

**RESOLUTION # 11/12-26
CITY OF DAYTON, OREGON**

Title: *A Resolution Authorizing the City Manager to Enter Into an Intergovernmental Agreement with the City of Carlton, the City of Lafayette, and the City of McMinnville acting by and through The McMinnville Water and Light Commission under ORS Chapter 190, for appropriation of Water from the Willamette River*

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

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

WHEREAS, Carlton, Lafayette, MW&L and Dayton anticipate that the Permit will be issued; and

WHEREAS, Carlton, Lafayette, MW&L and Dayton are entering into the IGA under the authority of ORS 190 and intend that the full powers of each entity under their respective governing statutes inure to the benefit of the entity created by this cooperative intergovernmental agreement as provided in ORS 190; and

WHEREAS, the parties are entering into the Intergovernmental Agreement, among other reasons, to acquire hold, manage, maintain and develop water permits for appropriation of water from the Willamette River;

The City of Dayton resolves as follows:

- 1) **THAT** the City Council hereby authorizes the City Manager to enter into an Intergovernmental Agreement 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.

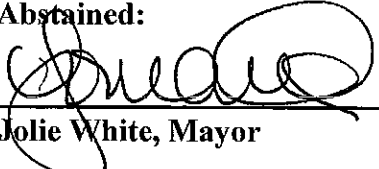
ADOPTED this 21st day of May 2012

In Favor: Blackburn, Evers, White, Wytoski

Opposed: None

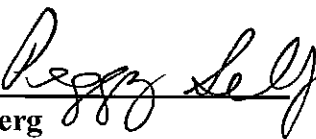
Absent: Frank, Utt

Abstained:



Jolie White, Mayor

6/19/12
Date of Signing

ATTEST: 

Peggy Selberg
City Recorder

5/21/12
Date of Enactment

EXHIBIT A

{00216829; 1 }

INTERGOVERNMENTAL AGREEMENT

UNDER ORS CHAPTER 190

BY AND BETWEEN

CITY OF MCMINNVILLE
Acting by and through
The McMinnville Water and Light Commission

AND

CITY OF CARLTON

AND

CITY OF DAYTON

AND

CITY OF LAFAYETTE

190 COOPERATIVE AGREEMENT INDEX

RECITALS

ARTICLE 1 – Definitions and Interpretations

ARTICLE 2 – Name of Cooperative Entity

ARTICLE 3 – Formation of the Commission/Powers

ARTICLE 4 – Governance

ARTICLE 5 – Operations and Management

ARTICLE 6 – Warranties and Representations/State Filing

ARTICLE 7 – Commission Assets, Funding & Finance

ARTICLE 8 – Service Area Description

ARTICLE 9 – Water Supply Agreements

ARTICLE 10 – New Participating Members

ARTICLE 11 – Withdrawal, Termination of Membership, Sale of Assets and Dissolution

ARTICLE 12 – Indemnity and Insurance

ARTICLE 13 – Dispute Resolution

ARTICLE 14 – General Provisions

EXHIBIT 1 – Schedule of Water Permit(s)

EXHIBIT 2 – Adopting Ordinances

EXHIBIT 3 – Service Area Maps

EXHIBIT 4 – Existing Water Supply Agreement(s)

{00212153; 1 }

INTERGOVERNMENTAL AGREEMENT

This Agreement (“Agreement”), subject to the conditions stated herein, is created by and between the City of McMinnville, a municipal corporation acting by and through McMinnville Water and Light Commission (MWL); the City of Carlton, a municipal corporation (Carlton); the City of Dayton, a municipal corporation (Dayton); and the City of Lafayette, a municipal corporation (Lafayette) and collectively referred to as the “Parties.”

RECITALS

WHEREAS, MWL owns and operates a municipal water system consisting of storage, treatment, transmission and water supply which includes, the distribution of potable water to retail customers; and

WHEREAS, Carlton owns and operates a municipal water system consisting of storage, treatment, transmission and water supply which includes, the distribution of potable water to retail customers; and

WHEREAS, Dayton owns and operates a municipal water system consisting of storage, treatment, transmission and water supply which includes, the distribution of potable water to retail customers; and

WHEREAS, Lafayette owns and operates a municipal water system consisting of storage, treatment, transmission and water supply which includes, the distribution of potable water to retail customers; and

WHEREAS, the Parties are entering into this Agreement under the authority of ORS 190 and intend that the full powers of each entity under their respective governing statutes inure to the benefit of the entity created by this cooperative intergovernmental Agreement as provided in ORS 190; and

{00212153; 1 }Page 2 of 23- 190 Cooperative Intergovernmental Agreement

WHEREAS, the Parties are entering into this Agreement, among other reasons, to acquire, hold, manage, maintain and develop water permits for appropriation of water from the Willamette River, and

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

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

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

1.1.1 Agreement – This document when signed by authorized representatives of each party, which document expresses the rights and obligations of the parties.

1.1.2 Commission - the ORS 190 cooperative entity established pursuant to this Agreement and named as stated in Article 2.

1.1.3 Fiscal Year – The time period as defined under ORS 294.311(17).

1.1.4 Initial Participating Member or Members shall mean MWL, Carlton, Dayton, Lafayette or all of them, as applicable.

1.1.5 Operating Protocols – The protocols to be developed by the Commission management which set forth the principles by which the water resources under the control of the Commission are to be managed under this Agreement.

1.1.6 Participating Member – A governmental entity that is either an Initial Participating Member, or a governmental member added pursuant to Article 10 after the initial establishment of the Commission pursuant to this Agreement.

1.1.7 Retail Customer – A user served by a Participating Member and paying the retail price for the delivery of domestic water. A municipal corporation or other entity, which purchases water for resale, shall not be considered a Retail Customer.

1.1.8 Remaining Participating Members shall have the meaning assigned thereto in Article 11.

1.1.9 Service Area shall have the meaning assigned thereto in Article 8.

1.1.10 System Assets shall mean the real property, pipes, valves, transmission mains, distribution lines, meters, pumps, reservoirs, tanks, treatment plants, vehicles and construction equipment, equipment and other physical assets owned, leased or under the control of the Commission pursuant to this Agreement or otherwise for the purpose of delivering domestic water to customers. The only System Assets of the Commission at the commencement of this Agreement are water permits defined in Article 3.4.

Acquisition and creation of other System Assets may occur only if the Parties unanimously agree to do so and only if a separate Agreement or amendment to this Agreement is executed as set forth on Article 3.5.

1.1.11 Withdrawal Date shall have the meaning assigned thereto in Article 11.

1.1.12 Wholesale Customer – A user served by the Commission or a Participating Member from water appropriated under the water permits defined in Article 3.4 and that pays the wholesale price for the delivery of domestic water. Participating Members receiving water supply under this Agreement shall not be considered wholesale customers.

1.2 Interpretation.

In this Agreement, 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 the other gender; (c) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (d) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (e) "hereunder", "hereof", "hereto", "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof; (f) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (h) reference to any law (including statutes and ordinances) means, unless the context or specific language requires a difference interpretation, 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 there under.

ARTICLE 2

NAME OF COOPERATIVE ENTITY

The name of the ORS 190 cooperative entity established by this Agreement shall be _____, hereinafter "the Commission".

ARTICLE 3

FORMATION OF THE COMMISSION/ POWERS

3.1 Initial Formation/Officers. Not later than 30 days after the date the governing bodies of the Initial Participating Members approve the ordinance identified in Article 6 (Warranties and Representations) approving establishment of the Commission and this Agreement, the Initial Commission Members shall meet and elect a Chair Person, Vice-Chair Person, Secretary and Treasurer with duties identified in this Agreement. The Commission shall have the authority to establish its own governing rules and bylaws. For the first year of operation, the chair person position shall be filled with a Member from MWL and the Vice-Chair, Secretary and Treasurer positions shall be filled with Members from Carlton, Dayton and Lafayette. In each successive year, these positions shall be elected by the Commission.

3.2 Procedures and Policies. Following the election of officers, the Commission shall adopt rules of procedure for its meetings and bylaws for its organization and proceed to conduct the business of the Commission as anticipated by this Agreement.

3.3 General Powers. In addition to other powers and duties specified in statute or elsewhere in this Agreement, the Commission shall manage the business affairs and the tangible and intangible assets of the Commission that are transferred to or held by the Commission pursuant to this Agreement.

3.4 Initial System Assets. The initial assets contributed are the water permits issued

Comment [HRM1]: The governing bodies? The Initial Commission Members are the cities themselves – it is unclear who will be at this meeting to elect the chair, etc. Maybe clarify and reference section 4.1 below?

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or to be issued by the Oregon Water Resources Department identified on Exhibit 1, attached hereto and incorporated by reference.

3.5 Additional System Assets. The only System Assets subject to this Agreement are the water permits referenced to in Article 3.4. Acquisition (by purchase, transfer or gift) or construction of new System Assets shall occur only if the Parties unanimously agree and only if a new Agreement or amendment to this Agreement is executed.

3.6 Debt. Neither the Commission nor any Participating Member shall have responsibility for any debt obligation that is incurred by another Participating Member prior to or after the date of this Agreement unless the Commission by separate resolution agrees to assume such obligation.

ARTICLE 4

GOVERNANCE

4.1 Commission Board of Directors. The Commission shall be governed by a board of four (4) individuals composed of one (1) individual from each Council or Commission of the Initial Participating Members. Such individuals shall be appointed by the Council or Commission of the Initial Participating Members and shall serve at the will of the respective governing bodies of the Participating Members. The chair of the Commission will be elected by the Commission.

Comment [HRM2]: Except during the first year? Where the chairperson is from MWL?

4.2 Meetings. Meetings of the Commission shall be conducted in accordance with the provisions of the Oregon Public Meetings Law, ORS 192.610 to 192.710. Robert's Rules of Order shall be used as a guide for the conduct and process of meetings unless the Commission

determines otherwise. The Commission shall hold meetings as necessary upon call of the Chair Person or any two Commission Members.

4.3 Quorum. The number members of the Commission necessary for a quorum shall be three (3) directors. If new members are added, terminated or withdraw, the Commission shall adjust the quorum and such adjusted quorum shall be specified in the Bylaws of the organization. Where less than the full membership of the Commission is present, but a quorum exists, the voting requirements stated in Section 4.4 below must continue to be met for any action to be authorized by the Commission.

4.4 Voting. For any resolution, motion, ordinance or other action of the Commission to be an official act of or be approved by the Commission, there must be an affirmative vote of a majority of the members of the Commission. Where a majority vote is necessary and less than all Participating Members are present, the number of votes necessary to pass any resolution or motion shall be that number as if all Commission Members were present.

4.5 Issues Requiring Unanimous Vote. The following issues shall require unanimous vote of the Commission Members to be approved:

- Approval of Amendments of this Agreement.
- Approval of an Agreement or Amendment of an Agreement between current Participating Members and a proposed new Participating Member.
- Sale or transfer of System Assets deemed by the Commission critical or integral to the effective operation and management of the System.
- Issuance of bonds or signature to any debt obligation of the Commission.

Comment [HRM3]: Participating member means the governmental entity – not a commission member. I think a better term to use here is Commission Member (and then that term should be defined in the definitions), OR the definition of Participating Member can be clarified.

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- Sale, transfer or assignment of ownership in System Assets to non-Participating Members.

ARTICLE 5

OPERATIONS AND MANAGEMENT

5.1 General Manager. The day to day affairs of the Commission shall be managed by a General Manager. The Parties agree the General Manager of the Commission shall be the General Manager of MWL.

5.2 Budgeting, Accounting, Audits.

5.2.1 Budget for the Commission. The operating budget for the Commission shall be developed and presented to the Participating Members for approval if expenditures are required for any budget year. Such budget shall be based on the assumption that the only asset for management is the cost to obtain, maintain, preserve and protect the water permits referred to in Article 3.4 and that there may be years when no cost will be incurred and no budget is necessary. If the General Manager deems expenditures necessary for a fiscal year, then by March 31, a budget will be prepared for Commission approval and recommendation to the Participating Members stating the required contribution from each. The Participating Members will approve their respective budget shares prior to June 30.

5.3 Commission Financial Audits. The Commission shall cause an independent audit to be performed by a Certified Public Accountant licensed and certified to do municipal auditing in the state of Oregon under ORS 297.405 to 297.990, as necessary.

Comment [HRM4]: Or the Commission? If this is participating members does that mean the governing body of each participating member must approve the budget?

Comment [HRM5]: See above question. Governing body?

ARTICLE 6

WARRANTIES AND REPRESENTATIONS/ STATE FILING

6.1 Warranties of the Initial Participating Members. The Initial Participating Members make the following warranties and representations:

6.1.1 That, prior to consideration of an ordinance authorizing the signatories to this Agreement, the Initial Participating Members have each conducted a public process that allows consideration by the public of the proposal for establishment of the Commission. Such process has been determined by each initial authorizing Participating Member as they deem appropriate and in compliance with Oregon's Public Meeting Laws. Such public discussion has been conducted on a schedule that will allow final consideration of the ordinance approving this Agreement by the respective governing bodies not later than _____, 2012.

6.1.2 That they have undertaken the necessary public procedures and have passed an ordinance in accordance with ORS 190.085, which authorizes the signatories to this Agreement to act on behalf of the applicable Initial Participating Member in executing this Agreement. Copies of such ordinances are attached as Exhibit 2 to this Agreement.

6.1.3 That they have the legal authority to enter into this Agreement.

6.2 Filing with the Secretary of State. After the initial organizational meeting referenced in Article 4 but not later than 30 days after the effective date of this Agreement, the Initial Participating Members further agree that they will cause to be filed with the Secretary of State the required filings as specified in ORS 190.085(2).

ARTICLE 7

COMMISSION ASSETS, FUNDING & FINANCE

7.1 Initial System Asset Contribution. The Initial Participating Members shall contribute the water rights identified in Article 3.4 and set forth on Exhibit 1 to the Commission, such assets to be held and used by the Commission. Nothing stated herein shall be construed to include a commitment to acquire land, buildings or other system assets of any kind without further written agreement of the Parties as provided in Article 3.5.

ARTICLE 8

SERVICE AREA DESCRIPTION

8.1 Initial Service Area. The Participating Members agree that the area to be served by the water rights shall be the area designated by the maps comprising Exhibit 3 (“Service Area”), attached hereto and incorporated herein by reference. Such Service Areas are the areas currently served by the Initial Participating Members. Other areas may be added to the Service Area by each Participating Member.

8.2 Notices of Annexation. At any time the Commission receives a notice of annexation from a Participating Member that impacts or is likely to impact the service area of the Commission, it shall determine a recommended response and advise each Participating Member of the intended response not less than seven (7) business days prior to submitting such response, unless such notice from the city is received after this time, in which case, a response to each Participating Member shall be given immediately upon receipt.

ARTICLE 9

WATER SUPPLY AGREEMENTS

9.1 Water Supply Agreements. The Initial Participating Members have the water supply agreement(s) identified in Exhibit 4, attached hereto and incorporated herein by this reference. Such agreements shall remain in full force and effect. This Agreement shall have no effect on such water supply agreements. The Parties also anticipate and acknowledge that one or more of the Initial Participating Members may enter into a separate water supply agreement with MWL and any such agreement shall not be subject to Commission approval.

Comment [HRM6]: Have entered?

9.2 Use of the Commission Assets. The Commission shall use its assets, including water rights in a manner consistent with prudent operating practices and to minimize the impact that such use may have on the other Participating Members.

ARTICLE 10

NEW PARTICIPATING MEMBERS

10.1 New Member Application Process. The Commission may accept new members upon written application by the prospective new member and unanimous approval of the Participating Members. New members must be a governmental entity authorized under Oregon statutes to serve customers with domestic water at wholesale or retail water rates.

Comment [HRM7]: Governing board?

ARTICLE 11

WITHDRAWAL, TERMINATION OF MEMBERSHIP, SALE OF ASSETS AND DISSOLUTION

11.1 Voluntary Withdrawal of a Participating Member. Any Participating Member may elect to terminate its interest in this Agreement and withdraw from the Commission by giving written notice of its desire to withdraw to all other Participating Members (“Remaining Participating Members”). The notice shall state a date of withdrawal which shall be not less than one (1) year from the date of notice nor more than two (2) years from the date of the notice (“Withdrawal Date”), unless a court order allows an earlier withdrawal time or the parties mutually agree. The withdrawal shall be effective on the Withdrawal Date, provided that the Withdrawal Date is within the range of dates allowed for withdrawal as specified in the preceding sentence. As of the Withdrawal Date, the Commission and Withdrawing Party will undertake to transfer to the Withdrawing Party that proportionate amount of the water permit allocated to it in cubic feet per second. The parties will cooperate with OWRD to effect the transfers. Thereafter, this Agreement between the Commission and the withdrawing Participating Member shall automatically terminate and be of no further force and effect. Any debt or financial obligation associated with any co-owned assets shall be assigned to and assumed by the Withdrawing Party based on the percentage of ownership interest in the asset.

11.2 Dissolution of the Commission. The Commission may be dissolved by the approving vote of all but one of the Initial Participating Members (if there are no other Participating Members) or the approving vote of all but one Participating Member if there are Participating Members that have been added to the Initial Participating Members. Upon dissolution, the Participating Members shall develop a plan to wind down and dissolve the

Comment [HRM8]: Governing body?

business affairs of the Commission. Unless modified by the plan, the dissolution shall be effective only after all debts and obligations are paid or provision for payment is made. Each Participating Member shall assume a share of the debts and obligations of the Commission in proportion to the ratio (expressed as a percentage) that that Participating Member has contributed to the total cost of the asset, unless the original debt instrument or the General Manager allocated a different share of responsibility for such debt to the Participating Members. The dissolution plan shall provide that all assets contributed by each Participating Member shall be transferred to the Participating Member contributing the asset. In the case of water rights, they will be transferred to the parties in the proportionate share of CFS allocated to that Member. The Participating Members or applicable Participating Member shall execute those documents necessary to vest ownership of the proper assets in the property Participating Member or the proportionate ownership of the System components, where applicable, in each Participating Member and execute a post dissolution management agreement. Nothing herein shall prevent a Participating Member from accepting cash or other consideration in lieu of continued proportionate ownership in the System. The cost of dissolution shall be treated as an operation and maintenance expense.

ARTICLE 12

INDEMNITY AND INSURANCE

12.1 Commission's Indemnity. To the extent permitted by the Oregon Constitution and laws of the State of Oregon, the Commission agrees to defend, indemnify and hold harmless its Participating Members from and against any and all actual or alleged claims, damages, expenses, costs, fees, including but not limited to attorney, accountant, paralegal, expert witness

fees, fines, environmental costs and/or penalty (collectively “costs”), which may be imposed upon, claimed against, or incurred or suffered by the Participating Members and which, in whole or in part, directly or indirectly arise from the following, unless and to the extent it was resulting from an individual Participating Member’s negligence or willful misconduct, :

12.1.1 Any act, omission or negligence of the Commission;

12.1.2 Any use, occupation or management or control of the System by the Commission;

12.1.3 Any injury or damage occurring in or on the System as a result of the operations of the Commission;

12.1.4 Any triggering environmental event for which the Commission is responsible, including without limitation, any injury or damage therefrom; and

12.1.5 Any breach, violation, or nonperformance of the Commission’s obligations under this Agreement. For purposes of this Agreement, this indemnity shall extend to a Participating Member’s directors, elected and appointed officials, officers, employees, agents, invitees and contractors.

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12.2 Participating Member Indemnity. To the extent permitted by the Oregon Constitution and laws of the State of Oregon, each Participating Member agrees to defend and indemnify the Commission and the other Participating Members from and against any and all actual or alleged claims, damages, expenses, costs, fees, including but not limited to attorney, accountant, paralegal, expert witness fees, fines, environmental costs and/or penalty (collectively “costs”), which may be imposed upon, claimed against, or incurred or suffered by the Commission or other Participating Member(s) and which, in whole or in part, directly or

indirectly arise from the following, unless and to the extent it was resulting from the Commission
's or other Participating Members' negligence or willful misconduct, :

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Members'

12.2.1 Any act, omission or negligence of the applicable Participating Member;

12.2.2 Any use, occupation or management or control of the System by a
Participating Member;

12.2.3 Any injury or damage occurring in or on the System as a result of the
actions or non-actions of the Participating Member or Members;

12.2.4 Any triggering environmental event for which the Participating Member is
responsible, including without limitation, any injury or damage therefrom; and

12.2.5 Any breach, violation, or nonperformance of the Participating Member's
obligations under this Agreement. For purposes of this Agreement, this indemnity shall
extend to the Commission's officers, directors, employees, agents, invitees and
contractors and the other Participating Members' directors, officers, employees, agents,
invitees and contractors.

ARTICLE 13

DISPUTE RESOLUTION

13.1 Dispute Resolution. The Participating Members hereby agree that resolution of
any and all disputes arising out of the terms of this Agreement or interpretation thereof shall
follow the steps as set forth in Article 13.2. The Participating Members recognize that a dispute
may occur between Participating Members or a Participating Member or Members and the
Commission, or combinations of individual or collective interests that cannot be resolved. The
disputants are referred to as "Disputing Parties" or if one such party the "Disputing Party".
Nothing shall prevent the Disputing Parties from waiving any of the steps by mutual consent.

13.2 Dispute Resolution Steps.

Step One: (Negotiation)

A Party who has a dispute will give written notice to all other Parties setting forth the reasons for such dispute. Within thirty (30) days following written notice of dispute, the Disputing Parties will designate a representative to negotiate on behalf of the applicable party they represent and attempt to negotiate a proposed resolution the issue. If the representatives negotiate a proposed resolution, the representatives shall reduce the resolution to writing and submit the same for ratification by the governing bodies of the Disputing Parties involved in the dispute and the Commission. If the proposed resolution is ratified by the Commission and the governing bodies of the Disputing Parties, the ratified resolution shall be binding on the Disputing Parties. If the proposed resolution is not so ratified, the Disputing Parties shall proceed to step two.

Step Two: (Mediation)

If the dispute cannot be resolved within sixty (60) days at Step One, the Disputing Parties shall submit the matter to non-binding mediation. The Disputing Parties shall attempt to agree on a mediator. If they cannot agree, any Disputing Party may proceed with any legal remedies available to that party.

Step Three (Legal Action)

After exhaustion of the preceding processes, the Disputing Parties or any Disputing Party may initiate litigation in the Circuit Court of the State of Oregon for Yamhill County.

13.3 Legal Fees. Each Disputing Party shall bear its own legal and expert witness fees at all stages of the dispute resolution process, including at trial or on any appeals.

ARTICLE 14

GENERAL PROVISIONS

14.1 Covenant of Good Faith. At all times the Participating Members shall have a duty of good faith and fair dealing with respect to the terms and obligations of this Agreement.

14.2 Instruments of Further Assurance. From time to time, at the request of the Commission or Participating Member, each Participating Member and the Commission shall, without further consideration, execute and deliver such further instruments, and shall take such further action as may be reasonably required to fully effectuate the purposes of this Agreement.

14.3 Assignment, Sale or Transfer. No Participating Member shall have the right to sell, transfer or assign all or a portion of its interest in this Agreement, without the prior written unanimous consent and consent to any necessary amendments to this Agreement necessitated by sale, transfer or assignment of the Participating Membership (minus the selling Participating Member) in accordance with requirements of this Agreement.

14.4 Severability. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the remaining provisions contained herein shall remain in full force and effect. The Commission and Participating Members agree to negotiate in good faith to achieve the purposes of this Agreement if a provision is found to be invalid, illegal or unenforceable.

14.5 Headings. The Article, section and subsection headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

14.6 Force Majeure. Except with respect to the obligation to pay money under this Agreement, neither the Commission nor any Participating Member shall be considered in default

in the performance of their respective obligations under this Agreement to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or in the future, which is beyond the reasonable control of the affected party, including, but not limited to, Acts of God, earthquake, drought, labor disputes, civil commotion, war, acts of terrorism and similar events. In the event a party claims that performance of its obligations was prevented or delayed by any such cause, that party shall promptly notify the Commission or the other applicable Participating Member(s) of that fact and of the circumstance preventing or delaying performance. Such party so claiming a cause of delayed performance shall endeavor to the extent reasonable to remove the obstacles which preclude performance.

14.7 Consolidation, Merger, Annexation

14.7.1 Change of organization is defined as:

- the consolidation or merger of any Participating Member with another Participating Member;
- the consolidation or merger of a Participating Member with another city under ORS 222.610 et seq;
- transfer of a Participating Member's territory to an Authority or other water providing entity formed by one or more cities, districts or both under ORS 450.680 et seq;

14.7.2 It is the intent of the Commission and the Participating Members that only the above defined Change of Organization exclusively between or among two or more Participating Members to this Agreement, is permitted without approval of the Commission, and in such case, the involved Participating Members' obligations and rights hereunder shall be binding upon and inure to the benefit of the surviving or

successor entity. Notice of such Change of Organization shall be given to the Commission and any other Participating Members prior to commencement of proceedings by the affected Participating Members. The surviving or successor entity shall be entitled only to the same number of voting representatives as any other single Participating Member to this Agreement.

14.7.3 A Change of Organization between one or more Participating Members to this Agreement and any non- Participating Member public entity or including service territory beyond the Participating Member's legally established or legally acknowledged service area shall require the prior unanimous consent of the other Participating Members as to the successor or surviving entity's entitlement to membership in the Commission. Such consent and consent to any necessary amendment to this Agreement shall not be unreasonably withheld, based on the entity's legal, financial and technical ability to assume the original Participating Member's obligations under this Agreement. If the surviving or successor entity's continued membership in the Commission is approved, the original Participating Members' obligations and rights hereunder shall be binding upon and inure to the benefit of the surviving or successor entity, and that entity shall be entitled only to the same number of voting representatives as any other single Participating Member to this Agreement.

14.8 Survival of Covenants. Any provision of this Agreement which, by its terms has or may have application after the expiration or earlier termination of this Agreement, including all covenants, agreements, and warranties, shall be deemed to the extent of such application to survive the expiration or termination of this agreement.

14.9 Notices. Any notice herein required or permitted to be given shall be given in writing and effective when actually received by hand delivery or by the United States mail, first class postage prepaid, addressed to the Commission and Participating Member(s) as set forth below. Each Participating Member shall notify the General Manager of any change of address or title for receipt of notices under this Agreement.

If to the MWL, notices shall be addressed to:

If to Carlton, notices shall be addressed to:

If to Dayton, notices shall be addressed to:

If to Lafayette, notices shall be addressed to:

14.10 Counterparts. This Agreement may be executed in any number of counterparts and by the Participating Members or separate counterparts, any one of which shall constitute an Agreement between and among the Participating Members.

14.11 Entire Agreement. This Agreement embodies the entire agreement and understanding between the Participating Members hereto with respect to the System and

{00212153; 1 }Page 21 of 23- 190 Cooperative Intergovernmental Agreement

supersedes all previous agreements and understandings relating to the System except as provided herein.

14.12 Effective Date/Duration of Agreement. This Agreement shall be effective as of the date the last Initial Participating Member's Board approves the Agreement. This Agreement is intended to, and shall, be perpetual, subject to termination by either of the Initial Participating Members. Notwithstanding the right of termination, such party terminating will be subject to payment of close-out costs as provided in Article 11 of this Agreement.

IN WITNESS WHEREOF the Parties have dated and signed this Agreement.

CITY OF MCMINNVILLE, Acting by and through its Water and Light Commission BY: _____	CITY OF CARLTON BY: _____
CITY OF DAYTON BY: _____	CITY OF LAFAYETTE BY: _____