

ORDINANCE No. 612  
CITY OF DAYTON, OREGON

*An Ordinance Ratifying the Intergovernmental Agreement forming the Yamhill Regional Water Authority Commission Creating an Independent Entity Pursuant to ORS 190.085 and declaring an emergency*

**WHEREAS**, the Yamhill Regional Water Authority Commission (Commission) was created under ORS Chapter 190 which authorizes units of local government to enter into written agreements with any other unit or units of local government for the performance of any or all functions and activities that any of them has the authority to provide, and that the agreement may provide that such functions and activities may be performed by an intergovernmental entity created by the agreement and governed by a board or commission appointed by, responsible to and acting on behalf of the units of local government that are parties to the agreement; and

**WHEREAS**, it is the intent of Commission members - 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) that the Commission's public purpose is to seek, acquire, hold, manage and maintain water permit(s) for appropriation of water from the Willamette River; and

**WHEREAS**, it is the intent of the Commission members that the Commission be a separate entity by governmental agreement; and

**WHEREAS**, the powers, duties and functions of the Commission, in addition to other powers and duties specified in statute or elsewhere in the intergovernmental agreement (IGA), are to manage the business affairs and the tangible and intangible assets of the Commission that are transferred to or held by the Commission pursuant to the IGA; and

**WHEREAS**, there is an immediate need to enact the Yamhill Regional Water Authority to receive water rights pending issuance and therefore an emergency is declared.  
This Ordinance takes effect on the date of passage.

**The City of Dayton ordains as follows:**

**Section 1:** The City of Dayton hereby ratifies the IGA creating the Commission.

**Section 2:** This ordinance will be effective on the date of passage by the City Council.

Date of first reading: November 19, 2012 In full \_\_\_\_\_ or by title only

Date of second reading: December 3, 2012 In full \_\_\_\_\_ or by title only

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

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## **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), collectively referred to as the “Parties.”

### **RECITALS**

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

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

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

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

WHEREAS, the Parties are entering into this Agreement under the authority of ORS Chapter 190 and intend that the full powers and limitations of each party, pursuant to their

respective charters and governing statutes, inure to the benefit of the entity hereby created as provided in ORS 190.030 and ORS 190.080; and

WHEREAS, the Parties are entering into this Agreement to seek, acquire, hold, manage and maintain water permit(s) for appropriation of water from the Willamette River; and

WHEREAS, the Parties submitted to the Oregon Water Resources Department an application (OWRD Application # S-87762) for a water use permit; and

WHEREAS, the Oregon Water Resources Department (“OWRD”) issued its Proposed Final Order issuing draft permit with conditions on March 27, 2012; and

WHEREAS, the OWRD order has become a Final Order,

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, and approved as provided in Article 6, that expresses the rights and obligations of the Parties.

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

1.1.3 Commission Members – The designated representatives from each Party to govern the Commission.

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

1.1.5 Governing Body – The respective City Councils of the Cities of Carlton, Dayton and Lafayette and, for the City of McMinnville, its Water & Light Commission.

1.1.6 Initial Participating Member - MWL, Carlton, Dayton, Lafayette or all of them, as applicable.

1.1.7 New Participating Member – A governmental entity that applies to join the Commission pursuant to Article 10.

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

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

1.1.10 Retail Customer – A user served by a Party 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.

1.1.11 Remaining Party - Shall have the meaning assigned thereto in Article 11.

1.1.12 Service Area - Shall have the meaning assigned thereto in Article 8.

1.1.13 System Asset(s) - The only System Asset(s) of the Commission at the commencement of this Agreement is the water permit defined in Section 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 is executed as set forth on Article 3.5.

1.1.14 Withdrawal Date - Shall have the meaning assigned thereto in Article 11.

1.1.15 Wholesale Customer – A user served by the Commission or served by a Party from water appropriated under the water permit defined in Section 3.4 who pays the wholesale price for the delivery of domestic water. A Party receiving water supply under this Agreement shall not be considered a wholesale customer.

1.1.16 Yamhill Regional Water Authority – The Commission as defined in Section 1.1.2 and named in Article 2.

1.2 Interpretation.

1.2.1 General Rules. 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 different 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.

1.2.2 Rule of Construction Concerning Water Permit. In the event any ambiguity arises in the terms of this Agreement, the term or terms shall be assigned the meaning most consistent with the limitations and conditions of the OWRD's Final Order and resulting water permit.

## **ARTICLE 2**

### **NAME OF COOPERATIVE ENTITY**

The name of the ORS 190 entity established by this Agreement shall be Yamhill Regional Water Authority, 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 Parties approve the ordinance identified in Article 6 (Warranties and Representations) approving establishment of the Commission and this Agreement, the designated representatives from each Party as provided in Section 4.1 shall meet and elect a Chair Person, Vice-Chair Person, Secretary and Treasurer with duties identified in this Agreement – thereafter the Commission Members. 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 by the representative from MWL and the Vice-Chair, Secretary and Treasurer positions



shall be filled by the representatives from Carlton, Dayton and Lafayette. In each successive year, these positions shall be elected by the Commission Members.

3.2 Procedures and Policies. Following the election of officers, the Commission Members 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. The rules and bylaws may be amended from time to time upon a majority vote of the Commission Members.

3.3 General Powers. The Yamhill Regional Water Authority is an entity formed pursuant to ORS 190.080 according to the powers and purposes set forth in this Agreement. 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 Asset. The initial System Asset contributed by the Parties is the water permit issued or to be issued by OWRD pursuant to its Final Order S-87762. The OWRD Final Order and draft permit is attached hereto as Exhibit 1, and incorporated by reference. This Agreement is for management of the water permit. The amounts allocated to each party are:

Carlton	2.98 cfs
Dayton	3.10 cfs
Lafayette	5.00 cfs
MWL	<u>33.10 cfs</u>
TOTAL	44.18 cfs

3.5 Development of Water Rights and Additional System Assets. Acquisition (by purchase, transfer or gift) or construction of any System Assets to develop the water permit in Section 3.4 and apply it to beneficial use shall occur only if a new Agreement for development of

the water permit is unanimously approved and executed by the Parties. The Parties acknowledge that this Agreement is only for management of the water permit.

3.6 Debt. Neither the Commission nor any Party shall have responsibility for any debt obligation that is incurred by another Party prior to or after the date of this Agreement unless the Commission by separate resolution agrees to assume such obligation and each of the governing bodies of the Parties also approve.

#### **ARTICLE 4**

#### **GOVERNANCE**

4.1 Commission Members. The Commission shall be governed by a board of four (4) individuals composed of one (1) individual from each of the governing bodies of the Parties. Such individuals shall be appointed by the governing body of the Party and shall serve at the will of the appointing governing body. The officers of the Commission will be elected by the Commission Members annually, subject to the provision of Section 3.1 that the Commission Members from MWL will be Chair Person for the first year.

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 adopts a superseding rule of procedure. The Commission shall hold meetings as necessary upon call of the Chair Person or any two Commission Members.

4.3 Quorum. The number of Commission Members necessary for a quorum shall be three (3). If new Parties to this Agreement 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 Commission Members are present, the number of votes necessary to approve any resolution, motion, ordinance or other Commission action shall be that number as if all Commission Members were present.

4.5 Issues Requiring Unanimous Vote of Commission Members. The following issues shall require unanimous vote of the Commission Members and subsequent approval by the Governing Bodies of all Parties:

4.5.1 Approval of Amendments of this Agreement.

4.5.2 Approval of an Agreement or Amendment of an Agreement between current Parties and a proposed new Participating Member.

4.5.3 Sale or transfer of System Assets deemed by the Commission critical or integral to the effective operation and management of the System.

4.5.4 Issuance of bonds or signature to any debt obligation of the Commission, as part of an Agreement under Section 3.5.

4.5.5 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 MWL shall be the General Manager of the Commission and that MWL will be the Managing Agency to provide staffing to the Commission.

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 Commission Members for approval if expenditures are anticipated for any budget year. Such budget shall be based on the assumption that the management costs are for those acts necessary to obtain, maintain, preserve and protect the water permit referred to in Section 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 the next fiscal year, then by March 31, a budget will be prepared for Commission approval and recommendation to the governing bodies for the Parties to include and approve the required proportionate contribution from each Party as part of each Party's budget process. The respective governing bodies of the Parties will approve their respective budget shares prior to June 30. If not approved, the Party failing to provide funds shall be suspended from voting, as if it is not a Party, and quorum requirements will be adjusted accordingly, unless the other Parties elect to terminate the non-paying Party's interest in this Agreement.

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.

## ARTICLE 6

### WARRANTIES AND REPRESENTATIONS/ STATE FILING

6.1 Warranties of Each Party. Each Party makes the following warranties and representations:

6.1.1 That, prior to consideration of an ordinance authorizing the signatories to this Agreement, the Parties have each conducted a public process as each Party deems appropriate and in compliance with Oregon's Public Meeting Law to consider the proposal to establish the Commission. Final consideration of the ordinance and action to approve this Agreement by the respective governing bodies of each Party shall occur not later than November 30, 2012.

6.1.2 That they have undertaken the necessary public procedures in accordance with ORS 190.085, to approve this Agreement and which authorizes each signatory to this Agreement to act on behalf of the respective Party in executing this Agreement. Copies of such approving ordinances and resolution are attached as Exhibit 2 to this Agreement.

6.1.3 That each Party has 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 Parties 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 water permit described in Section 3.4 and set forth on Exhibit 1 will be issued by OWRD in the name of the Commission. If OWRD issues the water permit(s) in the Parties' individual names, then the Parties shall transfer the water permit(s) identified in Section 3.4 and set forth on Exhibit 1 to the Commission, for such asset 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 or incur any financial commitment for capital improvements without further written agreement of the Parties as provided in Section 3.5.

## ARTICLE 8

### SERVICE AREA DESCRIPTION

8.1 Initial Service Area. The Parties agree that the area to be served by the water permits 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 Parties or within the approved Urban Growth Boundary of the Parties. Other areas may be added to the Service Area by each Party, subject to Section 8.2 below.

8.2 Notices of Annexation. At any time the Commission receives a notice of annexation from a Party that impacts or is likely to impact the Service Area, the Commission shall determine a recommended response and advise each Party of the intended response not less than seven (7) business days prior to submitting such response, unless such notice from the Party seeking annexation is received after this time, in which case, a recommended response to each Party shall be given as soon as reasonably possible upon receipt. The response shall include a

finding as to whether the water permit quantity allocation has capacity to supply the area to be annexed by a Party. If there is not capacity, the annexing Party is responsible for providing water supply for the area to be annexed from another source.

## **ARTICLE 9**

### **WATER SUPPLY AGREEMENTS**

9.1 Water Supply Agreements. The Parties have entered into 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 Parties may enter into a separate water supply agreement with MWL and any such agreement shall not be subject to Commission approval.

## **ARTICLE 10**

### **NEW PARTICIPATING MEMBERS**

10.1 Application. The Commission may accept new Participating Members upon written application by the prospective new Participating Member and unanimous approval of the Commission and approved by the governing body of each Party upon such written terms and conditions as agreed to by all. New Participating Members must be a governmental entity authorized under Oregon law to serve customers with domestic water at wholesale or retail water rates. Upon approval and compliance with all terms and conditions of joinder, the new Participating Member shall become a Party with all rights and obligations under this Agreement

## ARTICLE 11

### WITHDRAWAL, TERMINATION OF MEMBERSHIP, SALE OF ASSETS AND DISSOLUTION

11.1 Voluntary Withdrawal of a Party. Any Party may elect to terminate its interest in this Agreement and withdraw from the Commission (“Withdrawing Party”) by giving written notice of its desire to withdraw to all other Parties (“Remaining Parties”). The notice shall state a date of withdrawal that 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 governing bodies of all 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 those actions necessary to transfer or assign to the Withdrawing Party that proportionate amount of the water permits allocated to it as set forth in Section 3.4 in cubic feet per second (“CFS”). The Parties will cooperate with OWRD to effect the transfer or assignment. If transfer or assignment is not approved by OWRD, the Parties will use good faith efforts to achieve a comparable solution. Thereafter, this Agreement between the Commission and the Withdrawing Party shall automatically terminate and be of no further force and effect. Any debt or financial obligation associated with any System Assets shall be assigned to and assumed by the Withdrawing Party based on the percentage of ownership interest in the asset.

11.2 Involuntary Withdrawal. Upon material breach of this Agreement, the Commission Members (less the defaulting Member representative) shall give written notice to the defaulting Party specifying the breach. The defaulting Party shall commence to diligently



correct the default within 30 days of date of the notice. If the defaulting Party has not corrected or commenced to diligently move towards correction, the Commission may seek all remedies available at law or in equity, which may include but is not limited to the remedy of specific performance or injunction, or to treat such default as a withdrawal of the defaulting Party under Section 11.1. The defaulting Party shall forfeit all rights and claims to water under the water permit in Section 3.4 and Exhibit 1. The remedies available for breach as stated herein shall be cumulative and shall not restrict any remedy that is available to the Commission at law or in equity.

11.3 Dissolution of the Commission. The Commission may be dissolved by the approving vote of all but one of the governing bodies of the Parties. Upon dissolution, the General Manager shall develop a plan to wind down and dissolve the business affairs of the Commission for approval by the Commission and the governing body of each Party. 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 Party shall assume a share of the debts and obligations of the Commission in proportion to the ratio (expressed as a percentage) that a Party has contributed to the total cost of the System Assets. The water permit(s), they will be transferred or assigned to the Parties in the proportionate share of CFS allocated to that Party as of the date of dissolution according to the quantities set forth in Section 3.4. If transfer or assignment is not approved by OWRD, the Parties will use good faith efforts to achieve a comparable solution. Each Party agrees that it shall execute those documents necessary to vest ownership of the System Assets according to the dissolution plan and execute a post-dissolution management agreement where necessary. Nothing herein shall prevent a Party from accepting cash or other consideration in lieu of continued proportionate ownership in a System Asset. The

cost of dissolution shall be treated as an operation and maintenance expense to be paid equally by the Parties.

## 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 the Parties, their governing bodies, elected or appointed officials, officers, employees, agents, invitees and contractors 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 Parties and which, in whole or in part, directly or indirectly arise from the following, unless and to the extent it resulted from an individual Party's negligence or willful misconduct:

12.1.1 Any act, omission or negligence of the Commission;

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

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

12.1.4 Any event endangering the continued validity of the water permit for which the Commission is responsible.

12.1.5 Any breach, violation, or nonperformance of the Commission's obligations under this Agreement.

12.2 Party's Indemnity. To the extent permitted by the Oregon Constitution and laws of the State of Oregon, each Party agrees to defend, indemnify and hold harmless the

Commission and the other Parties, their governing bodies, elected or appointed officials, officers, employees, agents, invitees and contractors 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 Parties and which, in whole or in part, directly or indirectly arise from the following, unless and to the extent it resulted from the Commission’s or other Party’s(ies’) negligence or willful misconduct:

12.2.1 Any act, omission or negligence of the applicable Party;

12.2.2 Any use, management or control of the System Asset by a Party;

12.2.3 Any injury or damage occurring in or on the System Assets as a result of the actions or non-actions of the Party;

12.2.4 Any event endangering the continued validity of the water permits for which the Party is responsible; and

12.2.5 Any breach, violation, or nonperformance of the Party’s obligations under this Agreement.

12.3 Insurance. Each Party and the Commission shall maintain comprehensive liability insurance for personal injury and property damage at limits not less than the monetary amounts set forth in ORS 30.272 and 30.273. The Commission’s insurance costs shall be shared equally by the Parties.

## **ARTICLE 13**

### **DISPUTE RESOLUTION**

13.1 Dispute Resolution. The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Agreement or interpretation thereof shall follow the steps

as set forth in Section 13.2. The Parties recognize that a dispute may occur between two or more Parties or between a Party 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 and the Commission setting forth the reasons for such dispute. Within thirty (30) days following written notice of dispute, the Disputing Party(ies) will designate a representative to negotiate on behalf of the Party he/she represents and attempt to negotiate a proposed resolution. 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. If the proposed resolution is ratified by the governing bodies of the Disputing Parties, the ratified resolution shall be binding on the Disputing Parties. If the Commission is a Disputing Party, the resolution will be approved, by the Commission, subject to governing body approval where necessary and by the governing body of the other Disputing Party. 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 of the written notice required 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, the Commission (including the Disputing Parties) will designate a mediator.

### 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 Water Permit. The Commission shall exercise its authority, power, and duties in compliance with the limitations and conditions of the permit issued by the OWRD pursuant to its Final Order in S-87762 or any subsequently acquired permits.

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

14.3 Instruments of Further Assurance. From time to time, at the request of the Commission or a Party, each Party 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.

14.4 Assignment, Sale or Transfer. No Party 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 Party's interest, of the remaining Parties in accordance with requirements of this Agreement.

14.5 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 Parties agree to negotiate in good faith to achieve the purposes of this Agreement if a provision is found to be invalid, illegal or unenforceable.

14.6 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.

14.7 Force Majeure. Except with respect to the obligation to pay money under this Agreement, neither the Commission nor any Party 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 Party(ies) 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 that preclude performance.

14.8 Consolidation, Merger, Annexation

14.8.1 Change of organization is defined as:

- The consolidation or merger of any Party with another Party;
- The consolidation or merger of a Party with another City that is not a Party under ORS 222.600 et seq.;

- Transfer of a Party's territory to a Water Authority or other water entity formed by one or more cities, districts or both under ORS 450.680, et seq.;

14.8.2 Only the above defined Change of Organization exclusively between or among two or more Parties to this Agreement, is permitted without approval of the Commission, and in such case, the involved Party's 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 Parties prior to commencement of any change of organization proceedings. The surviving or successor entity shall be entitled only to one voting representative on the Commission as any other Party to this Agreement and the water allocated to those Parties under the Permit shall be combined.

14.8.3 A Change of Organization between a Party to this Agreement and any non-party public entity or annexation of service territory beyond the Party's legally established or legally acknowledged service area shall require the prior consent of the governing body of each Party 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 Party's obligations under this Agreement. If the surviving or successor entity's continued membership in the Commission is approved, the original Party's 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 one voting representative on the Commission as any other single Party to this Agreement.

14.9 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.

14.10 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 Parties as set forth below. Each Party 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:

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

If to Carlton, notices shall be addressed to:

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

If to Dayton, notices shall be addressed to:

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

If to Lafayette, notices shall be addressed to:

City Administrator  
City of Lafayette



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

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

14.12 Entire Agreement. This Agreement and its Exhibits embodies the entire agreement and understanding between the Parties hereto with respect to the water permit and supersedes all previous agreements and understandings except as provided herein.

14.13 Effective Date/Duration of Agreement. This Agreement shall be effective as of the date the last Party's governing body approves the Agreement. This Agreement is intended to, and shall, be perpetual, subject to termination by the Parties as set forth in this Agreement. 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.

DATED: \_\_\_\_\_

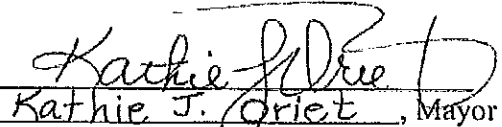
CITY OF MCMINNVILLE,  
Acting by and through its Water and Light Commission

BY: \_\_\_\_\_

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

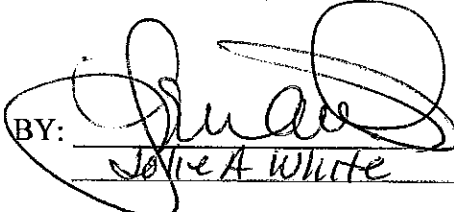
DATED: 11/16/12

CITY OF CARLTON

BY:   
Kathie J. Oriet, Mayor

DATED: 12/5/12

CITY OF DAYTON

BY:   
Julie A. White, Mayor

DATED: \_\_\_\_\_

CITY OF LAFAYETTE

BY: \_\_\_\_\_  
Chris Heisler, Mayor