graphs are based on unaudited estimates.

### Water Sales Revenue Variance



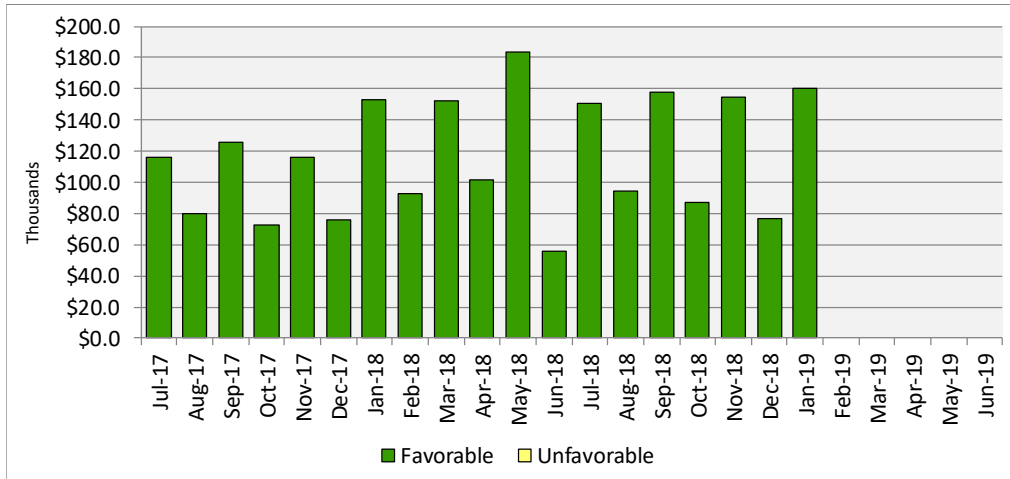
Note: These graphs are based on unaudited estimates.

### Volume Water Sales Revenue Variance



Note: These graphs are based on unaudited estimates.

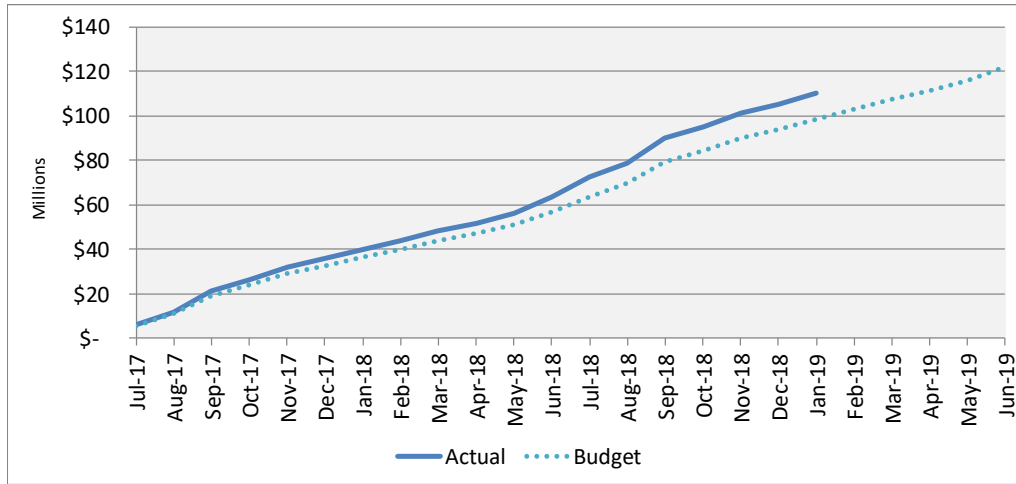
### Variance in Fixed Charge Revenue



Note: These graphs are based on unaudited estimates.

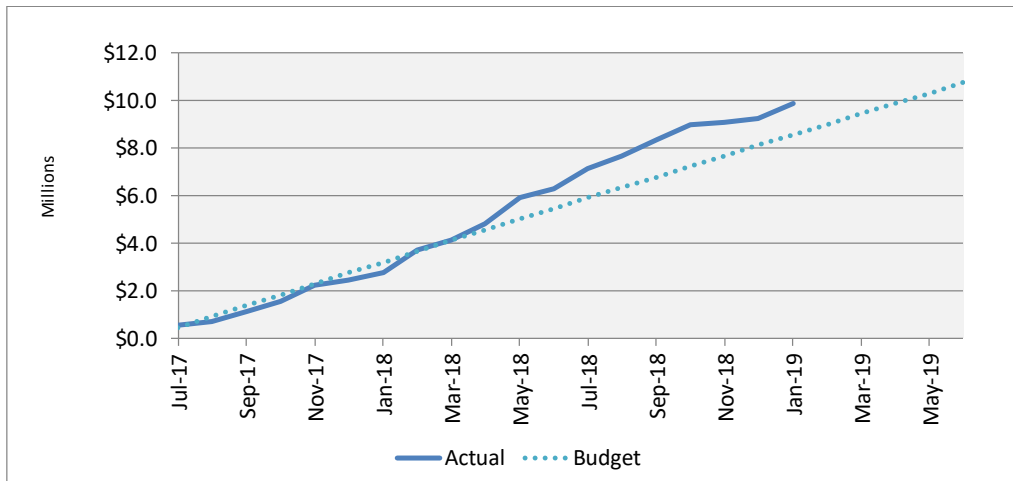


### Cumulative Water Sales Revenue

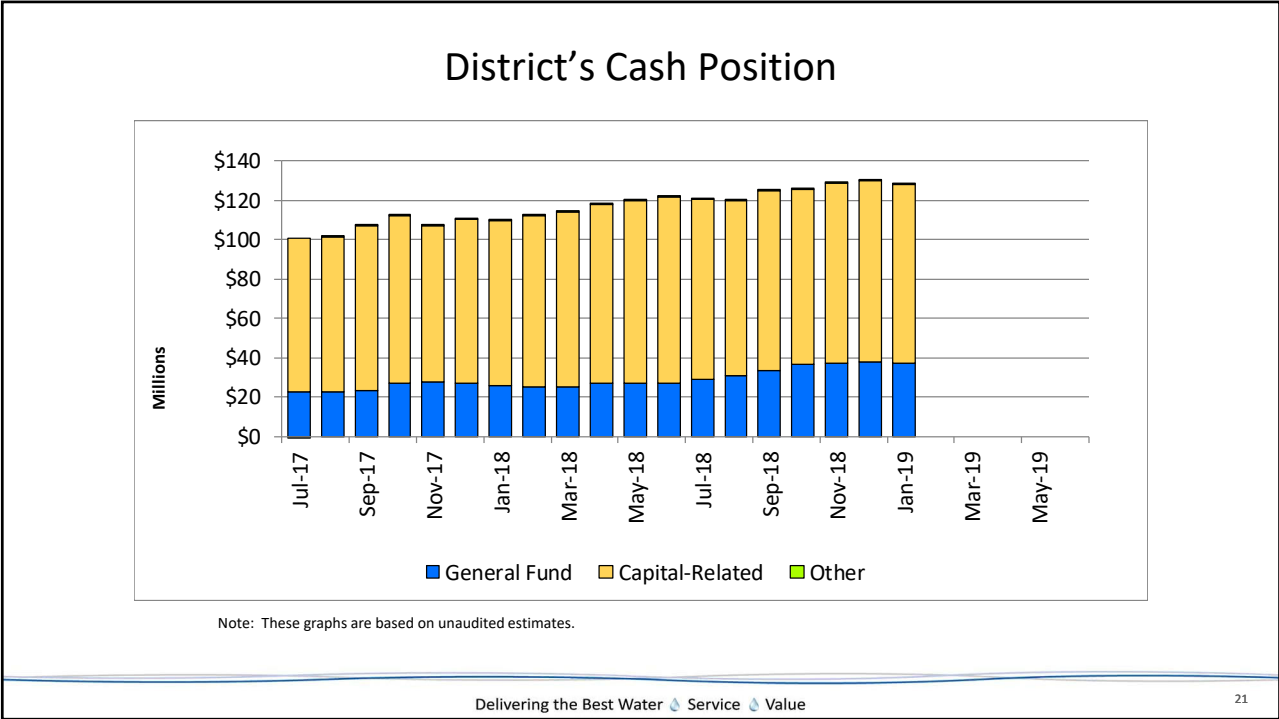


Note: These graphs are based on unaudited estimates.

### System Development Charge Revenue



Note: These graphs are based on unaudited estimates.



### District's Financial Performance 2017-19 Biennium

#### Key Findings

- Operating expenditures below budget
- Capital expenditures below budget
- Water sales revenue exceeded projections
- System development charges exceeded plan
- Projected ending fund balances higher than expected
- Remain debt free
- Starting 2019-21 Biennium in a strong financial position

# Financial Plan and Performance Update

## *Financial Plan Update*

**Paul L. Matthews**  
Chief Financial Officer

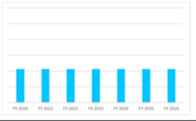
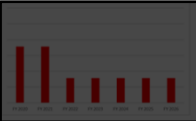



## Long-Term Financial Plan



### Key Issues

- In-District CIP alternatives and risks
- Willamette Water Supply System
- Operating expenditures
- PERS side account funding

## Preliminary Financial Scenarios

		CIP Options		
Rate Options	Minimal Improvements / Deferred Rehabilitation / No Replacement (High Risk):	Critical Asset Rehabilitation & Replacement (Medium to High Risk):	Delayed Replacement Schedule / Increased Rehabilitation (Medium Risk):	Proactive Risk Reduction (Low Risk):
				
				
				

## Selected Financial Scenarios

		CIP Alternatives		
Rate Options		High Risk	Medium Risk	Low Risk
				
				

### CIP Alternatives



#### Alternative 1 – High Risk

- Replace most critical facilities
- Replace facilities subject to imminent failure
- Maintain other facilities



#### Alternative 2: Medium Risk

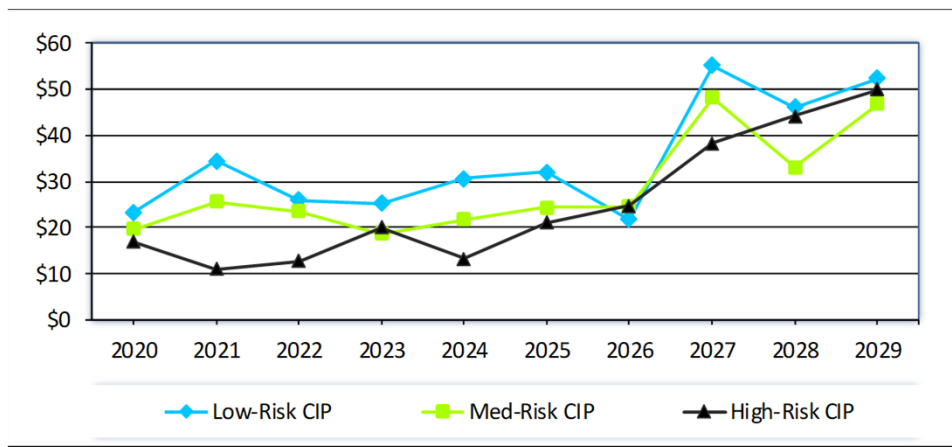
- Replace failing facilities where maintenance would not extend the life or would be more costly than replacement
- Maintain other facilities to extend useful lives
- Follows Master Plan schedule



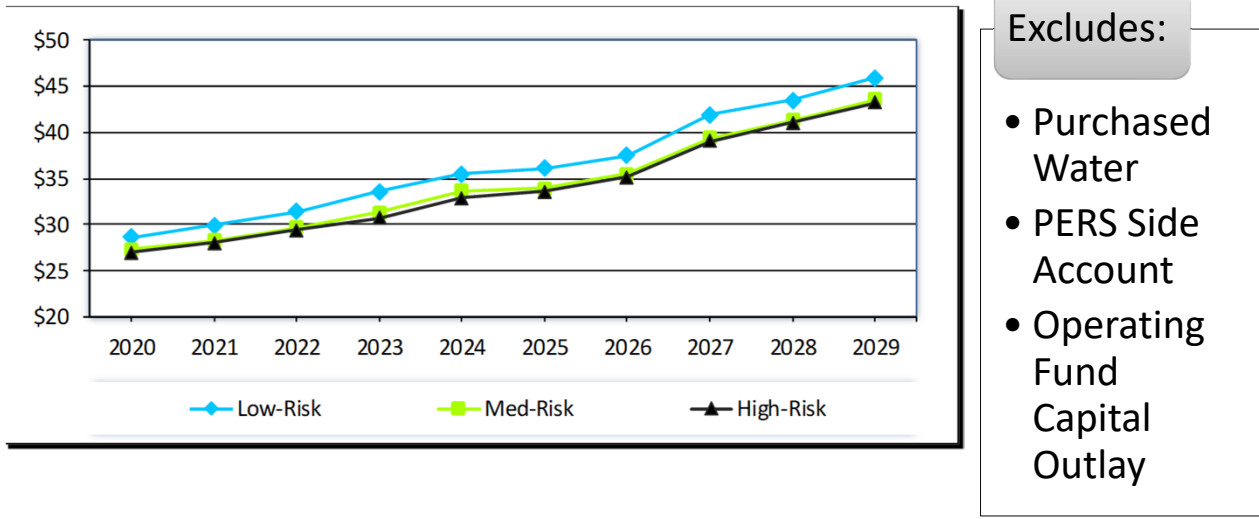
#### Alternative 3 – Low Risk

- Replace facilities at the end of their economic lives
- Accelerate Master Plan schedule

### Comparison of In-District CIP Expenditures



### Comparison of Impact on Operating Expenditures



### Rate Timing Options

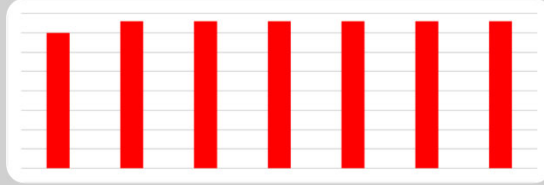
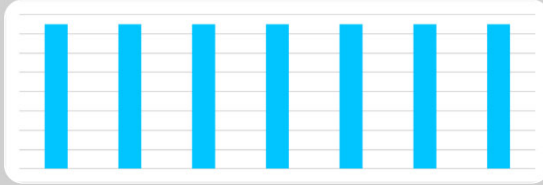
#### Option 1 – Even Over Time

- Forecast-based rate increases through FY2031

#### Option 2 – Lower Increases First Year

- Inflationary increase in FY2020
- Forecast-based rate increases for remainder through 2031

### Rate Timing Options



#### Option 1 – Even Over Time

- Pros
  - More predictable for customers
  - Avoids large increase
  - Continued message to bond market regarding financial management
- Cons
  - Less near-term rate relief for customers

#### Option 2 – Lower Increase First Year

- Pros
  - More near-term rate relief for customers
- Cons
  - Weakens message to bond market regarding financial management
  - Increases future rate adjustments
  - Slightly increases financial risk

### Selected Financial Scenarios

	CIP Alternatives		
Rate Options	High Risk	Medium Risk	Low Risk

## Key Assumptions

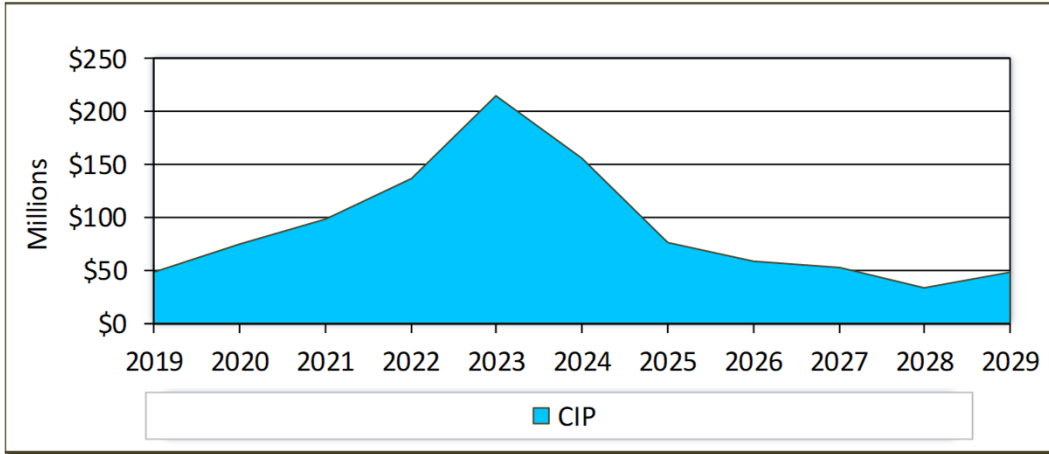
- Willamette Water Supply System based on latest program baseline budget
- Three in-District CIP alternatives
  - Low risk
  - Medium risk
  - High risk
- Engineering and Operations operating budget consistent with CIP alternatives
- Assumes \$10 million funding of PERS side account in FY2020 and FY2021
- Other expenditures consistent with trends in preparing proposed budget
  - Reduction in PERS rates consistent with side account funding

## Capital Improvement Plan (millions)

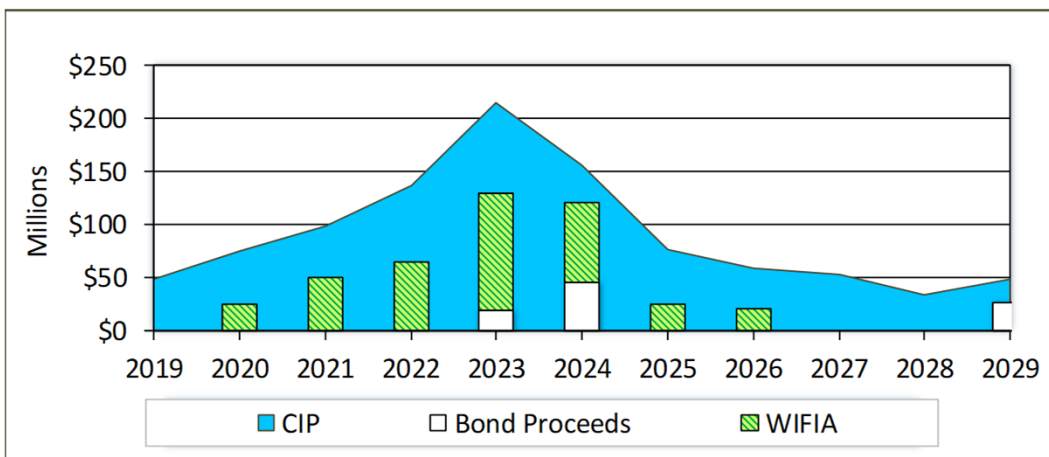
Description	10-yr Totals
WWSP (TVWD Share)	\$658.7
JWC (TVWD Share)	7.3
TVWD	286.3
<b>Total</b>	<b>\$952.3</b>



### Capital Improvement Plan



### Projected Financing



### Projected Annual Debt Service (millions)

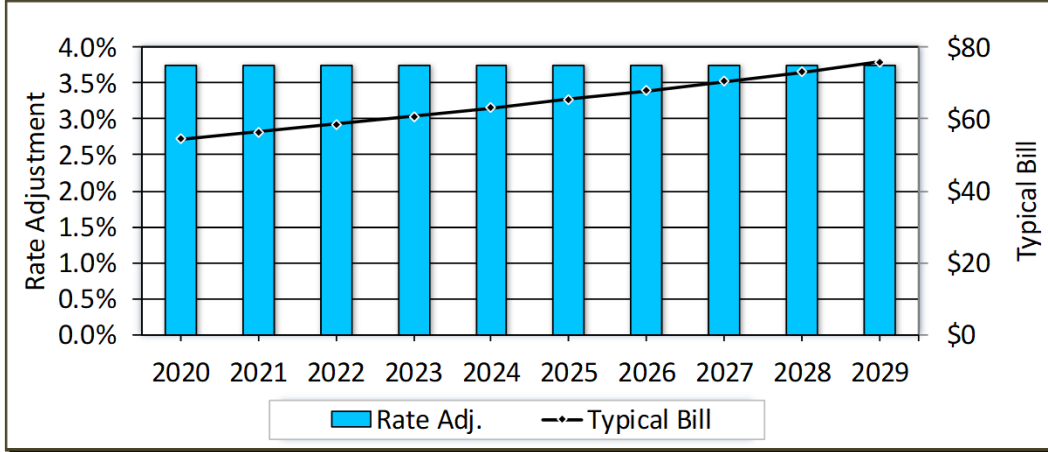
Year	Annual Debt Service*	Year	Annual Debt Service*
FY2020	\$0.0	FY2025	\$4.8
FY2021	0.0	FY2026	4.8
FY2022	0.0	FY2027	15.9
FY2023	0.7	FY2028	26.9
FY2024	3.1	FY2029	27.9

\* Note: Includes payment for principal and interest in millions.

### Projected Operation and Maintenance Costs (millions)

Year	Annual O&M	Year	Annual O&M
FY2020	\$51.5	FY2025	\$52.5
FY2021	52.7	FY2026	55.0
FY2022	44.9	FY2027	52.3
FY2023	47.6	FY2028	54.9
FY2024	49.7	FY2029	57.5

### Projected Customer Impacts



### Comparison of Alternatives

Rate Options	Years	CIP Alternatives		
		High-Risk	Med-Risk	Low-Risk
	FY2020-31	3.30%	3.75%	4.50%
	FY2020	3.00%	3.50%	3.50%
	FY2021-31	3.35%	3.80%	4.70%

### Risks to the Forecast

Higher Costs from Portland	Interest Rates	Capital Expenditures	Others
<ul style="list-style-type: none"> <li>• Costs for treatment facilities</li> <li>• Changes to peaking factors</li> <li>• Contract difficulties</li> <li>• Other O&amp;M and CIP</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of tax-exempt bonds</li> <li>• Reduction in credit rating</li> <li>• General increase in interest rates</li> </ul>	<ul style="list-style-type: none"> <li>• Timing/unplanned failure</li> <li>• Project definitions</li> <li>• Construction costs</li> <li>• Loss of a partner</li> </ul>	<ul style="list-style-type: none"> <li>• Economic downturn</li> <li>• Changes in water demands</li> <li>• Annexations with withdrawals</li> <li>• Curtailment of water sales</li> <li>• PERS costs</li> </ul>

### Positive Risks (Opportunities) to the Forecast

Capital Expenditures	Others
<ul style="list-style-type: none"> <li>• Value engineering</li> <li>• Project definition</li> <li>• Construction costs</li> <li>• Gaining partners</li> </ul>	<ul style="list-style-type: none"> <li>• Faster development within the District</li> <li>• Lower interest costs</li> <li>• PERS Side Account</li> <li>• Other unexpected savings</li> </ul>

# Questions and Answers



# Thank You



# Update on Long-Term Debt Program

**Paul L. Matthews**  
Chief Financial Officer



## WIFIA Process

### Project Review, Negotiations, and Closing

<b>Application Submission</b> • Up to 365 days	<b>Application Evaluation</b> • 30 – 90 days	<b>Terms Sheet Development</b> • 60 – 180 days	<b>Application Approval</b> • 30 Days	<b>Negotiations</b> • 60 – 150 days	<b>Closing</b>
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## Key Steps of Long-Term Debt Program

### Adopt *Financial Management Policies*

- Reviewed by Finance Committee

### Adopt Bond Ordinance

- Reviewed by Finance Committee

### Approve Master Revenue Bond Declaration

- Reviewed by Finance Committee

## Timing of Next Steps

### March Regular Meeting

- First reading of Bond Ordinance
- Adopt *Financial Management Policies*

### April Regular Meeting

- Second Reading and Adoption of Bond Ordinance

### May Regular Meeting

- Resolution Approving Master Revenue Bond Declaration

## Key Provisions of Financial Management Policies

Consistent with policies presented to the Board

- December 4, 2018 Work Session
- Followed up with meetings with Finance Committee

Asset Management Plan required

- Replaces *Renewal and Replacement Study* requirement

Best practices

- Formalizes many TVWD current practices
- Follows industry best practices (e.g., GFOA)

## Key Provisions Bond Ordinance

### Eligible Expenditures

- Capital expenditures of the District including investments in joint ventures (e.g., WWSS)

### Authorized Amount

- Net proceeds \$600 million
- Gross amount of \$680 million



# Questions and Answers



# Thank You



# Willamette Water Supply System IGA

*March 5, 2019 Work Session*

Clark Balfour

General Counsel



## Willamette Water Supply System Intergovernmental Agreement

### I. Purpose:

- Sets forth the terms for the joint ownership, management and operation of the Willamette Water Supply System (WWSS) in a prudent, economic and efficient manner to provide water to TVWD, Hillsboro and Beaverton.
- Absorbs the existing efforts for the permitting, design, construction, land acquisition and financing of WWSS started by TVWD and Hillsboro in 2013.
- Supersedes and terminates the Agreement for Design and Construction of the Willamette Water Supply Program (WWSP) between TVWD and Hillsboro (June 2015).

## Willamette Water Supply System IGA Summary

### II. Parties:

- Creates the WWSS Commission, a Chapter 190 entity between TVWD, Hillsboro and Beaverton to own, operate, maintain, manage, construct, repair and replace the WWSS.

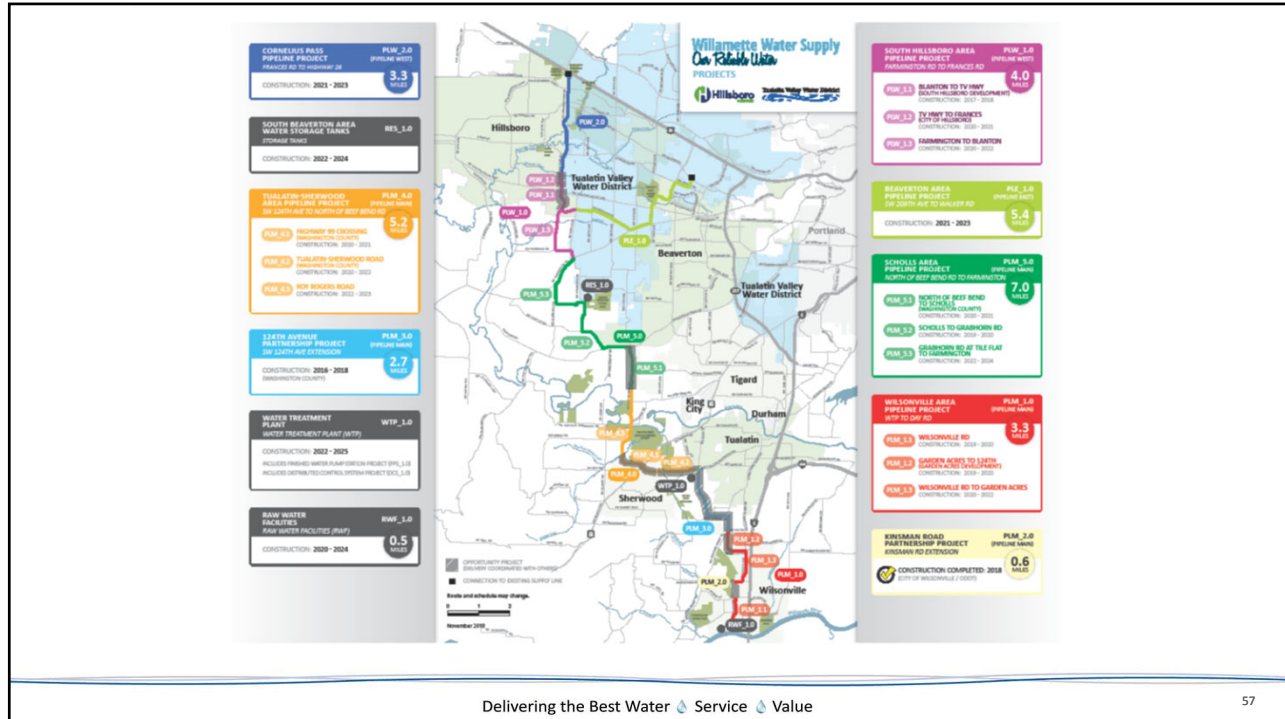
### III. Assets:

- WWSS Assets: everything downstream of System Separation Point to the Point of Delivery
- WWSS-only facilities *not* included in the Willamette Intake Facilities (WIF): raw water pipe (RWP), electrical ductwork, control building, surge tanks, instrumentation and controls, and pumps. There is a defined system separation point between WWSS and WIF.

## Assets

From WIF System Separation Point to Point of Delivery (Turnouts):

- Raw Water Pipeline to Water Treatment Plant (WTP)
- Water Treatment Plant
- Finished Water Pipeline from WTP to Terminal Storage
- Terminal Storage (Cooper Mountain)
- Transmission Pipeline from Terminal Storage to Hwy 26
- Turnouts identified on pipeline route for individual systems



## Willamette Water Supply System IGA Summary

### IV. Governance:

- Three-member Board with one alternate each. Member and alternate appointed by boards or councils.
- Board manages the business affairs of the WWSS Commission for the mutual benefit of all (powers and duties listed in Section 5.4).
- Board appoints Managing Agency as staff.

## Voting

- Weighted based upon initial RWP and finished water pipeline capacity
- Vote allocations:

Basis of Voting Weight

Party	Ownership Capacity (MGD)	Ownership Capacity Share (%)	Weighted Vote (%)
TVWD	59.1	58.92	58.92
Hillsboro	36.2	36.09	36.09
Beaverton	5.0	4.98	4.98
Total	100.3	100.00	100.00

- Voting changes based on re-rating
- Re-rating of capacity requires
  - WWSS Commission approved process
  - WWSS Commission adopted findings

## Voting

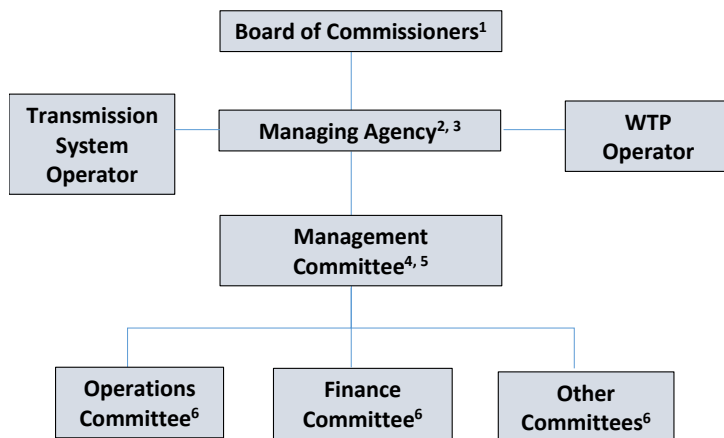
- Approval:
  - 70% of votes required to pass
  - Unanimous Vote = 100%
- Quorum:
  - All reps if 100% vote required
  - 70% if 70% vote required
- Unanimous vote (100%) required
  - New member
  - Authorize Commission debt
  - Amend or dissolve IGA

## Willamette Water Supply System IGA Summary

### V. Managing Agency

- TVWD appointed as Managing Agency
  - Continuation of WWSP IGA duties
  - Manage the WWSP to deliver the WWSS in 2026
  - Operations, maintenance, repair and replacement responsibility post 2026
- Post 2026 Managing Agency will supervise:
  - WTP operator - Hillsboro
  - Transmission operator - TVWD
- Powers and Duties in Section 6.6

## Willamette Water System Organization



**Notes:**

1. Appointed by governing bodies of each Party
2. Provides Managing Agency's recommendations to Board
3. Provides support to and consults with all committees
4. Provides recommendations to Managing Agency
5. Serve as liaisons to Parties' governing bodies
6. Provides recommendations to Management Committee

## Willamette Water Supply System IGA Summary

### VI. Advisory Committees:

- Management Committee
  - CEOs, city managers or designees
  - Members serve as liaisons to each respective governing body
  - Provides input and recommendations to the Managing Agency
- Finance Committee
  - People knowledgeable in municipal finance laws and practices
  - Provides recommendations to the Managing Agency
  - Recommends financial procedures to be implemented by the Managing Agency
- Operations Committee
  - People technically knowledgeable in water system operations or engineering
  - Managing Agency to advise and consult with the Operations Committee
  - Operations Committee to respond to requests from the Management Committee or Managing Agency
- Other committees as needed

## Willamette Water Supply System IGA Summary

### VII. Finances:

- Financial reporting and budget approval process
  - Managing Agency drafts budget and submits to Ops and Finance committees
  - Ops and Finance committees meet, review and revise budget with Managing Agency
  - Ops and Finance committees recommend budget to Management Committee (no later than March 15)
  - Following any final revisions, Managing Agency to distribute to the WWSS Board (April)
  - Budget/invoice and payment/accounting/audit

### VIII. Land:

- Fee title: water treatment plant, terminal storage and some pipeline segments
- Easement for facilities:
  - From Wilsonville and TVWD to the WWSS (TVWD, Hillsboro and Beaverton) for the WWSS facilities from the system separation point through the remainder of the Wilsonville and TVWD property
  - Various segments of raw water and finished water pipeline to point of delivery
- Ground lease: for all right-of-way usage in Wilsonville
- Permits: The majority of finished and raw water pipelines will be in public rights-of-way under occupancy permits.

## Willamette Water Supply System IGA Summary

### IX. Water Rights:

- Each party responsible to bring water rights
  - Perfection of water rights limited to owned WIF capacity and WWSS capacity unless otherwise approved by the Board

### X. Plans:

- Operations Plan
  - Complete prior to startup of WWSS
- Curtailment Plan
- Emergency Response Plan
- Capital Improvement Plan

## Willamette Water Supply System IGA Summary

### XI. Withdrawal and Sale Process:

- Notice
- Right of first offer extended to the other Parties (like the WIF Commission or Joint Water Commission). The price and terms are negotiated.
- Sale to municipal third party



## Willamette Water Supply System IGA Summary

### **XII. Lease of Capacity:**

- Firm leasing of capacity and water provisions

### **XIII. System Usage:**

- Overuse provisions, terms, remedies and compensation

## Willamette Water Supply System IGA Summary

### **XIV. Default and Performance:**

- Provisions for default, notice and opportunity for cure
- Remedies
  - Loss of voting privileges
  - Monetary losses
  - Termination of water service
- Dispute resolution procedures

## Next Steps and Schedule

- Currently under review by TVWD, Hillsboro and Beaverton
- Effective Date: July 1, 2019
- Adopt by ordinance
- Tentative TVWD schedule
  - First reading and hearing: March 20
  - Second reading, hearing and adoption: April 17

# **Willamette Water Supply System Intergovernmental Agreement**

**EFFECTIVE DATE  
JULY 1, 2019**

**~~1/10/19 DRAFT~~  
3/4/19 DRAFT**

**BY AND AMONG**

**TUALATIN VALLEY WATER DISTRICT**

**CITY OF HILLSBORO**

**CITY OF BEAVERTON**

**TABLE OF CONTENTS**

**EXHIBIT LIST**

<b>Exhibit No.</b>	<b>Title</b>
1	WWSS Ownership Allocation by Percentage
2	Description of Water Rights
3	WWSS Commission Organizational Structure
4	Weighted Voting System Calculation
5	Contract Approval Procedures
6	Financial Procedures
7	True Up Obligation
8	WWSS-Related Real Property
9	Sample Lease Form and Methodology
10	Overuse Compensation Requirements
11	Insurance Requirements and Limits
12	Existing Agreements Affected by the WWSS
<a href="#">13</a>	<a href="#">Performance and Maintenance Assurance</a>
<a href="#">14</a>	<a href="#">Approved Ancillary Projects</a>
<a href="#">15</a>	<a href="#">Capacity Allocations Methodology</a>

## Willamette Water Supply System Intergovernmental Agreement

This Willamette Water Supply System Intergovernmental Agreement (“**Agreement**”) for the ownership, management and operation of the Willamette Water Supply System (“**WWSS**”) is entered into between Tualatin Valley Water District (“**TVWD**”), a domestic water supply district organized under ORS Chapter 264, the City of Hillsboro (“**Hillsboro**”), an Oregon municipal corporation, and the City of Beaverton (“**Beaverton**”), an Oregon municipal corporation, all of which are local governments authorized to own, operate and maintain municipal water supply systems. Each entity may be referred to individually as a “**Party**” or jointly as “**Parties**.”

### RECITALS

WHEREAS, TVWD is a domestic water supply district under Oregon Revised Statutes (“ORS”) Chapter 264, which distributes potable water to its respective water system Users; and,

WHEREAS, Hillsboro operates a municipal water supply utility under ORS Chapter 225, which distributes potable water to its respective water system Users; and,

WHEREAS, Beaverton operates a municipal water supply utility under ORS Chapter 225, which distributes potable water to its respective water system Users; and,

WHEREAS, TVWD, Hillsboro, Beaverton, and the cities of Wilsonville, Sherwood, and Tigard have entered into the *Willamette Intake Facilities Intergovernmental Agreement* (“**WIF Agreement**”) dated April 18, 2018, creating an ORS Chapter 190 intergovernmental entity for the ownership, management, and operation of the Willamette Intake Facilities and to provide for design and construction to upgrade and expand the Willamette Intake Facilities; and,

WHEREAS, Hillsboro and TVWD entered into the *Agreement for Design and Construction of the Willamette Water Supply Program* (“**WWSP Agreement**”) on or about June 16, 2015, to permit, design, and construct the Willamette Water Supply System including intake and transmission facilities, a water treatment plant, and reservoir facilities (“**WWSS**”) to provide potable water to Hillsboro and TVWD and system reliability; and

WHEREAS, design and construction of portions of the WWSS has commenced; and,

WHEREAS, Hillsboro and TVWD desire to supersede and transfer, as necessary, the rights and obligations set forth in the WWSP Agreement into this Agreement; and

WHEREAS, TVWD, Hillsboro, and Wilsonville entered into a *Ground Lease for the Raw Water Pipeline*, dated March 21, 2018, and a *Pipeline Easement*, dated March 26, 2018, that will allow the Intake Facilities to connect via pipeline over the real property owned by TVWD and Wilsonville to the WWSS raw water pipeline located in and along Wilsonville right-of-way and lands owned or to be acquired by Wilsonville and TVWD; and,

WHEREAS, the Parties hold or may hold certain storage, release and surface water rights on the Willamette River and its tributaries (“**Water Rights**”) for the purpose of providing water to Willamette River Water Treatment Plant (“**WRWTP**”) or WWSS Water Treatment Plant Facilities for ultimate delivery to their respective water system Users; and,

WHEREAS, the Parties each own and operate municipal water supply systems that provide essential service to their communities, including protection of public health, emergency fire suppression, and potable water supply to support viable community and economic activities, and WWSS will provide necessary water supply to their respective water systems; and,

WHEREAS, the purpose of this Agreement is to set forth the terms for the joint ownership, financing, design, permitting, construction, operation, maintenance, repair and replacement of the

WWSS in a prudent, economic and efficient manner to provide high quality water to the Parties' respective municipal water supply systems, to support the resilient functioning of the WWSS, and to support their commitment to WWSS regional water supply planning and management; and

WHEREAS, the Parties are authorized under ORS Chapter 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 in this Agreement, the Parties agree as follows:

#### **AGREEMENT**

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

##### **1. Effective Date and Duration**

This Agreement is effective as of the 1<sup>st</sup> day of July 2019. Subject to the dissolution provisions in Section 27, this Agreement is perpetual.

##### **2. Transfer and Assignment**

As further provided for by this Agreement, the Parties agree to transfer and assign all their rights and obligations under the WWSP Agreement to the WWSS Commission created by this Agreement, and as provided in Section 28.7, the WWSP Agreement shall terminate upon such transfers and assignments. The Parties shall conclude and transfer WWSP assets; notwithstanding the foregoing, the Parties may elect to keep regulatory agency permits in the joint names of TVWD and Hillsboro to avoid additional permit processes.

##### **3. Definitions**

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



meanings:

- 3.1. **Agreement means this WWSS Intergovernmental Agreement.**
- 3.2. **Board** means the Willamette Water Supply System Board created by **Section 5.1.1** of this Agreement.
- 3.3. **Capacity** means the instantaneous ability of various components of the WWSS to deliver available water that does not exceed a Party's Ownership, 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. Storage shall be measured in million gallons.
- 3.4. **Capacity Expansion** means the expansion of any component facility of the WWSS through a capital improvement project that increases capacity.
- 3.5. **Commission** means the Willamette Water Supply System Commission, an intergovernmental entity created pursuant to ORS Chapter 190 and formed under this Agreement whose Parties are TVWD, Hillsboro and Beaverton, and may include other Municipal Water Providers joining at a future date.
- 3.6. **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.
- 3.7. **Demand** means the instantaneous amount of water used or projected to be used by a Party and imposed on the WWSS to deliver water to their respective municipal water supply systems. 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 WWSS.

- 3.8. **Emergency Response Plan** means a plan that outlines emergency procedures that are recommended for implementation.
- 3.9. **Effective Date** means the date specified in Section 1.
- 3.10. **Facilities Modification** means a capital improvement that does not result in a Capacity Expansion.
- 3.11. **Finance Committee** means the committee with a representative appointed by each Party to act as provided in Section 7.3.
- 3.12. **Fiscal Year** means the period from July 1 through June 30.
- 3.13. **Lease** means the lease of Capacity in the WWSS according to the terms and conditions of Section 14.
- 3.14. **Management Committee** means the committee with a representative appointed by each Party to act as provided in Section 7.1.
- 3.15. **Managing Agency** means the Party designated under Section 6 to manage the business affairs of the Commission and act in accordance with Section 6 and other provisions of this Agreement.
- 3.16. **Master Plan** means a plan that analyzes the performance of the WWSS, documents recommended upgrades, estimates water demand projections from the Parties, and updates the capital improvement plan.
- 3.17. **Member** means a person appointed by a Party to serve on the Board.
- 3.18. **MGD** means million gallons per day.
- 3.19. **Municipal Water Provider** means a city or special district, as defined by ORS

174.116, that supplies drinking water to the public.

- 3.20. **Operations Committee** means the committee with a representative appointed by each Party to act as provided in Section 7.2.
- 3.21. **Operations Plan** means the plan that describes the operational protocols, communications, and coordination for the WWSS.
- 3.22. **Ownership** means the ownership interest in the WWSS of a each Party ~~in the WWSS~~, established following a financial investment in the component facilities of the WWSS and periodically adjusted based upon audited financial records. The Ownership interest in the WWSS of each Party is set forth in Exhibit 1.
- 3.23. **Point of Delivery** means the WWSS owned and operated metered delivery locations connected to a Party's distribution system at the outlet side of the first manual isolation valve downstream from the WWSS-owned meter.
- 3.24. **Real Property** means the real property upon which the WWSS assets are located and may consist of fee, Wilsonville Ground Lease, lease, easement, license or permit interests.
- 3.25. **Supermajority** means a vote of approval from more than seventy percent (70%) of the weighted eligible votes of the Board when the votes are cast.
- 3.26. **System Separation Point** means that point defined in the WIF Agreement where the Willamette Intake Facilities terminate and the water from the caisson is separated by the pumps into untreated water pipes conveying water to either the WRWTP or WWSS WTP, as defined below.
- 3.27. **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 to whom the Party has agreed to sell water.

- 3.28. **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 to deliver water to the WWSS Water Treatment Plant. The Water Rights are more fully described in **Exhibit 2**.
- 3.29. **Willamette Intake Facilities (“WIF”)** means existing, expanded, or upgraded Willamette Intake Facilities used to withdraw and transmit water to the WIF Parties at the agreed System Separation Point. The Willamette Intake Facilities include the fish screens, intake pipe, caisson, pump station building, and other jointly owned equipment leading up to the System Separation Point in the WIF Agreement.
- 3.30. **Willamette River Water Coalition (“WRWC”)** means the ORS Chapter 190 entity currently consisting of TVWD and the cities of Sherwood, Tigard, and Tualatin.
- 3.31. **Willamette River Water Treatment Plant (“WRWTP”)** means the Water Treatment Plant located near the Willamette Intake Facilities currently serving potable water to the cities of Wilsonville and Sherwood, and other potential Municipal Water Providers.
- 3.32. **Willamette Water Supply Program (WWSP)** means the Program described in the Agreement for Design and Construction of the Willamette Water Supply Program (WWSP Agreement) and the Staff consisting of TVWD employees, Hillsboro employees, and consultants, assembled under the WWSP Agreement, ~~to manage and deliver the WWSS until WWSS completion to be directed by the~~

~~Managing Agency under this Agreement as a WWSS Managing Agency resource.~~

3.33. **Willamette Water Supply System (“WWSS”)** means all water supply system infrastructure facilities beginning at the Willamette Intake Facilities System Separation Point and continuing to the Points of Delivery, consisting of the raw water pipeline, water treatment plant, finished water pipeline(s), finished water storage, and related facilities that serve potable water to TVWD, Hillsboro, Beaverton and other potential Municipal Water Providers.

3.34. **Willamette Water Supply System Water Treatment Plant (“WWSS WTP”)** means the Water Treatment Plant in Washington County to be designed and constructed to serve potable water to TVWD, Hillsboro, Beaverton and other potential Municipal Water Providers.

#### **4. Commission**

Pursuant to ORS Chapter 190, the Willamette Water Supply System Commission (“**Commission**”), governed by the Willamette Water Supply System Board, is created according to this Agreement and the laws of Oregon. The Commission is created under this Agreement to design, permit, fund, construct, own, operate, manage, repair and replace and, as reasonable provide information to the Parties in support of their procuring financing for the WWSS in order to supply water to the Parties to this Agreement. The Board is served by appointed Management, Finance, and Operations Committees and the affairs of the Board are administered by an appointed Managing Agency (as appointed under **Section 6**), WWSS Intake and Water Treatment Plant Operator (as appointed under **Section 12.3**), and a WWSS Transmission System Operator (as appointed under **Section 12.4**), with an organization structure illustrated in **Exhibit 3**.

## 5. Willamette Water Supply System Board

### 5.1. Composition, Voting, Appointment, Alternates, and Quorum

- 5.1.1. The Commission shall be governed by a three-member Board. The name of the Board is the Willamette Water Supply System Board (“**Board**”).
- 5.1.2. The Board shall use a weighted voting system that is calculated by the percent of owned capacity of: 1) the raw water pipeline and 2) the finished water pipeline pumped as set forth in **Exhibit 4**. Vote splitting is not allowed. Any vote by a Member shall be a vote for the entire percentage share. Except where a unanimous vote is required, a Supermajority affirmative vote is required to decide any issue before the Board.
- 5.1.3. Each Party will appoint its respective Member to the Board pursuant to the decision-making process of the Party’s governing body. A Member serves at the pleasure of the Member’s governing body. A Party may not appoint a non-elected employee, employed by the Party, to serve as its Member on the Board.
- 5.1.4. Each Party’s governing body shall appoint an alternate Member to the Board to attend meetings in the absence of the regularly appointed Member. The alternate Member shall be appointed and may be removed in the same manner and must meet the same qualifications as the regularly appointed Member as set forth in **Section 5.1.3**. If the Member and the alternate Member attend the same meeting of the Board, the Member shall be the voting representative for the Party. The Member shall inform the Chair, as appointed under **Section 5.3**, in advance of any meeting of the Board if he

or she cannot attend and whether the alternate Member will attend and will be authorized to vote.

5.1.5. A quorum of the Board shall be two Members representing at least 70% of the weighted eligible votes, provided that if a unanimous vote is required to decide an issue before the Board, then each Party must have a voting Member present at the time of the vote to constitute a quorum for purposes of deciding that issue.

5.1.6. Upon application for membership by another Municipal Water Provider, the allocation of weighted voting shall be negotiated and mutually agreed upon before a new Party is admitted.

5.2. **Meetings; Manner of Acting**

Board meetings shall be conducted in accordance with applicable state law relating to public meetings. The Board shall generally meet monthly during the construction of the WWSS, but in no event less than quarterly. Special meetings may be called by the Chair or by any two Members. The Board shall adopt rules governing the conduct of its proceedings. Attendance at meetings by a Party's Member or alternate Member is an obligation required to be performed under this Agreement, and absences that preclude the Board from taking action constitute a default under **Section 22**.

5.3. **Officers**

The Board shall annually elect from its Members a chair ("Chair") and a vice chair ("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 by the

Board. 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 and may be replaced by the Board at any time. Officers will serve until a successor is appointed by the Board.

5.4. **Powers and Duties**

The Board shall be the governing body of the Commission and manage the business and affairs of the Commission for the mutual benefit of all Parties. The Board shall adopt such bylaws, rules, regulations and policies as it deems necessary in furtherance of the purposes of this Agreement. The Board shall perform such further duties as may be required by this Agreement, and it shall have all powers necessary and incidental to the execution of its specific duties. Unless otherwise reserved or delegated to the Managing Agency or a committee, the Board shall have all powers state or federal law authorize the Commission to exercise. The Board's powers shall include, among other things the authority to:

- 5.4.1. Appoint a Managing Agency, as provided in Section 6, and approve the terms of any agreement(s) with the Managing Agency as described in Section 6.
- 5.4.2. Adopt ordinances, resolutions and rules or regulations.
- 5.4.3. Approve an operations and management contract(s) as needed.
- 5.4.4. Adopt a budget, as described in Section 8.2.
- 5.4.5. Hire employees as it deems necessary.
- 5.4.6. Adopt a work plan in association with the budget.
- 5.4.7. Approve capital improvement plans, which may include the current fiscal



year.

- 5.4.8. Adopt contracting rules and serve as the Local Contract Review Board under ORS Chapter 279A.
- 5.4.9. Approve and periodically update a Master Plan and Operations Plan for the WWSS.
- 5.4.10. Recommend membership by another Municipal Water Provider, as provided in Section 20, subject to approval by the governing body of each Party.
- 5.4.11. Approve modifications or amendments to the Exhibits to this Agreement.
- 5.4.12. Approve and periodically update an Emergency Response Plan, and related policies and practices, to govern the operation of the assets in an emergency.
- 5.4.13. Approve and periodically update a Curtailment Plan.
- 5.4.14. Approve any Lease ~~for system assets~~ that has a term less than one year or longer than five years, as provided in Section 14.
- 5.4.15. Approve and periodically update overuse plans developed under Section 15.
- 5.4.16. Cause a financial audit to be conducted annually.
- 5.4.17. Review and obtain appropriate insurance and fidelity coverages.
- 5.4.18. Oversee the management and operation of the Managing Agency.
- 5.4.19. Approve contracts as set forth in Exhibit 6; acquire real property by negotiation, lease sale or condemnation; and dispose of surplus real and personal property.

**Commented [CB1]:** The definition of lease refers to capacity. Use of system assets seems confusing. Deleted system assets and just refer to lease as a defined term. If we need to adjust definition of lease, we can

5.4.20. Delegate to the Managing Agency, in writing, any functions of the Board and change those delegations from time to time.

5.4.21. Take other actions necessary and proper to manage, operate and maintain the WWSS.

**5.5. Ancillary Projects**

The Board may, in its reasonable discretion, consider and approve a request from a Party to allow use of Managing Agency resources to oversee and manage design and construction of a project that delivers water from a direct connection to the WWSS to that Party's water system. In such case, the Party shall submit the request to the Managing Agency, with a description of the scope of the proposed project and the justification for oversight and management by the Managing Agency. The Board will consider the request and may approve use of Managing Agency WWSS resources generally upon the following:

5.5.1. The proposed project is of sufficient size, complexity, or potential impact to the WWSS that oversight and management of its design and construction is appropriate;

5.5.2. WWSS Managing Agency resources staff are available to manage the project; and,

5.5.3. A mutually acceptable separate project agreement is executed between the requesting Party and the WWSS whereby the requesting Party agrees to, among other things, (a) management of the project by Managing Agency resources; (b) award the design or construction contract in the Party's sole name; (c) be responsible for all direct and indirect costs incurred by WWSS

Managing Agency resources; and (d) to fully indemnify, defend and hold harmless the WWSS and other Parties from any and all claims, costs, damages, liabilities or demands of any kind.

5.5.4. Notwithstanding the criteria established in Section 5.5.1 and 5.5.2 and subject to execution of a mutually acceptable separate project agreement in accord with Section 5.5.3, the Projects set forth on Exhibit 14, attached hereto and incorporated by reference, are approved as Ancillary Projects.

#### 5.6 Performance and Maintenance Assurances.

The Board may approve an intergovernmental agreement in substantially the form attached hereto as Exhibit 13, attached hereto and incorporated by reference that allows WWSS to provide performance and maintenance assurances within the City of Beaverton in lieu of bonds or other security.

### **6. Managing Agency**

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

TVWD is appointed the Managing Agency until such time that the Board designates a new Managing Agency. Upon designation of a new Managing Agency, TVWD and the 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 by the Management Committee prior to implementation, which shall provide advice to the existing and new

Managing Agencies about recommended changes to the plan.

6.2. **Contracted Services**

The Board may select a Managing Agency who is not a Party. In such case, the Board will obtain proposals in whatever manner it deems to be in the best interests of the Commission, provided that such process is otherwise consistent with this Agreement and applicable law. 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 by the Management Committee prior to implementation. The Board may terminate the contract with a non-Party Managing Agency at its sole discretion and appoint a new Managing Agency.

6.3. **Commission Employees**

The Board, in its discretion, may hire employees to assist or replace the Managing Agency. Upon notice from the Board of its intent to appoint employees to replace the Managing Agency, 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 by the Management Committee prior to implementation, which shall provide advice to the existing Managing Agency and the new employee(s) about recommended changes to the plan.

6.4. **Managing Agency Review**

The Management Committee shall conduct a performance review of the Managing Agency every five years to assist the Managing Agency with its duties. The Board,

in its discretion, may also conduct a review of the Managing Agency as it deems necessary and prudent.

6.5. **Termination or Withdrawal**

The Board will provide notice to the Managing Agency and Parties if the termination is for a default as provided in **Section 24**. The Managing Agency will provide a notice to the Board if withdrawal is desired. A notice to withdraw must specify an effective date, but in no event may the Managing Agency terminate without a successor Managing Agency in place. A transition plan with a reasonable period for transfer of duties to the new Managing Agency will be developed by the current Managing Agency and new Managing Agency for approval by the Board.

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

The Board may delegate any and all powers to the Managing Agency as necessary to provide for the management functions required to administer the Commission. The Managing Agency is responsible for administering the day-to-day 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. In addition to any other duties assigned or delegated by the Board, the Managing Agency's duties shall include, but are not necessarily limited to, the following:

- 6.6.1. Prepare a proposed annual work plan and corresponding proposed annual budget.

- 6.6.2. Perform such duties as established in an adopted annual work plan and any other duties as directed by the Board.
- 6.6.3. Provide administration of the Board meetings and required public meeting notices and duties.
- 6.6.4. Maintain records in accordance with public records laws.
- 6.6.5. Provide administration of the infrastructure operations and maintenance of the WWSS assets and associated contract approvals.
- 6.6.6. Perform financial planning and management for the Commission and WWSS operations including payment of invoices, accounting, reporting, financial oversight and budgeting in accordance with Oregon law.
- 6.6.7. Develop and coordinate capital improvements plans, including the timing of any improvements or expansions ~~as related~~ to the WWSS. Each Party will participate in planning projects, such as a Master Plan or facilities plan, and will provide good-faith estimates for future Demand.
- 6.6.8. Provide capital project management ~~through WWSP~~ for initial delivery of the WWSS by 2026 and ~~capital projects~~ thereafter with Managing Agency resources.
- 6.6.9. Provide leadership, administration and staffing in support of the Board and committees such as the Management Committee, Operations Committee, and Finance Committee.
- 6.6.10. Prepare and update an Operations Plan in coordination with the Parties. The Operations Plan must be reviewed by the Management Committee prior to submitting it to the Board for adoption.

- 6.6.11. Coordinate with WRWTP and the Willamette Intake Facilities to support and facilitate the orderly and effective operations, maintenance and construction activities of the WWSS.
- 6.6.12. Oversee and collaborate with the WTP Operator (as appointed in Section 12.3) and Transmission System Operator (as appointed in Section 12.4) for operation and maintenance management strategies and asset management.
- 6.6.13. Take prompt action, as necessary, in accordance with 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 WWSS, and the steps taken by the Managing Agency in response will be provided to the Board.
- 6.6.14. Procure and manage appropriate insurance coverages and fidelity coverages, in accordance with the insurance requirements set forth in Section 28.3, or as the Board may otherwise direct.
- 6.6.15. Approve, execute and administer contracts, subject to the contracting rules and direction of the Board within the limits set forth on Exhibit 6.
- 6.6.16. Provide the Parties and their authorized representatives access to all books, documents, papers and records of the Managing Agency that are directly related to the WWSS and associated capital improvement projects for the purpose of making any audit, examination, copies, excerpts and transcripts.
- 6.6.17. Provide public communications and outreach, including response to public information, media or records requests.

- 6.6.18. Provide operation management and oversight as set forth in **Section 12.2**.
- 6.6.19. Identify, track and report on key performance indicators and level of service goals.
- 6.6.20. Establish and maintain an operations safety program.
- 6.6.21. Manage the use of proceeds and any facilities constructed with borrowed proceeds in accordance with authorized purposes.
- 6.6.22. Cooperate with the Parties and assist them as reasonably requested in ~~compliance complying with covenants related to obligations for~~ their own borrowings ~~that is~~ associated with the WWSS.
- 6.6.23. Other duties as may be assigned by the Board.

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

### **7.1. Management Committee**

Each Party shall appoint one person to serve on the Management Committee. Each Management Committee appointee shall be a Party's Chief Executive Officer, City Manager, or ~~his or her the Chief Executive Officer or City Manager's~~ designee. The Managing Agency shall meet with the Management Committee to receive ~~advisory~~ recommendations on policies, planning, operations, capital projects, contract awards, etc., which the Managing Agency may use to provide information and recommendations to the Board. The Management Committee members will also serve as the liaison to each of their respective governing bodies regarding the work of the Managing Agency.

### **7.2. Operations Committee**

Each Party shall appoint one person to serve on the Operations Committee. Each



Operations Committee appointee shall be technically knowledgeable in water system operations or engineering to the Operations Committee. A Party may allow other attendees at an Operations Committee meeting. The Managing Agency will advise and consult with the Operations Committee on matters including but not limited to WWSS operations, capital improvements and planning, and contract management. The Operations Committee shall adopt a meeting schedule and, as required by this Agreement or upon request by the Management Committee, report on or provide recommendations to the Management Committee on any such matter in order to permit the Management Committee to provide advice to the Managing Agency.

7.3. **Finance Committee**

Each Party shall appoint one person to serve on the Finance Committee. Each Finance Committee appointee shall be knowledgeable in governmental accounting and finance practices. A Party may allow other attendees at a Finance Committee meeting. The Finance Committee shall adopt a meeting schedule and, as required by the Agreement or as requested, provide recommendations to the Management Committee ~~in order~~ to permit the Management Committee to provide advice to the Managing Agency 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.

7.4. **Other Committees**

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

Commission or Managing Agency.

## **8. Financial Management**

### **8.1. Budget Process and Calendar**

The Board shall adopt a budget for the Commission's operations and capital improvements for each Fiscal Year or on a biennial budget basis if the Board elects.

The Board shall adopt procedures for its consideration of the budget, which may, in the Board's discretion, require the Managing Agency to work with the Management, Operations and/or Finance Committee, before proposing a budget to the Board for its consideration.

### **8.2. Budget Adoption**

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 budget later than June 1<sup>st</sup> of each year.

### **8.3. Capital Improvement Plan Budget**

The Managing Agency shall maintain capital improvement plan budget projections for at least the subsequent four Fiscal Years following the current fiscal year budget, which shall be updated annually or biennially and submitted to the Board with the initial draft budget and the proposed budget. The Board will consider the capital improvement plan for adoption on an annual basis on the same timeline as the annual budget.

### **8.4. Accounting**

The Managing Agency shall comply with government accounting standards,

maintain independent budget and accounting control procedures, and provide budget financial status reports in a manner and at times required by the Board.

8.5. **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 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 corrective actions as needed. A copy of the annual audit shall be provided to each Party upon acceptance by the Board.

8.6. **Borrowings**

Each Party is expected to independently finance its share of the various components of the WWSS as well as any necessary future capital improvements, ~~comply with borrowing covenants, applicable federal and state law and provide required continuing disclosures.~~ Accordingly, the Parties do not anticipate that the Commission itself will need to enter into borrowing for the WWSS or future capital improvements, borrow money by issuing bonds under the provisions of ORS Chapter 287A and financing agreements under ORS 271.390 or borrow as otherwise may be allowed by Oregon law to finance capital improvements. Nonetheless, upon the approval of a written agreement by the governing bodies of each Party (the “Debt Agreement”), and a unanimous decision by the Board, the Board may approve borrowings funds. To the extent that the WWSS Commission

enters into borrowings, ~~borrows as an entity~~, then each Party shall be responsible for its proportionate share of the borrowings debt as determined by the Debt Agreement, which shall become an exhibit to this Agreement.

8.7. **Financial Procedures**

The Managing Agency shall develop any additional financial procedures as necessary to comply with the terms of this Agreement and applicable law for adoption by the Board.

8.8 **Invoicing of Parties and Payment of Budgeted Costs**

8.8.1. Each Party acknowledges and recognizes that all of the Parties to this Agreement are relying upon each other to provide a critical health, life and safety service to their respective Users. To that end, each Party covenants to impose rates in whatever amounts necessary to fund the Commission in a sum equal to its percentage share of the costs incurred to operate and maintain the WWSS, provide for administrative oversight of the Commission, as well as any additional capital improvement costs necessary to continue the operation of the WWSS. The Managing Agency shall provide a monthly invoice to each Party in an amount equal to each Party's percentage share of the costs incurred by the Commission for (1) administrative costs; (2) capital improvement costs, except as paid under the process of Section 8.8.3 for initial WWSS capital expenditures; and (3) operation and maintenance costs, as determined by the methodology set forth in **Exhibit 6**. Each Party agrees to pay such invoice within 30 days of the invoice being issued by the Managing Agency.

**Commented [CB2]:** The key points of this section are to have a clear and unambiguous rate covenant which is the second sentence of this section. This amended sentence is correct in terms of invoicing in the post 2026 world. But with Section 8.8.3 and Exhibit 6, capital costs through 2026 will be paid differently. Trying to draw out that distinction.

8.8.2. The Parties shall true up expenditures incurred prior to the effective date of this Agreement, including but not limited to expenditures for permitting, interests in land (fee, easement, Wilsonville Ground Lease, lease, permit or license), design, construction, and other costs incurred for WWSP by TVWD and Hillsboro. The amount of these true up expenditures either owed or overpaid for each Party is set forth in Exhibit 7. Within a reasonable time after the effective date of this Agreement, the Managing Agency will provide an invoice to each Party, which shall reflect the amounts allocated in Exhibit 7 to the invoiced Party. Each Party shall pay any amount owed within [redacted] days of invoice by the Managing Agency. The Managing Agency shall provide a credit against future invoices issued pursuant to Section 8.8.1 for any Party's overpayment as set forth in Exhibit 7.

8.8.3. For initial permitting, land acquisition, design and construction of WWSS capital improvement projects to deliver water by 2026, ~~the WWSS shall follow the billing and payment methods and procedures set forth in Exhibit 6, attached hereto and incorporated by reference. each Party shall deposit its respective share of the succeeding three months of the baseline budget. The Parties shall execute a Deposit Agreement that provides for advance deposit of funds with the Managing Agency, to be drawn upon by the Managing Agency as costs are incurred. Draws shall be reported, and the fund shall be replenished so that the deposit amount always holds the next three months of the baseline budget and is available to the~~

~~Managing Agency to complete the projects. The Agreement shall provide for investment of the fund consistent with the Managing Agency's portfolio of investments. Accrual of interest on a Party's deposit under the Deposit Agreement will be applied to that Party's existing deposit. The terms of the Deposit Agreement may be modified to conform with the WIFIA program terms.~~

#### 8.9. First Year Budget and Expenses

The initial budget for the WWSS for fiscal year 2019-20 will be considered by the Board after the effective date of this Agreement. Each Party agrees to reimburse the Managing Agency for its share of all WWSS costs and expenses incurred after the effective date of this Agreement up to and including the adoption of the WWSS budget by the Board. These expenses will be included in the projected first year budget and will be accounted for and invoiced per Sections 8.7 and 8.8.

### 9. WWSS Ownership

#### 9.1. Ownership

The Parties each own or anticipate owning a certain percentage of capacity in the various components of the WWSS. The anticipated percentage of owned capacity for each component is set forth in **Exhibit 1**. Upon completion of construction of each WWSS component and at any other time thereafter, the Board may amend **Exhibit 1** as necessary to reflect the actual capacity percentage of each WWSS

component.

9.2. **Real Property Ownership**

Current and future acquired Real Property interests will be held in the name of the WWSS Commission. Upon execution of this Agreement, any Party holding a WWSS-related Real Property interest listed in Exhibit 8 shall undertake to convey and transfer the interest to the Commission, unless either impracticable or otherwise agreed by the Board.

9.3. **IGA's, Permits and Other Assets**

Unless otherwise agreed by the Board, each Party agrees to take any further actions as necessary to effectuate the intent of this Agreement, including but not limited to, transferring or assigning any rights or interests in Intergovernmental Agreements, Permits and other assets that would have been held by the Commission if it were in existence at the time the rights or interests were acquired.

9.4. **Re-Rating Capacity**

The Parties acknowledge that the Assets set forth on Exhibit 1 may be capable of producing greater capacity than the stated ownership capacity. The capacity ownership stated on Exhibit 1 shall remain binding until the asset is re-rated at the request of TVWD or Hillsboro following the procedure set forth herein. No Party will have a greater capacity in an asset until the re-rating process is completed and approved by the Board; and Exhibit 1 is amended.

TVWD or Hillsboro may request the Board undertake a re-rating process for a specific asset(s) or of the entire WWSS. The Party's request shall be initiated by a

written proposal to the Managing Agency for Board consideration. The Managing Agency will provide the proposal to the Board and the other Parties. At or prior to the meeting where the Board will consider the proposal, the other Party (TVWD or Hillsboro) shall state whether they support the proposal. Beaverton will not participate ~~nor~~ receive benefit of re-rated capacity in excess of its ownership in the WIF. ~~because its ownership will not exceed 5 MGD.~~

Board authorization shall be conditioned upon full cost reimbursement of the WWSS for all consultant, attorney or other costs incurred by the WWSS from the re-rating study. The Parties that participate in the re-rating study may agree upon the allocation of resulting additional capacity different than proportional allocation. The results of any re-rating study shall be provided to the Board for review and approval. No re-rating of capacity is effective until Board approval. As part of Board approval of the re-rated capacity, all transactions, sales or exchanges resulting from the re-rating shall be implemented and the necessary exhibits will be amended or adopted.

## **10. Water Rights**

Each Party is responsible for obtaining its own Water Rights sufficient to meet its demand. Coordination, certifications and perfections, curtailments, and restrictions on use are managed through the WIF Agreement. The WWSS Commission will coordinate with the WIF Commission for demand and withdrawal needs. A Party's certification or perfection of its individual Water Right through the WWSS facilities cannot exceed the Party's owned Intake Facilities Capacity unless the Board approves otherwise and such approval is not to the detriment of the other Parties'



Water Rights.

## 11. Use of the WWSS by the Parties

### ~~11.1 Prudent Operating Practices~~

Each Party shall use the WWSS in a manner consistent with prudent water utility operating practices and in a manner that minimizes the impact of use, including additional costs, on the other Parties. The Managing Agency shall manage the WWSS for the mutual benefit of all Parties. Each Party shall obtain sufficient Ownership in the WWSS to serve the Demand imposed on the WWSS Commission by the Party.

## 12. Operations

### 12.1. Operations Plan

Prior to the date the WWSS Commission commences delivery of potable water to the Parties' respective distribution systems, the Board shall approve an Operations Plan that is developed by the Managing Agency in consultation with the Operations and Management Committees. The Operations Plan for the WWSS will include, but is not limited to, agreed protocols and a methodology to provide for the equitable, effective and efficient operation of the WWSS in accordance with generally accepted utility practices regarding the management, operation, maintenance, capital improvements, and expansion of all aspects of the WWSS, including level of service goals and coordination with the WIF, WWSS WTP, raw and finished water transmission system, terminal storage reservoirs and Points of Delivery to the Parties. The Operations Plan will provide that the Parties will use best efforts and good faith in the operation of the WWSS for the mutual benefit of

all Parties. The Operations Plan will be updated as needed.

12.2. **Operation Management and Oversight**

The Managing Agency shall follow the Board-adopted Operations Plan in performance of its functions. In addition to the duties set forth in **Section 6.6**, the Managing Agency shall be responsible for periodic updates to the Operations Plan. The Managing Agency shall identify the resources needed to fulfill the Operations Plan as part of the Commission’s annual work plan and budget.

12.3. **Operation of WWSS Intake and Water Treatment Plant – WTP Operator**

Hillsboro is initially appointed as the WWSS Water Treatment Plant Operator (“**WTP Operator**”) with responsibilities for participation in the design of improvements as well as routine operation and maintenance of the WWSS Raw Water Pump Station (“WWSS RWPS”) and WWSS WTP. The WTP Operator will be responsible for preparation and execution of those portions of the Operation Plan that directly pertain to the operation and maintenance of the WWSS RWPS and WWSS WTP, including coordination with the Managing Agency in support of the Managing Agency’s role for oversight and management of these functions. The WTP Operator, in coordination with the Managing Agency, shall recommend for review and approval by the Managing Agency the resources needed to fulfill these duties as part of the WWSS Commission’s annual work plan and budget.

12.3.1. The Management Committee, in coordination with the Managing Agency, shall conduct a performance review of the WTP Operator every five years. The Board, in its discretion, may also conduct a review of the WTP Operator

as it deems prudent.

12.3.2. Initial appointment of the WTP Operator will remain in effect until such time that the Board designates a new WTP Operator. The Board may select a WTP Operator who is not a Party. In such case, the Board will obtain proposals in whatever manner it deems to be in the best interests of the Commission and the Parties, provided that such process is otherwise consistent with this Agreement and applicable law. Upon Board designation of a new WTP Operator, the Management Committee and the Managing Agency will create a one-year transition plan, unless a different period is approved by the Board.

12.3.3. Duties to be performed by WTP Operator include but are not limited to:

- Day-to-day operation of the WWSS assets at the WIF, the WWSS RWPS and the WWSS WTP, including coordination with Parties to meet daily water demands.
- Coordinate operations and maintenance with other WIF partners.
- Coordinate operations and maintenance with the WRWTP.
- Perform Routine maintenance of the WWSS RWPS and WWSS WTP.
- Track and report on performance of WWSS components of the WIF, WWSS RWPS, and WWSS WTP operations and maintenance.
- Undertake financial reporting and annual budgeting of the WWSS components at the WIF, the WWSS RWPS/and the WWSS WTP.
- Coordinate with Managing Agency for budgeting, financial reporting, level of service goals development and tracking, key performance indicators

development and tracking, and procurements.

- Undertake routine ordering and maintenance of consumable supplies such as treatment chemicals.
- Undertake routine process control monitoring, including in-house laboratory testing.
- Asset management including maintenance of records.
- Participate in the WWSS Operations Committee.
- Coordinate with the Managing Agency for the procurement of WWSS WTP-related contract services (e.g., specialized maintenance, testing and inspections).

12.3.4. Operation of the WIF is the responsibility of the WIF Commission and, as such, the WWSS Commission does not direct the operation of the WIF. Notwithstanding that limitation, the WWSS WTP Operator shall be responsible for operation of WWSS assets located within the WIF, including coordination with the WIF Managing Agency and operation of WWSS assets in the WIF in conformance with the WIF Agreement IGA and the WIF Operations Plan.

12.3.5. Operation of WWSS WTP shall be executed in conformance with the WWSS Operations Plan and shall be coordinated with Managing Agency, Parties and the Transmission System Operator.

## 12.4 Operation of WWSS Pipelines and Reservoirs – Transmission System

### Operator

TVWD is initially appointed as the WWSS Transmission System Operator (“**Transmission System Operator**”) with responsibilities for participation in the design of improvements as well as routine operation and maintenance of the WWSS assets not located at the WIF or WTP. Transmission system assets generally include the WWSS raw water pipeline, finished water pipeline, terminal storage reservoirs, connections to the distribution systems (turnouts up to the isolation valve separating the turnout from the distribution system) and related appurtenances. The Transmission System Operator will be responsible for preparation and execution of those portions of the Operation Plan that directly pertain to the operation and maintenance of the WWSS transmission system, including coordination with the Managing Agency in support of the Agency’s role for oversight and management of these functions. The Transmission System Operator, in coordination with the Managing Agency, shall identify the resources needed to fulfill these duties as part of the WWSS Commission’s annual work plan and budget.

12.4.1. The Management Committee, in coordination with the Managing Agency, shall conduct a performance review of the Transmission System Operator every five years. The Board, in its discretion, may also conduct a review of the Transmission System Operator as it deems prudent.

12.4.2. Initial appointment of the Transmission System Operator will remain in effect until such time that the Board designates a new Transmission System

Operator. The Board may select a Transmission System Operator who is not a Party. In such case, the Board will obtain proposals in whatever manner it deems to be in the best interests of the Commission, provided that such process is otherwise consistent with this Agreement and applicable law. Upon Board designation of a new Transmission System Operator, the Management Committee and the Managing Agency will create a one-year transition plan, unless a different period is approved by the Board.

12.4.3. Operation of WWSS transmission system shall be executed in conformance with the WWSS Operations Plan and shall be coordinated with Managing Agency, Parties and the WTP Operator.

12.4.4. Duties to be performed by Transmission System Operator include but are not limited to:

- Day-to-day operation of the WWSS transmission system (including raw and finished water pipelines), terminal storage reservoirs and turnouts.
- Pipeline locating.
- Valve exercising, and other maintenance related to pipelines including periodic pipeline cleaning.
- Reservoir operation and maintenance including periodic cleaning.
- Asset management and mapping related to WWSS transmission system assets, including maintenance records.
- Performance tracking and reporting of transmission system operations and

maintenance.

- Delivery meter reading, reporting and meter maintenance.
- Coordination with Managing Agency for budgeting, financial reporting, Key Performance Indicator development and tracking, and procurements.
- Routine ordering and maintenance of consumable supplies.
- Participation in the WWSS Operations Committee.
- Coordination with the Managing Agency for the procurement of transmission system-related contract services (e.g., specialized maintenance, testing and inspections).

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

#### **13.1. 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 in consultation with the Operations and Management Committees. When reductions in Demand become necessary, the reduction shall be in accordance with the Curtailment Plan. The Curtailment Plan shall be developed in coordination and consistent with the Willamette Intake Facilities Curtailment Plan. The Curtailment Plan will be updated as needed.

#### **13.2. Emergency Response Plan**

The Board shall adopt an Emergency Response Plan. The Managing Agency shall prepare an Emergency Response Plan in consultation with the Operations and Management Committees. Procedures and protocols must be included in the proposed Emergency Response Plan. The Emergency Response Plan will be

updated as needed and presented to the Board for adoption.

## 14. Leasing

### 14.1. Leasing

The Parties recognize that options for leasing Capacity, as provided in Exhibit 9 ~~for the components of the WWSS,~~ are important to maintain the cost effective and efficient use of the WWSS and associated infrastructure. Only Parties to this Agreement are eligible to engage in leasing. A Party will not be forced to lease its percentage of owned eCapacity ~~in the WWSS components~~ to other Parties. Each Party retains sole discretion as to how much, if any, of its percentage of owned eCapacity of the WWSS components to make available for leasing. Prior to expanding or adding new infrastructure to the WWSS above the current Capacity of the components of the WWSS, the Parties will determine if leasing options are a reasonable approach as a method to defer capital expansion.

**Commented [CB3]:** Bond Counsel suggestion to use defined term of Capacity for consistency

### 14.2. **Leasing Procedures**

The Managing Agency will coordinate and manage the annual leasing process for the components of the WWSS, including associated agreements and approval requirements, on a schedule that accommodates the Commission and the Parties' budget processes. Any Party wishing to lease shall make a request to the Managing Agency stating the identity and eCapacity of WWSS components and the length of time the Party desires to for lease, and the period of lease. The Managing Agency will notify all parties of the lease request. Each Party interested in meeting the terms of the lease request will respond to the Managing Agency stating the eCapacity of WWSS components it wishes to make available to lease that conform



to the lease term requested. The Managing Agency will develop forms and protocols for managing the leasing process including the leasing requests and percentage of **owned eCapacity** in each WWSS component being made available for leasing by each Party. A rate methodology for leasing will be proposed by the Managing Agency, in consultation with the Management and Finance Committees, and adopted by the Board.

14.3. **Lease Terms**

The length of time for leases will be a minimum of one year and a maximum of five years, unless otherwise approved by the Board. The Managing Agency will develop recommended protocols and the terms to be approved by the Board for Leases. A sample Lease form and methodology are attached in **Exhibit 9**, which may be modified and/or updated by the Board.

14.4. **Lease Approval**

A Lease that is within the terms of this Section will be reviewed, approved and administered by the Managing Agency after consultation with the Management Committee. 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.

14.5. **Lease Distribution and Payments**

If more than one lessor and one lessee are involved, Lease requests and associated Lease revenues will be divided among the lessors based on the percentage of **owned eCapacity** in the WWSS component leased, unless otherwise approved by the Board. When Lease requests exceed the amount of percentages of **owned eCapacity**

made available, available percentages will be divided amongst the lessees based on the percent of Capacity requested, unless otherwise approved by the Board.

## 15. Overuse

### 15.1. Notification

A Party will manage its Demand on the WWSS within the Party's respective percentages of owned capacity in each of the WWSS components as may be augmented by leased 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 WWSS and to promote prudent planning of needed expansions. The Managing Agency shall notify a Party when the Party's instantaneous Demand has exceeded its percentage of owned capacity in any WWSS component as augmented by any leased Capacity. A Party should notify the Managing Agency if the Party exceeds or anticipates exceeding its percentage of owned capacity in any WWSS component as augmented by any leased Capacity. A Party will be required to take appropriate corrective action to decrease the Party's Demand on the WWSS to be within its percentage of owned capacity in the WWSS component(s) in question as augmented by any leased Capacity. A Party shall be deemed to have overused the WWSS if the Party's Demand on the WWSS exceeds the Party's percentage of ~~owned~~ Capacity in any WWSS component as described in Sections 9 and 11 and Exhibit 1. Overuse is subject to remedies described in Section 16.

### 15.2. Overuse Terms

If a Party has been notified by the Managing Agency that its instantaneous Demand on the WWSS has exceeded the percentage of owned capacity in any WWSS

component as augmented by any leased Capacity, the Party shall take corrective action to decrease the Demand to a non-exceedance level. A Party shall be deemed to have overused the WWSS if the Party's instantaneous Demand on the WWSS exceeds the Party's percentage of ~~owned~~ Capacity in a WWSS component as augmented by any leased Capacity ~~and Surplus Capacity~~ by the amount set forth in **Exhibit 1**. 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 of a component of the WWSS 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 in the WWSS, reduce Demand on the WWSS, or purchase Capacity in the WWSS, if made available by another Party such that the overuse will cease to occur. The Party that overused the WWSS 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 WWSS. Nothing in this Agreement shall compel a Party to lease or sell its percentage of owned capacity in any WWSS component to an overusing Party. The plan to eliminate overuse by the Party must be approved by the Board, 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. Failure of a Party to provide a plan, implement the plan or pay compensation shall be a default.

**16.2. Compensation**

To the extent that a Party overuses its percentage of ~~owned~~ Capacity in any WWSS component as defined in Section 15 of this Agreement, the Party shall compensate the other Parties as required by Exhibit 10. The compensation for overuse shall be distributed to the other Parties by their percentage of ~~owned~~ Capacity in the WWSS component that was overused.

**17. Expansion and Capital Improvements**

**17.1. Future Expansion or Improvement**

The component facilities constructed as part of the initial WWSS shall become the baseline measure of Capacity. Subsequent Capacity Expansion of the WWSS refers to any capital improvement project that results in increased WWSS Capacity over the baseline Capacity or any re-rating of a component facility that results in increased WWSS Capacity over the baseline Capacity. Capacity Expansion or Facilities Modification of the WWSS, 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 by the Management, Operations and Finance Committees before the Managing Agency presents it to the Board for adoption. The Managing Agency will conduct the planning and implementation of the WWSS Capacity Expansion, including provision for minimum operational impacts and cost impacts, to the other

Parties. Any Party may propose to the Managing Agency a Capacity Expansion outside the planned Capacity Expansions in the Master Plan, pursuant to the procedures set forth in subsection 17.2 below.

17.2. **Determination of Future Expansion**

Any Party may propose a Capacity Expansion by providing written notice to the Managing Agency describing the proposed expansion. The Managing Agency will provide notice to all 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 and: (a) state whether they wish to participate in the proposed Capacity Expansion, and (b) propose any conditions for participation. The Managing Agency will also determine if costs will be incurred that are beneficial to the WWSS, separate from the costs that increase capacity, such that non-participating parties should contribute a share of those general benefit costs based on the Party's percentage of owned capacity in the WWSS component in question. 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 responsibility for the capacity expansion costs, but they will participate in the general benefit costs. All Parties will include their proportionate share of the estimated costs in their respective budgets. In the case of any proposed Capacity Expansion, the Board must approve the proposed Capacity Expansion and allocation of capacity expansion and general benefit costs. If the Board agrees to allow the Capacity Expansion, each Party will have the option to participate in the

Capacity Expansion. If not all of the 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 other than those costs allocated to all Parties as general benefit costs. The Managing Agency will strive to resolve objections to proposed Expansion prior to a final decision being made with respect to the Capacity Expansion. A project agreement will be executed, and the Managing Agency will provide all design, permitting and construction management unless otherwise agreed.

## **18. Agreements for Sale of Water to Non-Party**

### **18.1. Sale by a Party:**

Each Party may enter into wholesale water sales agreements ~~for the sale of water to~~ with a non-Party if the connection to the non-Party is to the Party's system and not to the WWSS, ~~and if no other Parties are interested in participating in the sale.~~ Existing wholesale agreements that are in place with a Party prior to this Agreement are not governed by the WWSS Commission or this Agreement.

### **18.2 Sale by the WWSS.**

~~The Parties agree that the~~ Wholesale of water sales agreements with ~~to~~ a non-Party, ~~which is not~~ connected to the WWSS and not a Party's distribution system, shall be between the non-Party purchaser and by wholesale agreement with the WWSS Commission as approved by the Board. The Parties agree that sale of water to a non-Party from on the WWSS illamette supply shall occur only through the WWSS Agreement and not the WIF Agreement. The Capacity made available to a non-Party shall be based on an agreed upon formula by those e-participating

Parties ~~who own Capacity in~~ the WWSS components required for the sale ~~who agree to participate. A WWSS wholesale water sales agreement will be developed and approved by the Board and the non-Party.~~ A Party may opt out of participating in any wholesale agreement prior to the WWSS Commission entering into any such agreement. The cost of water for the sale to a non-Party will be evaluated at the time of sale, and the formula will be approved by the Board and added to this Agreement as an Exhibit. ~~A separate WWSS wholesale water agreement will be developed and approved by the Board and non-party.~~

## 19. Sale of Interest to Parties

### 19.1. Notification

One or more Parties (“**Selling Parties**”) may sell all or a portion of their ~~Ownership~~ Capacity in the WWSS or their WWSS components 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 components of the WWSS shall respond in writing to the Managing Agency and the Selling Parties indicating: (a) whether it wishes to purchase all or a portion of the interest in the WWSS, (b) the offer price, and (c) the proposed terms and conditions of the purchase and sale (“**Purchase Nomination**”).

### 19.2. Purchase Nomination Recommendation

19.2.1. 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 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.

19.2.2. 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 if an agreement can be reached, the Managing Agency will make a recommendation as to how the total interest designated for sale should be allocated among the Purchasing and Selling Parties. ~~In the absence of agreement, the Managing Agency shall allocate proportionately to the share of ownership shown in Exhibit 4.~~ The Managing Agency will recommend a proposed allocation within 30 days after receipt of Purchase Nominations.

19.2.3. ~~If all Purchasing and Selling Parties cannot be satisfied in full, and if an agreement for allocation cannot be reached, then the total interest designated for sale shall be divided and allocated in proportion to the purchase nominations received up to the capacity made available for sale as set forth on Exhibit 15, attached hereto and incorporated by reference. The Managing Agency will recommend a proposed allocation using this method 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, the Managing Agency will convene a meeting of the Selling Parties and the Purchasing Parties to reach final



agreement on the allocation of Capacity, the purchase price to be paid, and other terms of sale. The Purchasing Parties and Selling Parties 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 mutually agreeable 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 WWSS Capacity, component 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.

**19.5. Acceptance or Rejection**

Within 45 days of approval of a term sheet, each of the Purchasing and Selling Parties will conduct such internal review as each 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 Parties 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 purchase. 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 and Selling Parties mutually agree to extend the period to accept or decline the term sheet to more than 15 days.

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 final 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 it will enter the revised Capacity allocation and resulting equity interest into 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. No entity may remain a Party to this Agreement unless the Party maintains at least 5 MGD in WIF and 5 MGD in WWSS Capacity.

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.

19.12

**Commented [CB4]:** Buy Out Rights proposed by Beaverton not included.

**20. Admission of New Municipal Parties**

20.1. **Eligibility**

Only a Municipal Water Provider who is also a Party to the WIF Agreement and has or will acquire, upon becoming a member, not less than 5 MGD in WIF and 5 MGD in WWSS Capacity, 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: (a) the proposed date of joinder; (b) Demand and component Capacity sought to be purchased; (c) membership and Capacity in the WIF Commission; (d) the quantity and status of Water Rights the Applicant would provide; (e) the existing Capacity necessary to serve the Applicant; (f) any improvement(s) that would need to be built or expanded to accommodate the Applicant; and (g) 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 within 30 days of receipt. Failure to respond shall be considered a no vote. Once the Management Committee reports back to the Managing Agency 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 Board shall direct the Managing Agency to 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 component and Applicant's obligations for construction of new expansion of existing WWSS 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 in a component to an Applicant, the Party seeking to sell shall give notice to the Managing Agency as provided in Section 19. 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 Applicant requests under this Section concurrent with the Sale of Interest provisions

of Section 19 for the Selling Party and remaining Parties.

## **21. 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, provided that such duty shall not arise in case of malfeasance in office or willful or wanton neglect of duty by such person. 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 in this Agreement, “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~~ Event of Default shall be deemed to have occurred if the Defaulting Party fails to cure the Default within the cure period designated in Section 22.2.

### 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. The Notice of Default must specify the nature and factual circumstances 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 notice of default for non-payment shall require cure within a 10-calendar day period. A reasonable time cure period to cure  ~~(“Cure Period”) for~~ any default other than non-payment shall be deemed to be 30 calendar days unless another time period to cure  ~~Period~~ 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: (a) make payment in full by the date set in the Default notice; (b) submit a plan for repayment to the WWSS that must be approved by the Board; or (c) request Dispute Resolution. The Cure Period for non-payment is a 10-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: (a) cure the Default by the ~~time period to Cure~~ ~~Period~~ set forth in the Notice of Default; (b) state why the Default cannot be cured within the ~~time period to Cure~~ ~~Period~~, what efforts the Defaulting Party has made to ~~Cure~~ the Default and provide a reasonable plan to cure the Default; or (c) request Dispute Resolution. The plan for cure must be approved by the Board, and if not approved, an Event of Default will be declared. If Dispute Resolution is requested by the Defaulting Party or the Board, then that process will be followed.

22.3.3. **Failure to Cure**

Failure to cure the Default within the allowed ~~time period for 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.



Except in the case of nonpayment, -the Final Notice to C\_cure will contain one final allowed time period to C\_cure Period. Failure to cure the Event of Default within the 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 the remaining Board Members shall be required to determine the remedy. The Dispute Resolution process will apply to the imposition and scope of remedies. In making a determination of remedy for the Event of 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 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 the Notice of Default.

23.2.3. **Termination of Service**

The Board may elect: (a) to terminate water deliveries, or (b) to reduce water deliveries to the Defaulting Party until the Event of Default is cured.

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 its ownership in the WWSS.

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

A Default for other than non-payment 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 or could cause damage to the WWSS, WIF, or the Real Property of the Commission, 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 WWSS to their respective municipal water systems. If the Managing Agency is also a Party and is alleged to be a Defaulting Party, 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 that states its default provisions are intended to control and supersede over the provisions in this Section.

24.2. **Notice of Default and Cure**

A written Notice of Default shall be provided to the Managing Agency by the Board following a 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 time period to cure a Default by the Managing Agency 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 ~~time period to Cure Period~~ designated in Section 24.2, if any time period to cure is allowed. If no time period to cure 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. Enforcement by Individual Parties

If the Board does not take action to remedy a Default under Sections 23 or 24, a Party may individually seek to take any enforcement action available to it under Oregon law.

#### 26. Dispute Resolution

This Agreement obligates the Parties to cooperate in the ownership and operation of the WWSS for the mutual benefit of all Parties to consistently deliver water to their respective municipal water systems. 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.

26.1. **Notice of Dispute**

Except in the case of a Default for non-payment, 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 30 days, it shall be referred to mediation. In the case of a Default for other than non-payment, 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, 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.

26.2. **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 cooperate in good faith to select the mediator within 14 days of either Party requesting mediation, and the Parties 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 Washington 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 Washington County, or U.S. District Court if jurisdiction is available.

**26.3. Arbitration**

If the Parties agree to enter into binding arbitration, the matter shall be referred to Arbitration Service of Portland, Inc., or such other arbitration organization or arbitrator that the Parties may agree upon for final and binding arbitration in accordance with the Oregon Uniform Arbitration Act. 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 significant municipal law experience, unless the Parties mutually agree, in writing, otherwise.

**26.4. 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.

**26.5. 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.

**27. 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.

27.1. **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: (a) the continued operation of the WWSS while the dissolution plan is implemented; (b) an accounting of assets and liabilities; (c) 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; (d) the creation of a reserve account for known, unforeseen, and contingent liabilities; (e) a plan for liquidation of the assets; and (f) 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 WWSS.

27.2. **Transfer of Capacity Ownership**

The dissolution plan may provide for transfers of Capacity component ownership, for cash or other consideration, from a Party that seeks complete divestiture of ownership to a Party that plans to remain and use Capacity component to meet its Demand through the WWSS. 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 WWSS.

27.3. **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 Washington County under ORS 190.020(2).

## **28. General Provisions**

### **28.1. Warranties and Representations**

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

### **28.2. Ordinance of the Governing Body**

Each Party to this Agreement 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 specifically authorize the Party's representatives to the Board to take final vote or action that this Agreement does not specifically require to be referred to the Party's governing body, including a contractual commitment, to modify the Exhibits to this Agreement as provided in Section 28.6 and acknowledge that the other Parties to this Agreement may rely upon such authority. 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).

### **28.3. Insurance Requirements**

The insurance requirements and limits necessary for the operations of the WWSS, as set forth in Exhibit 11, shall be purchased and maintained at all times. The requirements will be reviewed by the Managing Agency periodically and modified when necessary.

### **28.4. 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.

28.5. **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 of that document and, if applicable, the terms of this Agreement; (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) 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"; (f) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (g) 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 in accordance with the law; and reference to a singular number or person may include the plural number

or person, and the plural number or person the singular.

28.6. **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 agree to include Exhibits 1 through 12, attached 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.

28.7. **Existing Agreements**

The WWSP Agreement between TVWD and Hillsboro dated on or about June 16, 2015, is superseded by this Agreement and terminated pursuant to Section XIV of the WWSP Agreement upon the effective date of this Agreement. Other existing Agreements between some or all of the Parties that affect or are affected by the WWSS that are the subject of this Agreement are identified in Exhibit 12. These related agreements on Exhibit 12 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.

28.8. **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 WWSS.

28.9. **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.

28.10. **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.

28.11. **Counterparts**

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

28.12. **Amendments and Modifications**

Except as provided in Section 28.6 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.

28.13. **Notice**

Notice shall be provided in writing, regular United States mail, or by hand delivery to the persons set forth below. A Party may provide written notice designating new recipients.

Tualatin Valley Water District  
Attn: Chief Executive Officer  
1850 SW 170<sup>th</sup> Avenue  
Beaverton, Oregon 97003

City of Hillsboro  
Attn: City Manager  
150 Main St.  
Hillsboro, Oregon 9712X

City of Beaverton  
Attn: Mayor  
12725 SW Millikan Way  
Beaverton, Oregon 97005

28.14. **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 Washington 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.

28.15. **Third Parties**

Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the Parties 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.

28.16. **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.

28.17. **Time of the Essence**

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

28.18. **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.

28.19. **Signing Authority**

Each person signing this Agreement on behalf of a Party warrants the person has actual authority to bind the person's respective Party.

28.20. **WWSS Facilities in Right of Way**

In consideration of the terms and covenants of the Parties to this Agreement, Hillsboro and Beaverton agree that any right of way fee (license, registration, gross revenue, linear foot or other methodology) that may be charged to WWSS or to any individual WWSS Party for use of city right of way shall be calculated and paid based upon gross revenues received by each Party to this agreement from direct retail water sales within the charging city, ~~that are received by each Party to this~~

Agreement. On or after July 1, 2058, a city may charge a linear foot fee on WWSS pipelines that do not provide water to users within the charging city.

**TUALATIN VALLEY WATER DISTRICT**

By:

\_\_\_\_\_  
Bernice Bagnall, President

APPROVED AS TO FORM

By:

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

**CITY OF HILLSBORO**

By:

\_\_\_\_\_  
~~Steve Callaway, Mayor~~, City Manager

**CITY OF BEAVERTON**

By:

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

APPROVED AS TO FORM

By:

\_\_\_\_\_  
William Kirby, City Attorney