

**RESOLUTION #11/12-9
CITY OF DAYTON, OREGON**

Title: *A Resolution Authorizing the City Manager to Enter Into an Intergovernmental Agreement to Create an ORS Ch. 190 Entity for Joint Water Supply*

WHEREAS, the City of McMinnville, a Municipal Corporation of the State of Oregon, acting by and through its Water and Light Commission, (MW&L), the City of Carlton, a Municipal Corporation of the State of Oregon (Carlton), the City of Lafayette, a Municipal Corporation of the State of Oregon (Lafayette), and the City of Dayton, a Municipal Corporation of the State of Oregon (Dayton) are engaged in the distribution and sale of domestic water supply; and

WHEREAS, MW&L, Carlton, Lafayette, and Dayton would benefit from additional water sources to meet the long term requirements; and

WHEREAS, MW&L, Carlton, Lafayette and Dayton have entered into an Intergovernmental Agreement (IGA) for services associated with the acquisition of a Willamette River Water Use Permit; and

WHEREAS, MW&L contracted with GSI Water Solutions, Inc. for services associated with the acquisition of a Willamette River Water Use Permit; and

WHEREAS, MW&L, Carlton, Lafayette, and Dayton which to proceed with an IGA to create an ORS Ch. 190 Entity for Joint Water Supply to serve as the new joint water supply agency;

The City of Dayton resolves as follows:

- 1) **THAT** the City Council hereby authorizes the City Manager to enter into an IGA that is substantially similar to the one attached hereto as Exhibit A, the final version to be approved as recommended by the City Attorney; and
- 2) **THAT** this resolution shall become effective immediately upon adoption.

ADOPTED this 3rd day of October 2011

In Favor: Blackburn, Evers, Frank, Utt, White, Witt

Opposed: None

Absent: Wytoski

Abstained: None



Jolie White, Mayor

ATTEST:



**Peggy Selberg
City Recorder**

10/16/2011
Date of Signing

10/3/2011
Date of Enactment

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (Agreement) is made and entered into by and between The City of McMinnville, a Municipal Corporation of the State of Oregon, acting by and through its Water and Light Commission, (MW&L), The City of Dayton, Oregon, a Municipal Corporation of the State of Oregon (Dayton), The City of Carlton, a Municipal Corporation of the State of Oregon (Carlton) and the City of Lafayette, a Municipal Corporation of the State of Oregon (Lafayette) (collectively, the Parties).

RECITALS

WHEREAS, under ORS 190.007, the Oregon legislature has declared a statewide purpose of promoting intergovernmental cooperation for the purposes of furthering economy and efficiency in local government; and

WHEREAS, under ORS 190.010, each Party is authorized to enter into an intergovernmental agreement for the performance of functions that each other Party hereto is authorized by law to perform; and

WHEREAS, each Party is authorized and engaged in the distribution and sale of domestic water supply; and

WHEREAS, each Party would benefit from additional water sources to meet the long term requirements of municipal water requirements; and

WHEREAS by previous Intergovernmental Agreements dated in May 2011 (Exhibit 2), MW&L, Dayton, Carlton and Lafayette agreed to retain GSI Water Solutions, Inc. (GSI) to provide various services to develop and submit a joint water right application to the Oregon Water Resources Department (OWRD) taking into account respective demand of each Party; and

WHEREAS the Parties hereto desire to develop an intergovernmental agreement to provide for the governance, financing and operation of water facilities to apply to beneficial use the water rights described above and provide for the design construction, operation, maintenance, repair and replacement of such facilities including but not limited to intake, treatment, conveyance and storage; and

The Parties being advised now, therefore, in consideration of the above recitals and the mutual covenants set forth below and the resulting public benefits derived, the Parties agree as follows:

**SECTION ONE
TERM**

This Agreement will become effective on the latest date the Agreement is executed by the parties below and will remain in effect until such time as the work and products described under Section Two, General Obligations below is complete and delivered.

**SECTION TWO
GENERAL OBLIGATIONS**

- A) The Parties agree to make reasonable efforts to develop an ORS Chapter 190 intergovernmental agreement agreeable to all parties. The agreement will: (1) create an entity to hold the joint water rights as set forth in the application to be submitted to OWRD; and (2) set forth obligations regarding the design, construction, ownership, operation, maintenance, repair and replacement of all facilities necessary to appropriate and beneficially use the joint water rights after ORWD has issued applicable joint water right permits. (Exhibit 2). The topics to be discussed as part of the creation of the intergovernmental agreement include, but are not limited to, the factors set forth on Exhibit 1, attached hereto and incorporated by reference. This will be referred to as the "Governance Intergovernmental Agreement". In drafting the agreement, the Parties will discuss and incorporate the factors set forth in Exhibit 1 which is attached and incorporated by reference herein. The final resulting agreement will be referred to as the Governance Intergovernmental Agreement.
- B) MW&L's legal counsel will develop, and draft, the Governance Intergovernmental Agreement for review and comment by the other Parties to reduce costs for other Parties in the use of consultants and legal counsel. Each Party will be responsible for its own costs incurred in the use of consultants or legal counsel in reviewing, the Governance Intergovernmental Agreement.
- C) The Parties agree to send a designated representative to regular meetings scheduled by MW&L??? to develop the Governance Intergovernmental Agreement so a final agreement is ready for review and approval by the respective City Councils or City Commissions of each Party no later than _____.

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- Comment [HRM1]: What is exhibit 2? Is it a draft of the IGA? The OWRD application? Permit? It is unclear.
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- Comment [HRM2]: This is again unclear – are the parties entering into one IGA and that IGA is going to be the Governance IGA or are there going to be 2 – and this Governance IGA will be the first one and then later the parties will enter into another one? Also the last sentence here says "this" what is "this"? The document attached as Exhibit 1? Or will the discussions of the topics outlined in Exhibit 1 result in a Governance IGA? It should be clarified. See my suggested changes
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D) Each Party will dedicate sufficient staff and legal resources as necessary to meet the schedule set forth in C above.

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E) Concurrent with the development and adoption of the Governance Intergovernmental Agreement, GSI will develop a water permit application jointly naming the Parties as recipients of the water rights identified therein. Upon the adoption of the Governance Intergovernmental Agreement by each Party creating an ORS Ch. 190 entity (Entity), the pending water permit application (or permit if issued) will be assigned to the Entity. Each Party will execute the necessary documents to assign the water permit application or water permit to the Entity.

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**SECTION THREE
MODIFICATION**

This Agreement may be modified only by written agreement of the Parties.

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**SECTION FOUR
GOVERNING LAW**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Oregon.

**SECTION FIVE
ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and any prior understandings or representations of any kind preceding the date of this Agreement shall not be binding upon any Party except to the extent incorporated in this Agreement. This Agreement can only be amended or modified by a written agreement signed by duly authorized representatives of the Parties hereto.

**SECTION SIX
WAIVER OF TERMS OR CONSENT TO BREACH**

No term or provision of this Agreement shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by any Party to, or waiver of, a breach by the another Party shall not constitute a waiver of or consent to any subsequent or different breach. If a Party fails to enforce a breach of this Agreement by the any Party, such failure to enforce shall not be considered a

consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

**SECTION SEVEN
SEVERABILITY**

In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.

**SECTION EIGHT
NOTICES**

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each Party, to the attention of the Agreement's signatories as listed below:

(Title of Person) (Name of Entity) (Address)	City Manager City of Dayton P.O. Box 339 416 Ferry Street Dayton, OR 97114	Deleted: The
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(Title of Person) (Name of Entity) (Address)	General Manager McMinnville Water & Light 855 Marsh Lane P. O. Box 638 McMinnville, OR 97128
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(Title of Person) (Name of Entity) (Address)	City Manager City of Carlton 191 E. Main Street Carlton, OR 97111	Deleted: The
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(Title of Person) (Name of Entity)	City Administrator City of Lafayette	Deleted: The
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(Address)

486 Third Street
P.O. Box 55
Lafayette, OR 97127

**SECTION NINE
TERMINATION**

If a Party does not join the Governance Intergovernmental Agreement to be developed hereunder, then that Party may elect not to proceed, and, shall relinquish and waive any claim or right to the water right application or water right permit described in Section Two. ~~Those Parties who enter into the Governance Intergovernmental Agreement will receive all of the available water rights that were waived and relinquished by any, withdrawing Parties, and will allocate the use or disposition of that water as provided in the Governance Intergovernmental Agreement.~~

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IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed, effective on the date set forth above.

~~CITY of McMinnville, CITY of DAYTON~~
Acting by and through its
Water and Light Commission

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- Deleted: THE

By: _____
Richard L. Olson, Mayor and
Ex-Officio Member of the Water
and Light Commission

By: _____
Christy Ellis
City Manager

Clerk of the Commission

By: _____

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THE
Deleted: THE

By: _____
 Rob Drake
 Interim City Manager

By: _____
 Preston Polasek
 City Administrator

EXHIBIT 1

Preliminary Discussion Outline

Organizational and Governance Framework

In creating a Governance Intergovernmental Agreement to create an ORS Ch. 190 entity for joint water supply, many of the following factors or key issues will need to be discussed. These decisions will serve as the framework for a new joint water supply agency or water supply agreement between the parties.

1. Scope and Objectives
 - a. Define Service Area
 - b. Water supply (supply, treatment, transmission)
 - c. Water supply sources
 - d. Operation and maintenance of joint facilities for:
 - i. Reliable water supply, including backup
 - ii. Regulatory compliance to meet state and federal water quality standards
 - iii. Efficient and effective use of water resources
2. Nature of Agreement Between Parties
 - a. IGA
 - b. IGA Entity
3. Type of Entity / Rights of Entity
 - a. Enterprise utility
 - b. Full municipal powers to provide water service
4. Governance
 - a. Board composition / member representation
 - b. Appointment method

- c. Powers of the Board
- d. Board voting system
- e. Executive Committee
- f. Managing Agency?
- g. Managing Agency's powers
- h. Timely and complete access to records, data, and information about the system and its operation.

5. Formation

- a. Name (at least a "placeholder")
- b. Required approvals - authorization of creation and funding
- c. Validation Proceeding?
- d. Financial contributions & accounting
- e. Assumptions for valuation of existing assets
- f. Transition process

6. Fiscal Authority

- a. Budgeting and payment by members
- b. Ability to make and administer rates
- c. Ability to fund capital improvements
- d. Authority to incur debt and sell bonds
- e. Contract for wholesale water sales to non-members
- f. Contract for wholesale purchase for alternative supplies

7. System Ownership

- a. Basis of ownership in the joint system
- b. Method of assigning value (e.g., capacity versus shares versus units)
- c. Treatment of existing water rights and assets contributed
- d. Source of starting capital / structure of initial capitalization
- e. Treatment of existing debts
- f. Upfront proof of project funding source

8. Operational Standards & Authorities

- a. Standards of operation
- b. Process and time frame for water supply allocation
- c. Water quantity
 - i. Routine / reliable supply
 - ii. Emergency supply
- d. Water quality
 - i. Compliance with applicable state and federal standards
- e. Wholesale water sales - Policy on contracting services to others (first rights of water supply to members then to wholesalers)
- f. Wholesale water purchases
- g. Ability to resell water

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- h. Conservation and curtailment policies
 - i. Role in source water protection and water resource management
 - j. Emergencies
9. Fiscal Standards & Authorities
- a. Basis of rates & charges
 - b. Overuse charges or system impacts
 - c. Planning and implementation of capital improvements
 - d. "Must lease" excess capacity
 - e. Policies and procedures for fiscal accountability
 - f. Initial capitalization of first year O&M with true-up at end of year
 - g. Emergencies
10. Future Considerations
- a. Planning and forecasts of future demands
 - b. New Members/latecomer policy
 - c. Policy on members changing system ownership amount
 - d. Policy of expansion to supply system / authority to develop alternative supplies and/or emergency supplies
 - e. Notice of proposed project to other; may proceed alone after notice of offer
 - f. Ability to modify responsibilities and services over time
 - g. Joint pursuit and perfection of existing and future water rights
11. Access by Customers and Members of the Public
- a. Policies on public participation and access by the public
 - b. Policies on accountability to the public
12. Other
- a. Member exit terms
 - i. Voluntary
 - ii. Involuntary
 - iii. Valuation
 - iv. Purchase terms option/mandatory
 - b. Dispute resolution process
 - c. Dissolution and winding up

**INTERGOVERNMENTAL AGREEMENT TO DISCUSS AND DEVELOP JOINT
GOVERNANCE, FINANCING, AND OPERATION OF WATER FACILITIES**

This Intergovernmental Agreement (Agreement) is made and entered into by and between The City of McMinnville, a Municipal Corporation of the State of Oregon, acting by and through its Water and Light Commission, (MW&L), The City of Dayton, Oregon, a Municipal Corporation of the State of Oregon (Dayton), The City of Carlton, a Municipal Corporation of the State of Oregon (Carlton) and the City of Lafayette, a Municipal Corporation of the State of Oregon (Lafayette) (collectively, the Parties).

RECITALS

WHEREAS, under ORS 190.007, the Oregon legislature has declared a statewide purpose of promoting intergovernmental cooperation for the purposes of furthering economy and efficiency in local government; and

WHEREAS, under ORS 190.010, each Party is authorized to enter into an intergovernmental agreement for the performance of functions that each other Party hereto is authorized by law to perform; and

WHEREAS, each Party is authorized and engaged in the distribution and sale of domestic water supply; and

WHEREAS, each Party would benefit from additional water sources to meet the long term requirements of municipal water demands; and

WHEREAS by previous Intergovernmental Agreements dated in May 2011, attached hereto as Exhibit 2, MW&L, Dayton, Carlton and Lafayette agreed to retain GSI Water Solutions, Inc. (GSI) to provide various services to develop and submit a joint water right application to the Oregon Water Resources Department (OWRD) for a water permit to be jointly held by the Parties (the "Water Rights"), taking into account the respective demands of each Party; and

WHEREAS the Parties hereto desire to develop an intergovernmental agreement to provide for the governance, financing and operation of water facilities to apply to beneficial use the Water Rights and provide for the design, construction, operation, maintenance, repair and replacement of such facilities including, but not limited to, water intake, treatment, conveyance and storage; and

The Parties being advised, now, therefore, in consideration of the above recitals and the mutual covenants set forth below and the resulting public benefits derived, the Parties agree as follows:

SECTION ONE TERM

This Agreement will become effective on the latest date the Agreement is executed by the parties below and will remain in effect until such time as the work and products described under Section Two, General Obligations, are complete and delivered.

SECTION TWO GENERAL OBLIGATIONS

- A) The Parties agree to make reasonable efforts to develop an ORS Chapter 190 intergovernmental agreement agreeable to all parties. The agreement will: (1) create an entity to jointly hold the Water Rights and (2) set forth obligations regarding the design, construction, ownership, operation, maintenance, repair and replacement of all facilities necessary to appropriate and beneficially use the Water Rights after OWRD has issued applicable joint water right permits. In drafting the Agreement, the Parties will discuss and incorporate the factors set forth on Exhibit 1, attached hereto and incorporated by reference. The final resulting agreement will be referred to as the "Governance Intergovernmental Agreement."
- B) MW&L's legal counsel will develop and draft at MW&L's expense the Governance Intergovernmental Agreement for review and comment by the other Parties. Each Party will be responsible for its own costs incurred in the use of consultants or legal counsel in reviewing the Governance Intergovernmental Agreement.
- C) The Parties agree to designate a representative to attend regular meetings, to be scheduled at a time and place mutually agreeable to the Parties, to develop the Governance Intergovernmental Agreement in a timely fashion so that a final agreement is ready for review and approval by the City Councils or City Commissions of each Party no later than June 1, 2012.
- D) Each Party will dedicate sufficient staff and legal resources as necessary to meet the schedule set forth in C above.
- E) Concurrent with the development and adoption of the Governance Intergovernmental Agreement, GSI will develop a water permit application naming the Parties as joint applicants for the Water Rights. Upon the adoption of the Governance Intergovernmental Agreement by each Party creating an ORS Ch. 190 entity (Entity), the pending water permit application (or permit if issued) will be assigned to the Entity. Each Party will execute the

necessary documents to assign the water permit application or water permit to the Entity.

SECTION THREE MODIFICATION

This Agreement may be modified only by a written agreement signed by the duly authorized representatives of the Parties.

SECTION FOUR GOVERNING LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Oregon.

SECTION FIVE ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and any prior understandings or representations of any kind preceding the date of this Agreement shall not be binding upon any Party except to the extent incorporated in this Agreement. This Agreement can only be amended or modified by a written agreement signed by duly authorized representatives of the Parties hereto.

SECTION SIX WAIVER OF TERMS OR CONSENT TO BREACH

No term or provision of this Agreement shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by any Party to, or waiver of, a breach by the another Party shall not constitute a waiver of or consent to any subsequent or different breach. If a Party fails to enforce a breach of this Agreement by the any Party, such failure to enforce shall not be considered a consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

SECTION SEVEN SEVERABILITY

In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or

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circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.

**SECTION EIGHT
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(Title of Person)
(Name of Entity)
(Address)

City Manager
City of Dayton
P.O. Box 339
416 Ferry Street
Dayton, OR 97114

(Title of Person)
(Name of Entity)
(Address)

General Manager
McMinnville Water & Light
855 Marsh Lane
P. O. Box 638
McMinnville, OR 97128

(Title of Person)
(Name of Entity)
(Address)

City Manager
City of Carlton
191 E. Main Street
Carlton, OR 97111

(Title of Person)
(Name of Entity)
(Address)

City Administrator
City of Lafayette
486 Third Street
P.O. Box 55
Lafayette, OR 97127

**SECTION NINE
TERMINATION**

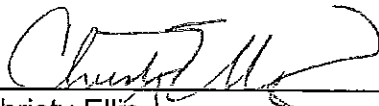
If a Party does not join the Governance Intergovernmental Agreement to be developed hereunder, then that Party may elect not to proceed, and shall relinquish and waive any claim or right to the Water Rights. Those Parties who enter into the Governance Intergovernmental Agreement will jointly receive all of the Water Rights waived and relinquished by any withdrawing Parties and will allocate the use or disposition of that water as provided in the Governance Intergovernmental Agreement .

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed, effective on the date set forth above.

CITY of McMinnville,
Acting by and through its
Water and Light Commission

CITY of DAYTON

By: _____
Richard L. Olson, Mayor and
Ex-Officio Member of the Water
and Light Commission

By:  _____
Christy Ellis
City Manager

Clerk of the Commission

By: _____

CITY OF CARLTON

CITY OF LAFAYETTE

By:  _____
Kathie Oriet
Mayor

By: _____
Preston Polasek
City Administrator

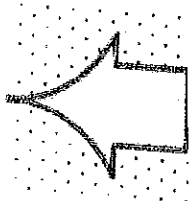


EXHIBIT 1

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 - i. Reliable water supply, including backup
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 - a. IGA
 - b. IGA Entity
3. Type of Entity / Rights of Entity
 - a. Enterprise utility
 - b. Full municipal powers to provide water service
4. Governance
 - a. Board composition / member representation
 - b. Appointment method
 - c. Powers of the Board
 - d. Board voting system
 - e. Executive Committee
 - f. Managing Agency?
 - g. Managing Agency's powers
 - h. Timely and complete access to records, data, and information about the system and its operation.
5. Formation
 - a. Name (at least a "placeholder")
 - b. Required approvals - authorization of creation and funding

- c. Validation Proceeding?
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 - b. Ability to make and administer rates
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 - c. Treatment of existing water rights and assets contributed
 - d. Source of starting capital / structure of initial capitalization
 - e. Treatment of existing debts
 - f. Upfront proof of project funding source
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 - b. Process and time frame for water supply allocation
 - c. Water quantity
 - i. Routine / reliable supply
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 - g. Ability to resell water
 - h. Conservation and curtailment policies
 - i. Role in source water protection and water resource management
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- a. Basis of rates & charges
 - b. Overuse charges or system impacts
 - c. Planning and implementation of capital improvements
 - d. "Must lease" excess capacity
 - e. Policies and procedures for fiscal accountability
 - f. Initial capitalization of first year O&M with true-up at end of year

- g. Emergencies
-
- 10. Future Considerations
 - a. Planning and forecasts of future demands
 - b. New Members/latecomer policy
 - c. Policy on members changing system ownership amount
 - d. Policy of expansion to supply system / authority to develop alternative supplies and/or emergency supplies
 - e. Notice of proposed project to other; may proceed alone after notice of offer
 - f. Ability to modify responsibilities and services over time
 - g. Joint pursuit and perfection of existing and future water rights
-
- 11. Access by Customers and Members of the Public
 - a. Policies on public participation and access by the public
 - b. Policies on accountability to the public
-
- 12. Other
 - a. Member exit terms
 - i. Voluntary
 - ii. Involuntary
 - iii. Valuation
 - iv. Purchase terms option/mandatory
 - b. Dispute resolution process
 - c. Dissolution and winding up