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CITY OF TUALATIN  
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ENGINEERING &  
BUILDING DEPARTMENT

5 2 6 6 9

## Regional Water Sales Agreement

10 Year

Presented to

City of Tualatin

April 3, 2006

# Regional Water Sales Agreement (10 Year)

April 3 2006

Page 2

## SECTION 1 – NATURE OF SERVICE

- A. Subject to the terms and conditions contained herein, City agrees to furnish and sell, and Purchaser agrees to purchase a firm supply of potable water on an annual basis for the life of this Agreement. The City further agrees to furnish and sell an interruptible supply of water to be made available for purchase at the City's discretion subject to terms of this agreement.
- B. Water is to be delivered to the purchaser at the place or places, at such pressure or pressures, and at such flow rate or flow rates as are set forth on Exhibit 1. Provided that the City is not obligated to meet Purchaser's demands for water during any period of time that Purchaser operates its system not in compliance with operational rules established pursuant to Section 4.D.1.
- C. The City shall deliver water to the purchaser from the same source or sources of water that City delivers to City inhabitants. The City shall meet all applicable drinking water regulatory requirements up to the purchaser's point of delivery.
- D. Purchaser's supply of water shall be reduced or terminated only in accordance with the terms of this agreement.
- E. Purchaser recognizes and agrees that no liability for damages shall attach to the City on account of any failure of supply or changes in pressure, flow rate, or water quality due to circumstances beyond the reasonable control of the City acting in accordance with standards of care common and usual in the municipal water supply industry. Examples of such circumstances include, but are not limited to, natural events such as earthquakes, landslides and floods, and human-caused events such as terrorism, malevolent acts, contamination of the water supply, and acts of war.
- F. The parties agree and acknowledge that the City of Portland is the owner and operator of the water supply, storage, transmission, and treatment system, and all facilities and infrastructure associated with the storage, treatment, transmission, and distribution systems used in its utility operations. The purchase of water or any other commodity or service under this agreement shall not constitute purchase of ownership rights to water or any portion of the water system owned and operated by the City, except as may be specified herein or may be established by separate agreement. Nothing in this agreement shall preclude the parties from entering separate agreements involving joint ownership or joint operation of system elements.

**Regional Water Sales Agreement (10 Year)**

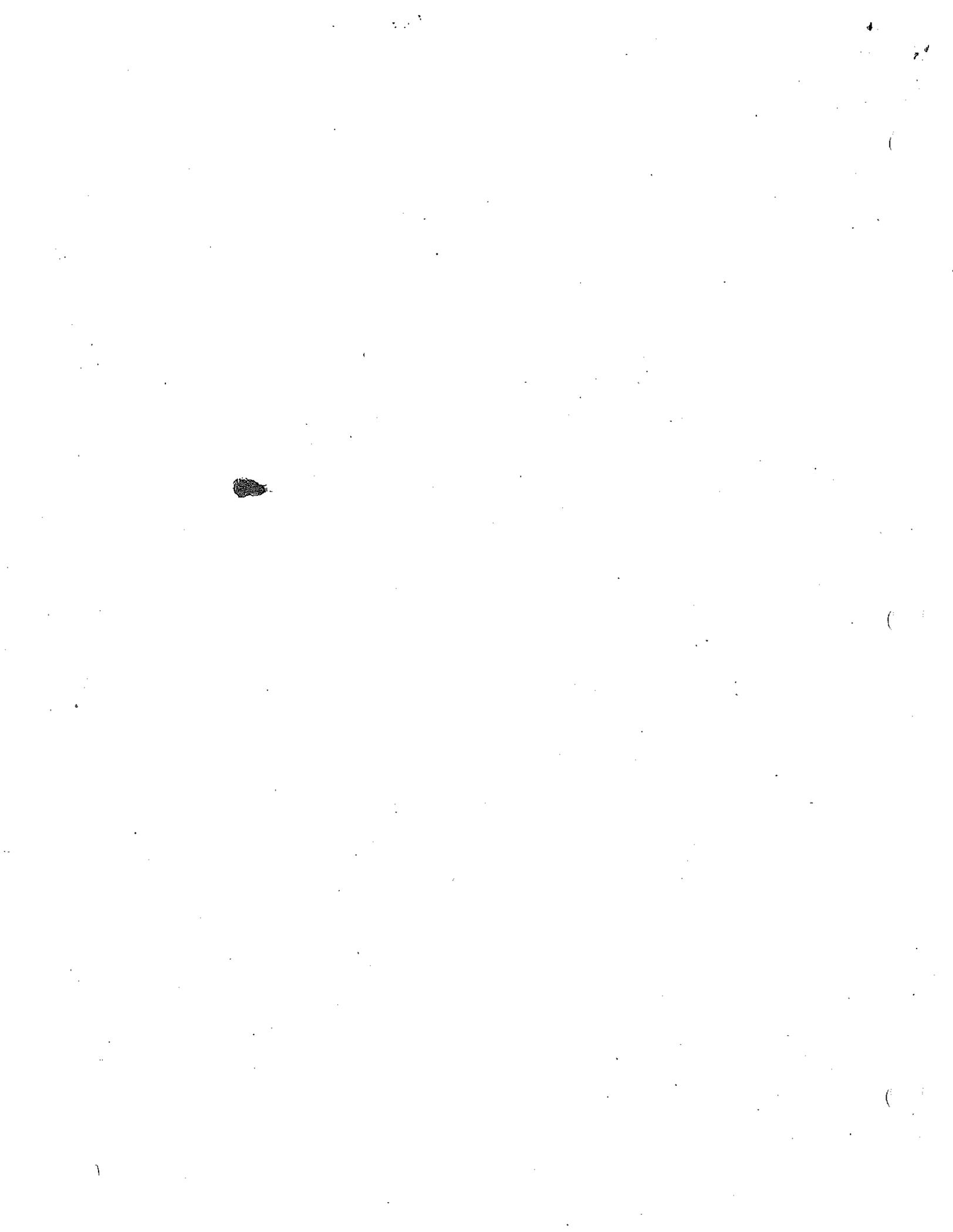
April 3, 2006

Page i

**REGIONAL WATER SALES AGREEMENT  
(10 YEAR)**

**TABLE OF CONTENTS**

	<u>Page</u>
SECTION 1 – NATURE OF SERVICE.....	2
SECTION 2 – WATER REGULATIONS.....	3
SECTION 3 – DURATION OF AGREEMENT AND RENEWAL.....	4
SECTION 4 – WATER MANAGERS ADVISORY BOARD.....	6
SECTION 5 – GUARANTEED PURCHASE WATER QUANTITIES.....	10
SECTION 6 - INTERRUPTIBLE WATER.....	19
SECTION 7 – RATES AND CHARGES FOR GUARANTEED PURCHASE WATER QUANTITY.....	20
SECTION 8 - RATES AND CHARGES FOR INTERRUPTIBLE WATER.....	31
SECTION 9 - WATER SYSTEM PLANNING AND COOPERATION.....	32
SECTION 10 - RESERVATION OF SYSTEM CAPACITY.....	33
SECTION 11 - CONNECTIONS AND METERING.....	34
SECTION 12 - PURCHASER-SUPPLIED WATER TO CITY RESIDENTS.....	35
SECTION 13 - WATER RESOURCE CONSERVATION.....	36
SECTION 14 – WATER CURTAILMENT AND PROTECTION OF THE WATER SYSTEM..	39
SECTION 15 – BILLING AND PAYMENT.....	41
SECTION 16 –JOINT FUNDING OF CAPITAL IMPROVEMENTS.....	43
SECTION 17 – DISPUTE RESOLUTION.....	44
SECTION 18 – WASHINGTON COUNTY SUPPLY LINE.....	46



## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 1

**THIS AGREEMENT** is entered into by and between City of Tualatin, herein called "Purchaser," and the CITY OF PORTLAND, a municipal corporation of the State of Oregon, herein called "City."

The parties recite:

- A. Purchaser is a municipal corporation of the State of Oregon and is authorized by its charter or by state law or both to operate a municipal water system.
- B. City is a municipal corporation of the State of Oregon and is authorized by Chapters 2 and 11 of the Charter of the City of Portland to maintain water works for the furnishing of water to the city, its property, its inhabitants, and to non-inhabitants. The Council of the City is further authorized to enter into contracts for the supply of water by the city and to sell water to persons, public and private, outside the city, on terms and conditions the Council finds appropriate.
- C. City is further authorized by Section 2-105(a)4 of its Charter to enter into agreements, without limitation as to term, as the Council finds appropriate for cooperation, consolidation and maintenance of services with any other public corporation or unit of government.
- D. ORS 190.003 to 190.110 authorize units of local government to enter into intergovernmental agreements for the performance of their duties or for the exercise of powers conferred upon them.
- E. The service and commodity provided by City pursuant to this Agreement are a special contract service and are not provided by City as a common utility service.

# Regional Water Sales Agreement (10 Year)

April 3 2006

Page 2

## SECTION 1 – NATURE OF SERVICE

- A. Subject to the terms and conditions contained herein, City agrees to furnish and sell, and Purchaser agrees to purchase a firm supply of potable water on an annual basis for the life of this Agreement. The City further agrees to furnish and sell an interruptible supply of water to be made available for purchase at the City's discretion subject to terms of this agreement.
- B. Water is to be delivered to the purchaser at the place or places, at such pressure or pressures, and at such flow rate or flow rates as are set forth on Exhibit 1. Provided that the City is not obligated to meet Purchaser's demands for water during any period of time that Purchaser operates its system not in compliance with operational rules established pursuant to Section 4.D.1.
- C. The City shall deliver water to the purchaser from the same source or sources of water that City delivers to City inhabitants. The City shall meet all applicable drinking water regulatory requirements up to the purchaser's point of delivery.
- D. Purchaser's supply of water shall be reduced or terminated only in accordance with the terms of this agreement.
- E. Purchaser recognizes and agrees that no liability for damages shall attach to the City on account of any failure of supply or changes in pressure, flow rate, or water quality due to circumstances beyond the reasonable control of the City acting in accordance with standards of care common and usual in the municipal water supply industry. Examples of such circumstances include, but are not limited to, natural events such as earthquakes, landslides and floods, and human-caused events such as terrorism, malevolent acts, contamination of the water supply, and acts of war.
- F. The parties agree and acknowledge that the City of Portland is the owner and operator of the water supply, storage, transmission, and treatment system, and all facilities and infrastructure associated with the storage, treatment, transmission, and distribution systems used in its utility operations. The purchase of water or any other commodity or service under this agreement shall not constitute purchase of ownership rights to water or any portion of the water system owned and operated by the City, except as may be specified herein or may be established by separate agreement. Nothing in this agreement shall preclude the parties from entering separate agreements involving joint ownership or joint operation of system elements.

# Regional Water Sales Agreement (10 Year)

April 3 2006

Page 3

## SECTION 2 – WATER REGULATIONS

- A. Purchaser hereby agrees to abide by and be bound by the terms and provisions of Chapter 21.28 of the Code of the City of Portland, Oregon, as it presently exists or as may be amended to comply with federal and state law, during the life of this agreement, to the extent to which such terms and provisions do not conflict with any material provisions of this agreement.

# Regional Water Sales Agreement (10 Year)

April 3 2006

Page 4

## SECTION 3 – DURATION OF AGREEMENT AND RENEWAL

### A. Initial Term

This agreement shall become effective on July 1 of 2006 and shall continue in effect thereafter under the terms of this section, unless terminated as provided herein. Each “contract year” shall run from July 1 through June 30.

### B. Initial Five Year Non-Renewal Notice

At any time during the five-year period from July 1, 2011, through June 30, 2016, either party may give a written notice of non-renewal. If such notice is issued, the contract will terminate on the next June 30 at least five years but not more than six years from the date of the notice.

### C. First Renewal in 2016

If neither party gives notice of non-renewal on or after July 1, 2011, and prior to July 1, 2016, the contract shall continue for another ten years, through June 30, 2026.

### D. Subsequent Renewals After June 30, 2026

If this contract is renewed pursuant to Subsection 3.C. above, then the contract shall also be repeatedly renewed for ten year intervals after June 30, 2026, and every ten years thereafter, unless one of the parties gives a notice of non-renewal under the terms of Subsection E below.

### E. Five-Year Non-Renewal Notice

Either party may provide a written non-renewal notice any time during the second five years of each ten-year renewal period. If either party gives a notice of non-renewal during the non-renewal notice period, the contract will terminate on the next June 30 at least five years but not more than six years from the date of the notice.

For example, if this contract is renewed through June 30, 2026, pursuant to Subsection C above, then the non-renewal notice period during that term of the contract shall run from July 1, 2021, through June 30, 2026. If either party gives written notice of non-renewal during that period of time, the contract shall terminate on the next June 30 five years or more but less than six years from the date of the notice. If no party gives notice of non-renewal during that period, the contract will be automatically extended through June 30, 2036. If the contract is extended to June 30, 2036, the next non-renewal notice period would then run from July 1, 2031, through June 30, 2036.

**Regional Water Sales Agreement (10 Year)**

April 3, 2006

Page 5

**SECTION 3 – (Continued)**

**F. Effect of Renewals on Cost Cap and Supply Reliability**

The five-year period used to judge the City's compliance with the cost cap established by Subsection 7.I. shall be restarted at each renewal of this contract. The ten-year period used in calculating the City compliance with its reliability obligations described in Section 5.F.2 shall be restarted at each renewal of this contract.

# Regional Water Sales Agreement (10 Year)

April 3 2006

Page 6

## SECTION 4 – WATER MANAGERS ADVISORY BOARD

### A. General

A Water Managers Advisory Board (WMAB) shall be established no later than thirty (30) days after five or more Purchaser's have approved a Water Sales Agreement with the City that includes this provision, and will continue during the term of this agreement. Purchaser is eligible for participation in the WMAB. The WMAB shall consist of two representatives of the City Bureau of Water Works, to be named by the Administrator, and one representative of each participating entity that has signed a contract to purchase water from the City containing a provision allowing its participation on the WMAB. The City of Portland Water Bureau will provide staff support to the WMAB and will be responsible for keeping the official records.

### B. Meetings and Bylaws

The WMAB shall meet regularly to communicate with and make recommendations to the Administrator regarding matters relating to the City's sale of water to participating purchasers. The WMAB may adopt such bylaws concerning its organization and governance as a majority of the membership shall see fit. The role of this Board is advisory in nature and, except as specified herein, no rule, bylaw, or action of the WMAB may alter any term of this agreement.

### C. Committees

The WMAB shall be responsible for establishing committees as needed to address ongoing needs, which may include:

1. Water Resource Conservation – Possible responsibilities for such a committee are outlined in Section 13 – Water Resource Conservation;
2. Operations Coordination – Possible responsibilities for such a committee may include coordinating supply system routine and emergency operations among the City and its wholesale Purchaser with the goal of providing efficient and cost-effective system operations; and
3. Other committees, as identified by the WMAB.

### D. Creation of Operating and Information Standards

1. The WMAB shall recommend to the Administrator standard water system operating practices necessary or advisable to enhance the efficiency, reliability, and cost-effectiveness of the supply, transmission, and storage of water provided under this agreement. These standard operating practices will address issues such as, but not necessarily limited to, forecasting seasonal demands, forecasting peak demands, managing the system to minimize the impact of peak demand periods,

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 7

## SECTION 4 – (Continued)

security and emergency management, use of storage, and timing of deliveries of water. Pending recommendations from the WMAB, the Administrator shall adopt interim operating practices and upon receipt of the recommendations, the Administrator shall adopt the recommendations, with such alterations as he or she deems necessary or advisable. The Purchaser agrees to operate its system in a manner consistent with such established operating practices and in keeping with responsible use of the City's water supply system.

2. The WMAB shall recommend to the Administrator what information and data he or she shall require each participating Purchaser to provide, in order to allow efficient, reliable, and cost-effective provision of water under this Agreement. The Administrator shall adopt these recommended information requirements, with such alterations as he or she deems necessary or advisable. Such information may include, but is not necessarily limited to:
  - (a) System maps with mains, pump stations, tanks, and supply connections;
  - (b) Connections and usage from other supply sources;
  - (c) Total existing and new service connections by category;
  - (d) Key benchmarks to be identified by the Operations Group such as but not limited to standards for operational norms, notification deadlines, protocols for communication;
  - (e) Water quality data;
  - (f) Purchaser facilities' standards for operation to minimize peak and emergency events; and
  - (g) Emergency contact information for each provider and any agreements that have been signed by individual providers to address emergency response.
3. The WMAB shall periodically evaluate Purchasers' compliance with the information requirements and standard operating procedures and shall provide the Water Bureau Administrator with findings and recommendations to assure ongoing compliance.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 8

## SECTION 4 – (Continued)

### E. Rate Review

In order to provide timely notification to Purchaser of proposed changes in rates, charges, and rate design and an opportunity for Purchaser to evaluate such proposals and be heard before the City Council, City agrees that the following steps shall be taken annually.

#### 1. Capital Improvement Program.

- (a) On an annual basis, Purchaser, through the WMAB, shall be invited to participate in development of that portion of the Water Bureau's Capital Improvement Plan addressing capital improvements used to serve Purchaser or other participating Purchasers;
- (b) Capital planning will take place in a manner sufficiently timely to ensure Purchaser effective participation in the City's capital budget deliberations each year;
- (c) City and WMAB will identify criteria to be considered in prioritizing capital improvement projects. City will also share its proposed ranking of projects for funding and completion and its proposed schedule for such capital improvements. Purchaser will be provided reasonable opportunity to present suggestions and recommendations for changes to the proposed Capital Improvement Plan, specific capital projects, and for improvements in the capital planning and financing process;
- (d) At a minimum, the City will host at least one meeting a year to discuss the Water Bureau's Capital Improvement Plan on a schedule sufficient to allow Purchaser participation in the City's capital budget deliberations each year.

#### 2. Operation & Maintenance Budget

- (a) On an annual basis, Purchaser, through the WMAB, shall participate in review of the Water Bureau's Operations and Maintenance budget for the water supply system used to serve Purchaser or other participating Purchasers;
- (b) Water Bureau O & M budget development and review will take place in a manner sufficiently timely to ensure Purchaser effective participation in the budget deliberations each year;
- (c) The WMAB will be provided the opportunity to participate in the budget development and review process, including steps such as:

## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 9

### SECTION 4 – (Continued)

(i) The Administrator will report to WMAB at the commencement of annual financial plan and budget preparation, and report each month to the WMAB on progress in the budget preparation and any particular budgetary issues or concerns related to that part of the water supply system used to serve the Purchaser and other members of the WMAB. Reports may be in writing or at WMAB meetings.

(ii) A reasonable time, but no less than two weeks, prior to submission of the Water Bureau budget to the Mayor, the Administrator shall report to the WMAB on the current state of budget and financial plan preparation and provide his or her best estimate of the final budget for submission to the Mayor related to that part of the water supply system used to serve the Purchaser and other members of the WMAB and shall consult with the WMAB about the budget to be proposed to the Mayor.

(iii) The Administrator will provide WMAB a presentation concerning the Water Bureau budget request to the Mayor and the Water Bureau financial plan for the following fiscal year and provide copies of the budget request and financial plan for review and comment. The budget request and the financial plan will be made available to WMAB on or as soon as reasonably possible after the date they are submitted to the Mayor.

(iv) The City will advise Purchaser in writing of significant changes in the proposed Water Bureau Budget after its submission to the Mayor.

(v) When the City Bureau of Water Works files its annual rate ordinance with the City Council Clerk, a copy of said ordinance will be forwarded to Purchaser, accompanied by a letter giving the dates on which the City Council is scheduled to consider rates.

3. Purchaser, through the WMAB, may offer comments on the annual rate ordinance in writing or in personal testimony before the City Council.

#### F. Protection of Confidential Information

Information submitted to or produced by the WMAB or otherwise exchanged by the parties to this Agreement and similar wholesale water agreements may include documents related to the vulnerability or security of water supply systems. The parties agree that if either receives a public document request for such information, the party receiving that request shall, prior to release of any documents, expeditiously notify the entity about whose system information is sought and shall, in addition, assert all applicable exemptions to release of the documents available under the Oregon Public Records Law.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 10

## SECTION 5 – GUARANTEED PURCHASE WATER QUANTITIES

### A. General Guaranteed Purchase Payment Obligations

Unless excused by some other provision of this Contract, Purchaser agrees to pay City each year a sum of money (its "guaranteed purchase payment") equal to the annual water rate applicable to Purchaser for that year times the Purchaser's "guaranteed purchase" quantity of water. Payments shall be made as provided in Section 15, Billing and Payment.

### B. Guaranteed Purchase Quantities And Peaking Factors

1. Guaranteed Purchase Quantity. For purposes of calculating annual rates and determining Purchaser's minimum payment, Purchaser's guaranteed purchase quantity (expressed in annual average daily demand and in total monthly demands) shall be the quantity identified in Exhibit 1 to this contract, unless changed pursuant to the terms of this contract.

#### 2. Seasonal Peaking Factor.

a. Except as otherwise provided in this agreement, for purposes of calculating monthly demands and annual rates and determining Purchaser's minimum payment, Purchaser's "seasonal peaking factor" shall be the seasonal peaking factor identified in Exhibit 1 to this contract unless changed pursuant to the terms of this contract. "Seasonal peaking factor" is the ratio of the Purchaser's guaranteed purchase average daily demand placed on the City system during the "peak season" to the Purchaser's guaranteed purchase annual average daily demand. For this calculation "peak season" is the period of time from July 1 through September 30. For purposes of ratemaking and calculating monthly demands, the seasonal peaking factor excludes purchases of interruptible water.

b. For purposes of Section 5 of this agreement, the Purchaser's "actual seasonal peaking factor" shall be the ratio of the Purchaser's actual average daily demand placed on the City system during the peak season (as determined from City water supply data) to the Purchaser's guaranteed purchase annual average daily demand.

#### 3. Daily Peaking Factor.

a. Except as otherwise provided in this agreement, for purposes of calculating annual rates and determining Purchaser's minimum payment, Purchaser's "daily peaking factor" shall be the daily peaking factor identified in Exhibit 1 to this contract unless changed pursuant to the terms of this contract. "Daily peaking factor" is the ratio of the daily average derived from the Purchaser's highest three consecutive days of purchases to its annual average daily demand for the contract

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 11

## SECTION 5 – (Continued)

year. For purposes of ratemaking and calculating monthly demands, the daily peaking factor excludes purchases of interruptible water.

b. For purposes of Section 5 of this agreement, the Purchaser's "actual daily peaking factor" shall be ratio of the daily average derived from the Purchaser's actual highest three consecutive days of purchases (based on City data) to its guaranteed purchase annual average daily demand for the contract year.

### C. Changes In Guaranteed Purchase Quantities

#### 1. Reductions In Guaranteed Purchase Quantities

Except as specifically provided for in this contract, Purchaser's guaranteed purchase quantity may not be reduced during the term of this contract except by a contract amendment.

#### 2. Increases in Guaranteed Purchase Quantities

On any March 15 during the term of this contract, Purchaser may request that its guaranteed purchase quantity be increased. The Administrator may accept or reject such request, in whole or in part. The Administrator shall respond to any request for an increase in guaranteed purchase by May 1 of the same year the request is made. Unless otherwise agreed by Purchaser and the City, any increases in guaranteed purchase agreed to under this provision shall be effective for the remaining term of the contract.

If on any March 15, more than one Purchaser under a similar wholesale water agreement requests an increase in guaranteed purchase and the Administrator determines that he or she can prudently approve some increase in guaranteed purchases, but cannot approve all pending requests in total, then the Administrator may grant such overall increase in guaranteed purchase as he or she deems prudent, provided that when granting partial approvals of more than one request, the Administrator shall grant such approvals in proportion to the then existing guaranteed purchase quantity of each requesting Purchaser compared to the total of then existing guaranteed purchase quantities of all requesting Purchasers. If the Administrator cannot grant Purchaser's original request in total, the Purchaser may elect to withdraw its requested increase in guaranteed purchase quantity. All increases in guaranteed purchase quantities shall be confirmed in writing and signed by both parties.

#### 3. Transfers of Guaranteed Purchase Quantities

With approval of the Administrator, which shall not be unreasonably withheld, Purchaser may alter its guaranteed purchase quantity (and its guaranteed purchase obligation) by transferring all

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 12

## SECTION 5 -- (Continued)

or some of its guaranteed purchase quantity to another municipal entity with a valid similar wholesale water agreement with the City. Withholding approval shall be deemed reasonable in the following circumstances only: the Administrator determines that the transfer would require changes in the City water system infrastructure or reduce the reliability of the water supply system. In these two circumstances, nonetheless, the Administrator shall endeavor to approve transfers with such conditions as he or she deems necessary or advisable to avoid the need to make changes in the City water system infrastructure or reduction in the reliability of the water supply system.

### 4. Sale of Guaranteed Purchase Water

Purchaser may sell water purchased from the City as part of its guaranteed purchase quantity to other water suppliers, upon approval of the Administrator, which will not be unreasonably withheld. Withholding approval shall be deemed reasonable in the following circumstances only: the Administrator determines that the transfer would require changes in the City water system infrastructure, or reduce the reliability of the water supply system. In these two circumstances, nonetheless, the Administrator shall endeavor to approve sales of water with such conditions as he or she deems necessary or advisable to avoid the need to make changes in the City water system infrastructure, or reduction in the reliability of the water supply system.

### D. Changes in Seasonal Peaking Factor

#### 1. Requested Changes to Seasonal Peaking Factor

Subject to limitations of Section 5.D.2(a) below, at any time prior to December 1 of each year of the second through fifth year of this contract, Purchaser may request in writing that its seasonal peaking factor for Years 3 through 6 of this Contract be changed from that identified for Year 1, as set out in Section 5.B.1(b) above. Purchaser's requested seasonal peaking factor shall be no less than the average of the Purchaser's actual seasonal peaking factor for the previous years under this contract.

Prior to December 1 of Contract Year 6 and every year thereafter, Purchaser may request in writing a change in Purchaser's seasonal peaking factor. Any requested change shall take effect on the first day of the next contract year and shall continue as Purchaser's seasonal peaking factor thereafter unless changed pursuant to the terms of this contract. Purchaser's requested seasonal peaking factor shall be no less than the average of the Purchaser's actual seasonal peaking factor for the five previous years under this contract.

Upon receiving such a request, the City shall adjust the Purchaser's seasonal peaking factor unless the Administrator determines that to do so would reduce the reliability of the water supply system.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 13

## SECTION 5 – (Continued)

### 2. Excess Seasonal peaking factors

- (a) Except as provided in Section 5.D.2(b) below, if in any year Purchaser's actual seasonal peaking factor exceeds by more than 10% the seasonal peaking factor set by the terms of this contract for the purposes of calculating rates in that year, the Administrator shall recalculate the year's rates and in the next available contract year shall impose on the Purchaser a surcharge equal to the difference in the Purchaser's guaranteed purchase payment under the original rates and the Purchaser's guaranteed purchase payment under the rates as recalculated using the Purchaser's actual seasonal peaking factors. When calculating rates for the year in which the surcharge is to be collected, the City shall treat the surcharge as an offset to the otherwise estimated annual revenue requirements for all wholesale and retail customers of the system. The Administrator may also increase the Purchaser's seasonal peaking factor to the actual excessive seasonal peaking factor for the purpose of calculating rates for a period of five years and the Purchaser shall not be entitled to reduce its seasonal peaking factor as described in Section 5.D.1 during this same five year period. If the Administrator determines that honoring Purchaser's actual excessive seasonal peaking factor for the five year period would reduce the reliability of the system or threaten the water supply of any other wholesale purchaser of water from the City, he or she may refuse to honor the increased seasonal peaking factor and take steps he or she deems necessary or advisable to protect the system and other Purchasers, as provided in Section 5.F, Excess Demand.
- (b) The provisions of Section 5D.2(a) shall not apply if the excess seasonal peaking factor resulted from the direct result of Acts of God, malevolent acts, contamination of the water supply, or events beyond the Purchaser's control if the consequences of any such circumstance or event could not have been avoided through the exercise of the standards of care common and usual in the municipal water supply industry.

### E. Changes In Daily Peaking Factor

#### I. Daily Peaking Factors For Contract Years 2 Through 5

- (a) Except as it is changed upon Purchaser's request as provided in Section 5.E.1(b), for rate-making purposes in the second through fifth contract year, Purchaser's peaking factor shall be the average of its actual daily peaking factor for all previous contract years, based on demand data collected by the City.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 14

## SECTION 5 – (Continued)

(b) At any time prior to December 1 of the first through fourth contract years, Purchaser may request that its daily peaking factor for the next year, as calculated in Section 5.E.1.(a), be altered up or down by no more than 20 percent. Except as provided in Section 5.E.3, for ratemaking purposes in the next year, the City shall use the daily peaking factor identified by the Purchaser consistent with this section, unless the Administrator determines that honoring the requested peaking factor would reduce the reliability of the system or threaten the water supply of any other wholesale purchaser of water from the City.

### 2. Daily Peaking Factors For Contract Years 6 And Thereafter

(a) Except as it is changed upon Purchaser's request as provided in Section 5.E.2.(b), for rate-making purposes in the sixth and subsequent contract years, Purchaser's peaking factor shall be the average of its actual daily peaking factor for the five preceding years, based on demand data collected by the City.

(b) By December 1 of the fifth contract year and each year thereafter, Purchaser may request that its daily peaking factor for the next year, as calculated in Section 5.E.2.(a), be altered up or down by no more than 10 percent. Except as provided in Section 5.E.3., for ratemaking purposes in the next year, the City shall use the daily peaking factor identified by the Purchaser consistent with this section, unless the Administrator determines that honoring the requested peaking factor would reduce the reliability of the system or threaten the water supply of any other wholesale purchaser of water from the City.

### 3. Excess Daily Peaking Factors

(a) Beginning in contract year 3, and for each year thereafter, except as provided in Section 5.E.3(b) below, if in any year Purchaser's actual daily peaking factor exceeds by more than 20% the daily peaking factor set by the terms of this contract for purposes of calculating rates in that year, the Administrator shall recalculate the year's rates and in the next available contract year shall impose on the Purchaser a surcharge equal to the difference in the Purchaser's guaranteed purchase payment under the original rates and the Purchaser's guaranteed purchase payment under the rates as recalculated using the Purchaser's actual daily peaking factors. When calculating rates for the year in which the surcharge is to be collected, the City shall treat the surcharge as an offset to the otherwise estimated annual revenue requirements for all wholesale and retail customers of the system. In addition, for five years after the year in which the Purchaser's actual daily peaking factor exceeds by more than 20% the daily peaking factor set by the terms of this contract for purposes of calculating rates in that year, the Administrator need not honor any request by Purchaser to alter the Purchaser's calculated daily peaking factor pursuant to Sections 5.E.1(b) or 5.E.2(b).

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 15

## SECTION 5 -- (Continued)

(b) The provisions of Section 5E.3(a) shall not apply if the excess daily peaking factor resulted from the direct result of Acts of God, malevolent acts, contamination of the water supply, or events beyond the Purchaser's control if the consequences of any such circumstance or event could not have been avoided through the exercise of the standards of care common and usual in the municipal water supply industry.

### F. Release Of Purchaser From Guaranteed Purchase Obligations

#### 1. Changes in Guaranteed Purchase Quantities In Case Of Short-Term Curtailment

##### (a) Reduction or Shift of Guaranteed Purchase Quantity

Purchaser's guaranteed purchase quantity (and, as appropriate, its guaranteed purchase annual payment) shall be altered, at Purchaser's request, for any year in which the Purchaser acts on a request by the City to reduce or curtail demand below its established guaranteed purchase quantity for more than five consecutive days. Any request must be made in writing to the City within 30 days after the Purchaser is no longer reducing or curtailing demand upon the City's request. At Purchaser's option, the quantity of water it did not purchase during a reduction or curtailment period of more than 5 consecutive days shall either: (a) be excluded from that year's guaranteed purchase quantity or (b) be shifted to another time of the year when curtailment is not in effect. Provided, however, that the Administrator need not honor a request to shift quantities to other times if he or she determines that to do so would threaten the reliability of the water system.

##### (b) Quantification of Reduction or Shift in Guaranteed Purchase Quantity

For purposes of Section 5.F.1, the Administrator shall calculate the reduction in water used by the Purchaser (and, therefore, the amount of the guaranteed purchase quantity reduction or shift) by considering the difference between the Purchaser's actual water usage during the period of curtailment or water use reductions and the Purchaser's guaranteed purchase demand projections for the same period and such other information available to the Administrator that he or she determines can be used to assist in making the calculations.

##### (c) Seasonal Peaking Factor Effects

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 16

## SECTION 5 – (Continued)

Reductions or shifts of guaranteed purchase quantities pursuant to Section 5.F.1 shall not alter the Purchaser's seasonal or daily peaking factors for purposes of future ratemaking.

2. Changes in Guaranteed Purchase Quantities In Case of Failure of Supply
  - (a) Except as provided in Section 5.F.2(d) below, if the City fails to supply Purchaser's guaranteed purchase demand for more than 30 consecutive days more than one time in any period of ten consecutive years, the Purchaser may declare its intention to reduce its guaranteed purchase quantity pursuant to this Subsection.
  - (b) For purposes of Section 5.F.2, the Administrator shall determine if there has been a failure to meet guaranteed purchase obligations by considering the difference between the Purchaser's actual water usage during the period of curtailment or reduced water supply and the Purchaser's guaranteed purchase demand projections and such other information available to the Administrator that he or she believes can be used to assist in making the determination.
  - (c) Procedure to Reduce Guaranteed Purchase Quantities
    - i. To reduce its guaranteed purchase quantity under this Subsection, Purchaser must give written notice to the City of its intent to do so. The notice must be given any time after the 31st day of the failure of supply, but not more than 60 days after supply has been fully reestablished.
    - ii. Having given notice under Subsection 5.F.2(c)i, Purchaser may thereafter reduce its guaranteed purchase from the City by up to 10% of the guaranteed purchase quantity in effect the day before the failure of supply each year for the remaining years of the then current contract term and the next ten year term if the contract is renewed. To reduce its guaranteed purchase for any contract year, Purchaser must provide written notice of the reduction to the City no later than December 31 of the preceding contract year. Provided that to continue reducing its minimum quantity after any contract renewal, Purchaser must give written notice to the City of its intent on or before the date of renewal.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 17

## SECTION 5 – (Continued)

- iii. If Purchaser elects to reduce its guaranteed purchase quantities pursuant to the terms of this Subsection, all other terms of the contract shall continue in effect.
- (d) Purchaser shall not have the option to reduce its guaranteed purchase obligation under this Subsection if the City's failure to supply Purchaser's guaranteed purchase was caused by Acts of God, malevolent acts, contamination of the water supply, or events beyond the City's control if the consequences of any such circumstance or event could not have been avoided through the exercise of the standards of care common and usual in the municipal water supply industry.
- (e) The ten year period for judging this obligation shall restart at each renewal of this contract. (See Section 3.F.)

### G. Excess Demands

#### 1. Reduction in Supply

Should Purchaser place demands on the system in excess of that agreed to between City and Purchaser or not in compliance with the Operating Standards adopted pursuant to Section 4, WMAB, in a manner that jeopardizes the reliability and safety of the Portland water system or compromises the City's ability to meet its obligations to other customers, the Administrator may take such steps as are necessary or advisable to protect the system. Such actions may include, but are not limited to reducing the supply of water flowing to the Purchaser. If the water system infrastructure does not allow the Administrator to make such supply reductions, the Administrator may construct control devices as may be needed to suitably control Purchaser's demands. The cost of such improvements shall be fully recovered through a surcharge billed to Purchaser and added in equal installments to the Purchaser's monthly invoices during the four months following completion of construction.

#### 2. Calculation of Excess Demands

For purposes of Section 5.G, the Administrator shall determine whether Purchaser has imposed excess demands on the system using any information available to the Administrator that he or she determines can be used to assist in making the determination. The Administrator's determination shall be subject to review and comment by the WMAB.

### H. Increased System Capacity To Meet Increased Guaranteed Purchase Quantities

1. If Purchaser requests an increase in its guaranteed purchase quantity pursuant to Section 5.C.2 that, in the judgment of the Administrator, cannot prudently be granted

## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 18

### SECTION 5 – (Continued)

because it exceeds the capacity of the system to deliver water to Purchaser, the Purchaser may request that the City undertake a study to determine what, if any, enhancements or alterations to the system, would produce sufficient system capacity to meet the increased guaranteed purchase quantity.

2. Upon Purchaser's written agreement to fund such a study of system enhancements or alterations, the City shall undertake the study. Provided that the City's obligation shall be contingent on the negotiation of a mutually satisfactory intergovernmental agreement between the City and Purchaser establishing the nature, timing, and funding of the study.

3. Upon completion of any system study provided for in this subsection, the Purchaser funding the study may request the City to undertake system enhancements or alterations sufficient to meet the increased Purchaser's proposed increased guaranteed purchase quantity.

4. Upon request for system enhancements or alterations, the City may agree to undertake the enhancements or alterations requested, under such terms and conditions as the City and Purchaser (or others) in writing mutually agree. The parties may utilize joint funding agreements, as provided for under Section 16 of this Agreement, or such other arrangements as are determined to be mutually beneficial at the time.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 19

## SECTION 6 - INTERRUPTIBLE WATER

### A. In General

Purchaser may purchase water over and above its guaranteed purchase quantities under the terms and conditions set forth herein. Such water shall be termed interruptible water. Except as provided herein, the City is not obligated to sell interruptible water to Purchaser. Further, City may cease providing interruptible water at any time under procedures of Section 6.F below, even after the Administrator has accepted an offer to purchase interruptible water under procedures of Sections 6.B, 6.C and 6.D below.

### B. Winter Interruptible Water

From October 1 through May 31, Purchaser may offer to purchase winter interruptible water on one day's verbal or written notice to the City. The City may provide interruptible water to Purchaser if the Administrator determines it is prudent to do so and if the Administrator accepts the Purchaser's offer either verbally or in writing.

### C. Summer Interruptible Water

1. From June 1 through September 30, Purchaser may request to purchase summer interruptible water using the procedures established in this Section 6.C.
2. No later than March 15 of each year, Purchaser may submit to the City, in writing, its offer to purchase summer interruptible water supplies. The offer must identify the quantities of water to be purchased, by month, for the next June through September period.
3. No later than April 15, City of each year shall respond in writing to Purchaser's request for interruptible water, based on the Administrator's prudent estimates of system capacity and operational requirements. If the Administrator accepts Purchaser's offer without changes, then the Purchaser is obligated to purchase and the City is obligated to sell the designated quantity of summer interruptible water under the terms of this contract.
4. If the Administrator determines that it would not be prudent to agree to meet all timely requests for summer interruptible water from all Purchasers, he or she shall offer the total quantity of interruptible water he or she deems to be prudent to all requesting Purchasers as follows: each Purchaser shall be offered a quantity of interruptible water proportional to its guaranteed purchase quantity in comparison to the total of the guaranteed purchase quantities of all requesting Purchasers.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 20

## SECTION 6 – (Continued)

5. If the Administrator offers to supply Purchaser less than the full amount of summer interruptible water requested by the Purchaser, Purchaser must, within 15 days of the Administrator's offer, accept or reject the offer. If Purchaser accepts the offer, then Purchaser is obligated to purchase and the City is obligated to sell that quantity of summer interruptible water under the terms of this contract.

### D. Additional Sales of Interruptible Water

Notwithstanding the other provisions of Section 6, each contract year after the Administrator has confirmed sales of summer interruptible water under Subsection 6.C. above, the Purchaser may buy and the City, acting through the Administrator, may sell additional interruptible water at that year's summer season interruptible rate and on such other terms as are mutually agreeable.

### E. Confirmed Summer Interruptible Water Payment

#### 1. Purchaser's Obligation to Make Payment

Once Purchaser and the City have agreed on a quantity of interruptible water under the terms of this section, and subject to the billing provisions of Section 15 of this Contract, except as provided in Section 6.E. 2 below, the Purchaser shall pay the City for that quantity of water agreed to at the price established by Section 8 of this Contract. The amount due shall be termed the confirmed interruptible water payment.

#### 2. Reduction in Confirmed Interruptible Water Payment

If the City fails to deliver any of the confirmed quantity of interruptible water, the Purchaser shall be excused from paying a portion of its confirmed interruptible water payment equal to the quantity of water not delivered times the price of interruptible water.

### F. Reduction or Elimination of Interruptible Water

In the event of an emergency or other condition under which continued supply of interruptible water jeopardizes the reliability of the water system, the City may cease providing interruptible water at any time on one day's written or verbal notice to the Purchaser. Under all other circumstances, the City may cease providing interruptible water at any time on 21 days written or verbal notice to the Purchaser.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 21

## SECTION 7 – RATES AND CHARGES FOR GUARANTEED PURCHASE WATER QUANTITY

### A. Rate Making In General

1. The rate structure for Purchaser's guaranteed purchase quantity of water shall consist of (a) a fixed monthly charge calculated using the cost of service of typical non-volumetric services such as, but not limited to, meter reading, billing, meter purchases, meter maintenance, and relevant overhead and (b) a volume charge calculated using volumetric rates established as provided herein times the Purchaser's guaranteed purchase quantity.
2. The City shall annually establish rates and charges for the Purchaser's fixed monthly charge and guaranteed purchase quantities that do not exceed charges calculated using the principles and standards of this Section 7.
  - (a) Determination of revenue requirements using the utility basis of revenue requirements and cost of service principles as described in Manual of Water Supply Practices – M1. Principles of Water Rates, Fees and Charges. Fifth Edition. Denver: 2000 published by the American Water Works Association (hereafter "AWWA Manual M1") or in such updates as may occur from time to time, except for such deviations from AWWA Manual M1 as are described or permitted by this contract. A cost of service computer model will be used to calculate the revenue requirements, cost allocations, and resulting rates.
  - (b) The components used to determine the revenue requirements under the utility basis shall be:
    1. Operation and Maintenance (hereafter "O & M") costs;
    2. Return on Investment; and
    3. Depreciation.
  - (c) Purchaser shall not be charged for the costs incurred by the City that are incurred for the sole purpose of serving the City's retail customers. For the costs incurred serving both the Purchaser and the City's retail customers, Purchaser shall be charged an amount that equals its proportionate share of the cost, using standard cost-of-service principles, as generally described in AWWA Manual M1, unless stated otherwise herein.
  - (d) The parties understand that the City may enter into similar wholesale water sale agreements with other water utilities. If the City does so, the charges to Purchaser shall continue to be based on the Purchaser's proportionate

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 22

## SECTION 7 – (Continued)

share of the cost to serve the Purchaser, based on the Purchaser's proportionate share of total demand on the system, including demand of other purchasers under similar wholesale water agreements and the City's retail customers.

- (e) The City shall treat surcharges collected under Section 5.D.2 of this agreement as an offset to the otherwise estimated annual revenue requirements for all wholesale and retail customers of the system.

### B. Cost Allocations—In General

1. Costs shall be allocated to the Purchaser in accordance with generally accepted ratemaking practices and procedures, as described in AWWA Manual M1, as it may be updated from time to time, except to the extent that the procedures specified herein may deviate from the practices and procedures of AWWA Manual M1. In general, unless specified otherwise in the agreement, costs shall be allocated based on the proportionate share of costs of the assets and other revenue requirements, as provided in AWWA Manual M1.
2. Cost allocation for purposes of this contract shall be based on the "commodity demand" methodology, as defined in AWWA Manual M1, unless otherwise agreed to by Purchaser and the Administrator.

### C. O & M Cost Allocation

#### 1. Definition

For purposes of this agreement O & M expenses include the operations, maintenance, and associated overhead expenses of the City's water supply system as adopted in the City's annual budget process for the year for which the rate will be in effect except that costs for water planning studies that are expensed rather than capitalized shall be included in the O & M expenses at their actual cost rather than budgeted or anticipated costs. When use of actual costs for such studies results in a delay of recovery of costs associated with such studies, Purchaser shall also be charged interest on the funds expended from the time the costs were incurred by the City until the start of the following contract year. The interest rate shall be equivalent to the rate earned on the City's internal investment pool managed by the City Treasurer.

#### 2. Allocations

The City shall allocate O & M costs to cost functions applied in accepted cost of service rate-making contemplated by AWWA M-1, such as commodity, peak season demand (referred to as the seasonal peaking factor under this contract), peak three days system-wide demand (referred to as the daily peaking factor under this contract), customer, and equivalent meter service based on

## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 23

### SECTION 7 – (Continued)

the City's best professional engineering judgment. The City shall then allocate O & M costs allocated to these respective cost functions to the Purchaser based on the Purchaser's proportionate share of retail demand and non-retail guaranteed purchase quantities for annual average demand, peak season demand, total annual non-retail bills, meters, and size of meters respectively. Allocations may also be based on peak day or peak three day demands, but for those purposes the City may include Purchaser's total demands on the Portland water system, including guaranteed purchase quantities and actual purchases of interruptible water. Definitions of allocation factors are found in Exhibit 2, which is hereby incorporated and made part of this Agreement.

#### 3. Special Allocation to Avoid Cost Cap

In any year that the Administrator determines that standard allocation of the O & M expenses contained in the City Budget will cause specified O & M expenses to exceed the O & M cost cap as defined in Section 7.I., the Administrator may alter the O & M component of Purchaser's rates in a manner that avoids that result.

#### D. Capital Cost Allocations

1. Capital costs are those expenditures that result in the acquisition of or addition of fixed assets that become part of the rate base.
2. Except as specifically provided herein, capital costs shall be allocated based on Purchaser's guaranteed purchase quantity in a five-step process using best professional judgment. First, system assets included in the rate base shall be allocated to functional asset groups. Second, the resulting system assets by functional asset group shall be allocated to water service characteristics. Third, the assets allocated to each water service characteristic shall be allocated to customer classes based on their respective percentages of the water demands related to each water service characteristic. The City shall classify customer classes as retail and wholesale and shall treat each wholesale customer that serves more than 200 service connections as an individual customer class. Fourth, the asset costs allocated to each customer shall be multiplied by the rate of return to determine the return on investment for each customer class. Fifth, the working capital component of the rate base shall be allocated to customer classes in proportion to the allocation of all other rate base assets.
3. In performing these allocations, items that solely serve the City's retail customers shall be allocated to retail customers. Items that solely serve the Purchaser and other wholesale customers shall be allocated to wholesale customers. Items that serve the City and any wholesale customers shall be allocated proportionately to

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 24

## SECTION 7 – (Continued)

the City, based upon its retail water demand, and the respective wholesale customers, based upon each customer's guaranteed purchase amount.

4. For the purposes of these allocations, functional asset groups are collections of common water system assets or facilities that are used to provide water service to customers. The City's functional asset group designations shall be specific enough that customer classes are not allocated costs to support assets or facilities that do not provide service or benefit to them. Definitions of functional asset groups and their allocations to customers shall be consistent with the findings contained in a document entitled *Functional Asset Groups* unless circumstances change, in which case the allocations will also be changed to reflect the use or benefit of assets and facilities under normal operating conditions. Any changes in definitions of functional asset groups shall be presented to the WMAB for review and comment. The Administrator shall provide a written explanation if WMAB recommendations are not implemented and consult with WMAB regarding his determination.
5. For the purposes of these allocations, water service characteristics may include such things as commodity, peak season demand, peak three days demand, customer, equivalent meter, and fire. For purposes of peak day and peak three day analysis, the City may include Purchaser's total demands on the Portland water system, including guaranteed purchase quantities and Purchaser's actual purchases of interruptible water. Definitions of these water service characteristics are provided in Exhibit 2.
6. The allocations of assets to functional asset groups and subsequently to water service characteristics may vary from time to time as changes to the system and its operation may occur. The revised allocations, if any such revisions occur, shall be used in the annual rate setting process, and if no revisions occur, then the previously adopted allocations shall be used for annual rate setting. The entire set of these allocations, including the initial allocations and any subsequent changes, shall be reviewed in the Cost Allocation Audits, as described in Section 7.E. below.

### E. Cost Allocation Audits

1. In Contract Year 5 and every five years thereafter during the term of this contract and any extensions, an independent third party shall be retained to conduct an audit of all steps of the then-currently employed process to allocate assets and O & M to customer classes. The expert shall be instructed, as the result of its audit, to recommend any changes necessary to ensure the continued accuracy of the cost allocations consistent with the terms of this contract and the AWWA M-1 manual.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 25

## SECTION 7 – (Continued)

The expert shall be selected by a majority vote of the WMAB and the auditor expense shall be included in O & M expenses and allocated accordingly. The expert's report shall be completed by December 1 of the contract year in which the expert is hired.

2. Expert recommendations for cost allocations shall be reviewed by the WMAB and shall be implemented by the Administrator in the contract year following receipt of the recommendations unless: (1) a majority of the WMAB and the Administrator concur that the recommendations should not be implemented or (2) the Administrator determines that it would be imprudent to adopt any or all of the recommendations. In case the Administrator reaches a determination of imprudence, he or she shall explain his or her determination in writing to the WMAB and consult with WMAB concerning his or her determination.

### F. Depreciation of Capital Assets

1. Depreciation expense shall be the annual depreciation expense on assets that are used, in total or in part, to serve the Purchaser, either directly or indirectly. Depreciation shall be calculated on the original cost of the assets and on a straight-line basis, using City accounting estimates of the useful lives of the assets in accordance with Generally Accepted Accounting Principles, which may differ from the actual useful lives of those assets.
2. The parties understand and agree that the assets being depreciated for these purposes may include backup facilities and other redundant facilities that may be idle for long periods of time, but which the City has determined still provide a service function to the system and the Purchaser by virtue of their backup and redundancy functions.
3. Depreciation shall not be charged for assets that are no longer able to provide service to the Purchaser or whose accounting life has expired, unless otherwise agreed to by the parties.

### G. Return On Investment

Return on investment shall equal the rate of return multiplied by the value of system assets (the rate base) that serve the Purchaser.

#### 1. Rate of Return

The rate of return for each year shall be the percentage rate of the Bond Buyer Revenue Bond Index as published by the newspaper The Bond Buyer on the previous December 1 or the City Water Bureau's embedded cost of debt on the previous December 1, whichever is higher, plus

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 26

## SECTION 7 – (Continued)

one percentage point (1.0%). If the Bond Buyer Revenue Bond Index ceases to be available, the Administrator shall notify the Purchaser and consult with WMAB regarding identification of a substitute index. The substitute index shall be selected by the Administrator, in consultation with the WMAB, and shall be widely available to dealers in municipal securities, and measure the interest rate of high quality, long-term, fixed rate municipal securities. If available, an index measuring the interest rates on high quality, long-term, fixed rate municipal revenue bonds will be selected by the Administrator over a comparable general obligation bond index. Upon identification of a substitute index, the rate of return on this contract shall be the percentage rate of a substitute index plus one percentage point (1.0%).

### 2. Rate Base

The rate base shall equal:

- (a) Working capital, consisting of an amount equal to an average of 45 days of operation and maintenance costs for the water system supply, transmission, storage and pumping facilities that are incurred to provide service directly or indirectly to non-retail customers.
- (b) The remaining un-depreciated value, i.e., book value, of all assets that provide service, directly or indirectly, in whole or in part, to the Purchaser, including water system supply, transmission, storage, and pumping facilities, equipment, and appurtenances and any other water system assets that provide service directly or indirectly to the general water supply and transmission portion of the water system, thereby providing water supply to non-retail water customers of the City. These assets may include backup facilities and other redundant facilities that may be idle for long periods of time, but which the City has determined still provide a service to the system and Purchaser. For such assets providing water supply benefit to both retail and non-retail customers, the assets included in the rate base shall be allocated proportionately as previously described herein.
- (c) The assets initially included in the Rate Base, as of the date of this agreement, are listed in Exhibit 3. Each year, the City shall produce a new Rate Base asset list and provide it to Purchaser during the rate-making process as provided in Section 4, WMAB.
- (d) After the first year of this contract, the assets included in the Rate Base assets shall be updated each year to include all water system capital assets listed and valued in Water Bureau documents used to produce the City's most recent Comprehensive Annual Financial Report and its supporting

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 27

## SECTION 7 – (Continued)

documentation, which may include capitalized interest on some or all of the relevant assets.

### 3. Rate Base Exclusions

The Rate Base shall exclude the following items:

- (a) Construction work in progress.
- (b) Assets that are fully depreciated, even though such assets may be still in service.

### H. Prepayment of Capital Cost Share

The Purchaser may elect to pay its share of capital cost allocations for new water system assets in a lump sum cash payment or other mutually agreed upon payment terms in lieu of paying annualized rates for depreciation and rate of return for the new facilities. If Purchaser makes such cash payment, the portion of the asset cost being prepaid by the Purchaser shall be deducted from the value of the specified assets in the rate base used to calculate the Purchaser's rates. By making such cash payment, Purchaser does not obtain an ownership interest in the specified assets unless Purchaser and the City have entered into a supplemental joint ownership agreement as specified in Section 16, Joint Funding of Capital Improvements.

### I. Operations And Maintenance Cost Control

To help ensure stability and predictability of wholesale rates and to permit recovery of costs of service, increases in specified O & M expenses shall be subject to limitations described below. These limits do not apply to capital costs, recovery on investment, or O & M expenses that are not specified O & M expenses.

#### 1. O & M Cost Cap

The O & M Cost cap is the prior year's specified O & M expense any portion of which was allocated to Purchaser or any other wholesale purchasers under similar water sale agreements increased by the sum of two percentage points (2%) plus the annual rate of change of the selected CPI.

- (a) Selected CPI shall mean the CPI-Urban, West Urban (ref CUUR0400SAO) for January 1 of the year new rates are calculated, e.g., CPI of January 1, 2006, will be used to assess O & M increases in rates for July 1, 2006. If this referenced index ceases to be available, the Administrator shall notify the Purchaser and consult with WMAB regarding identification of a substitute index.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 28

## SECTION 7 – (Continued)

- (b) Specified O & M expenses are those City O & M expenses defined in Subsection I.3 below, Specified O & M Expenses and Exclusions.

### 2. Cost Cap Limitation

The City may not more than once in any consecutive five year period include in the calculation of Purchaser's rates, specified O & M expenses that exceed the O & M cost cap. If, however, the City's actual O & M spending (including, but not limited to specified O & M expenses) is 90% or less than the City's budgeted O & M expenses for each of the prior four years, the increase in the fifth year shall be limited to the formula of 7.I.1 above. A new five year period shall commence at each renewal of this contract.

### 3. Specified O & M Expenses And Exclusions

Specified O & M expenses shall be those O & M expenses, including associated overhead, incurred by the City's water system to serve directly or indirectly, in whole or in part, the Purchaser and other purchasers under similar wholesale water agreements and any portion of which is properly allocated to Purchaser or any other purchasers under similar wholesale water agreements under the terms of their contracts, except for expenses or classes of expenses excluded by this Section 7.I. The Administrator shall make a determination of specified O & M expenses and exclusions in consultation with the WMAB each year during the ratemaking processes.

- 4. Specified O & M expenses shall not include and shall therefore, exclude, the following expenses or classes of expenses:

- (a) **Pass-Through Costs.** These are costs that the parties agree are generally beyond the reasonable control of the City water system to influence. For purposes of this contract, pass through costs are those listed here.
  - i. Utilities, including electricity, water, sewer, natural gas, garbage and telephone.
  - ii. Equipment rental, such as hoists, excavators, tools and other miscellaneous equipment not included in the City's fleet.
  - iii. Operating supplies, such as treatment chemicals, lubricants and consumables related to system operation and maintenance.
  - iv. Communication Services, including but not limited to telephone, radio, microwave and fiber-optic transmission of data, voice, video and related information.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 29

## SECTION 7 -- (Continued)

- v. Insurance or the expenses of self-insurance, other than workers compensation, including but not limited to costs for general liability, property, casualty and fleet coverage.
  - vi. Additional costs identified by the Administrator from time to time that are beyond the control of the City to influence in a manner similar to the specific costs listed in this subsection. Provided that the City may not exempt any such additional costs from the cost cap without first presenting proposed additions to the WMAB for review and comment.
- (b) The costs of PERS Pension Obligation Bonds (POBs) paid by the City of Portland Water Bureau.
- (c) **Costs In Response to Unexpected Events or Circumstances**
- i. These are costs that arise unexpectedly or as the result of Acts of God, malevolent acts, contamination of the water supply, or events beyond the City's control, the consequences of which events or circumstances could not have been avoided through the exercise of the standards of care common and usual in the municipal water supply industry.
  - ii. The City and Purchaser shall, within 120 days of the onset of such unexpected costs commence good faith negotiations to determine what, if any, of the costs of responding to the event or circumstances, which are otherwise excluded, should be included within the Specified O & M expense.
- (d) **Costs Associated With Planning Studies**
- These are costs to pay for City planning studies related to the Water Supply System including those studies in the City's Water Bureau Capital Improvement Program that are expensed rather than capitalized.
- (e) **Costs Associated With New Facilities Or Programs**
- i. These are first time or initial increases to O & M expenses (which may affect more than one fiscal year) associated with operation and maintenance of new facilities or the functioning of new programs. New programs may include such things as responses to new state or federal mandates or regulations, or activities to improve the

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 30

## SECTION 7 – (Continued)

efficiency, reliability, security or quality of the water supply. The WMAB will be consulted regarding initial O & M costs of new facilities and new programs. The parties understand and agree that O & M costs may increase in any given year in order to implement new programs or to operate or maintain new facilities without exceeding the cost cap.

ii. Once O & M expenses for new programs or facilities are established and have become a routine part of the City's water system budget, however, those of the expenses that are not otherwise excluded from "specified O & M costs," (pass through costs, PERS expenses listed in Subsection 2 above, costs in response to unexpected events or circumstances, or costs associated with planning studies) shall be included in future calculations of the increase in specified O & M expenses.

iii. As O & M expenses for new facilities or new programs arise, the Administrator shall consult with WMAB concerning the expenses and then determine which of those expenses should be excluded from cost cap calculations as "new O & M" and which expenses should be included within the cost cap on what schedule. The Administrator shall advise Purchaser and WMAB of his determination.

(f) Costs Incurred on Behalf of the Purchaser or WMAB

These are costs to be paid by the City by mutual agreement of the City and Purchaser or the City and the WMAB.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 31

## SECTION 8 - RATES AND CHARGES FOR INTERRUPTIBLE WATER

### A. Winter Interruptible Water

The price of winter interruptible water shall be twenty percent (20%) of the Purchaser's rate for that year for its guaranteed purchase water quantity, plus any extra delivery costs (such as extra pumping) incurred by the City to deliver the water that are not included within the rate for the guaranteed purchase quantity.

### B. Summer Interruptible Water

The price of summer interruptible water shall be forty-five percent (45%) of the Purchaser's rate for that year for its guaranteed purchase water quantity, plus any extra delivery costs (such as extra pumping) incurred by the City to deliver the water that are not included within the rate for the guaranteed purchase quantity.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 32

## SECTION 9 - WATER SYSTEM PLANNING AND COOPERATION

To facilitate regional water planning and resource development, Purchaser and the City agree as follows:

### A. Purchaser Projected Water Usage

1. Each five years, at a minimum, starting on July 1 of Contract Year 5, Purchaser shall provide to the City estimates of the Purchaser's water demand to be purchased from the City by year, annual seasonal peaking factor, and daily peaking factor for a period of ten years including any anticipated increases in guaranteed purchase quantity.
2. In addition, in any other Contract Year in which unforeseen developments have significantly altered Purchaser's five year estimates, Purchaser shall provide the City with its revised estimates of its preferred use of Portland water for a ten year period.
3. The estimates provided for in this provision are for planning purposes only and do not commit the City or the Purchaser to either buy or supply any particular quantities of water.
4. The City shall provide WMAB a summary of the City's projected demands for all wholesale and retail demands by no later than May 1 of each year.

### B. City Evaluation of Capacity of Portland Water System

1. Whenever it receives revised demand and peaking factor estimates from the Purchaser, the City shall provide the Purchaser with estimates of the capacity of the Portland water system to meet all projected system loads over the ten year planning horizon.
2. If the City determines that the Portland water system cannot meet the projected demands Purchaser and others have proposed to place on it over the ten year planning horizon, the City and Purchaser (together with other Purchasers who may wish to join the discussions) may initiate negotiations to determine if and how the Portland water system could meet the projected loads, either through reduction in demand or development of additional water system capacity.
3. In no case, however, does this contract obligate the City to sell, or Purchaser to pay for, water beyond the guaranteed purchase quantities established herein.

## **Regional Water Sales Agreement (10 Year)**

April 3, 2006

Page 33

### **SECTION 10 - RESERVATION OF SYSTEM CAPACITY**

At any time during the term of this contract, Purchaser and the City may enter a separate reserve capacity agreement. A reserve capacity agreement would enable Purchaser to take a specified amount of additional water from the system at a specified future time. At a time to be specified in the reserve capacity agreement, the quantity of water reserved will be added to the Purchaser's guaranteed purchase quantity under this contract and will be used to calculate the Purchaser's guaranteed purchase payment thereafter.

Unless specified otherwise in the reserve capacity agreement, costs for reserve capacity shall be charged at a rate equivalent to the rate of return on the proportionate share of the capital assets that would be used to make such capacity available, and shall be billed to the Purchaser in equal monthly installments.

Purchaser will possess no right to use the additional capacity identified in its reserve agreement until the specified future time. The City may use any or all of the reserve capacity prior to the specified future time.

Unless specified otherwise in the reserve capacity agreement, Purchaser shall provide the City written notice at least 90 days prior to the specified future time identifying if the Purchaser will (a) exercise its option to use the additional system capacity after the specified future time, (b) allow the reserve capacity agreement to expire without further action, or (c) request a new or amended reserve capacity agreement with a new specified future time.

If a request for reserve capacity can only be met by adding new assets to the system, the City will not reserve capacity for the Purchaser until the parties have reached an agreement on the method for financing and the schedule for adding the assets to the system.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 34

## SECTION 11 - CONNECTIONS AND METERING

### A. Meter Ownership and Responsibility

Upon execution of this agreement, all existing water meters used to measure the water supplied by the City to the Purchaser, and associated facilities such as vaults, shall become the property of the City. In addition, when a new meter or meters are required, the City shall install on Purchaser's main, at a point near the connection with the City's main, a water meter or meters that will at all times measure the water supplied by City to Purchaser. City shall maintain the meter or meters in proper working condition, including periodic testing, calibration, maintenance and replacement of the meter(s) based on generally accepted industry standards. City agrees to notify Purchaser prior to repairing the meter.

### B. Meter Costs

The cost of replacing the meter or meters and their operations and maintenance shall be included by the City in calculating Purchaser's rates.

### C. Meter Access

The Purchaser shall be allowed reasonable access to meters and facilities for purposes of installing and maintaining telemetry equipment or other equipment related to the metering function.

## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 35

### SECTION 12 - PURCHASER-SUPPLIED WATER TO CITY RESIDENTS

#### A. Water Supplies To City Residents

To the extent permitted by law, Purchaser agrees, when requested by the Administrator, to provide water supply to City residents in areas adjacent to Purchaser's water mains subject to limitations of the available capacity of Purchaser's water distribution system. Water so delivered shall be metered by the City at its residents' individual services.

#### B. Master Metering

The City and Purchaser shall review each situation where such arrangements exist and attempt to reach agreement on the need and feasibility of installing a master meter or master meters to register the volume of water delivered to City residents. The Purchaser agrees the water delivered to City residents will be from the same source or sources as water that Purchaser delivers to its customers and shall meet all applicable drinking water regulatory requirements. The Purchaser may request the City install a master meter if the local distribution system is shown to have demonstrated leakage or unaccounted water losses in excess of 10% of the average day demand of the City residents served by system or by mutual agreement of the parties. Improvements to the local distribution system shall be made by mutual agreement of the parties.

#### C. Charges For Water

1. The Purchaser may charge the City up to one hundred twenty-five percent (125%) of the guaranteed purchase wholesale water rate the City charges the Purchaser. The City will credit this amount to Purchaser. Such water will not be included in the calculation of total water purchases made by the Purchaser from the City.

2. Notwithstanding the foregoing, the Purchaser may conduct a cost-of-service study to determine the cost of serving City residents. If the cost-of-service exceeds the 125% of the wholesale water rate, Purchaser may adjust the charge to the City accordingly, but not above the actual cost of service.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 36

## SECTION 13 - WATER RESOURCE CONSERVATION

### A. General

1. The obligations in this Section will apply to both the City and Purchaser. Both parties to this agreement intend that water to which the City holds water rights shall be used beneficially, efficiently, and without waste.
2. The parties encourage the development of joint conservation programs where such partnerships are of mutual benefit and produce increased efficiencies in program costs or water savings. Provided, however, that funding for joint conservation programs will be established by separate agreement between the interested parties.

### B. Water Managers Advisory Board

The WMAB will foster and promote efficient use of water and best management practices as outlined further in this Section. It will also be the role of the WMAB to implement the provisions of this Section. In doing so, WMAB may assign tasks to a WMAB committee or to staff of participating purchasers' subject in all cases to WMAB review and approval.

### C. Water Conservation Obligations and Submission of a Water Conservation Plan

1. The Purchaser must operate water systems that are fully metered at the individual customer level or have an implementation program to complete installation of such meters by the end of the fifth contract year.
2. Unless Purchaser serves a population of 1,000 or less, Purchaser shall, on or before the end of the second contract year, and every five years thereafter, submit a Water Conservation Plan for its water system to the WMAB.
3. If Purchaser is a participant in the ORS 190 Agreement for the Regional Water Providers Consortium, it may submit the regional conservation programs as part of its Conservation Plan, but the Consortium programs, by themselves, do not constitute a Conservation Plan for the individual Purchaser.
4. Each Conservation Plan submitted must include programs specified in State of Oregon Water Resource Department Water Management and Conservation Plan Rules, as they are from time to time amended.

### D. Review of Conservation Plan

1. The WMAB may, if it deems it advisable, adopt guidelines for the submission of water Conservation Plans.

## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 37

### SECTION 13 – (Continued)

2. Upon receipt of a Purchaser Conservation Plan, the WMAB will review the plan pursuant to the standards of this Section. In reviewing a Conservation Plan, the WMAB shall consider, at a minimum, the following factors:
  - (a) Whether the program contains the following mandatory programs
    - i. Leak detection and repair programs, if required by State Rule, that meet Oregon Administrative Rule (OAR) 690-86-150(4)(e) and, if applicable, Subsection (6)(a).
    - ii. Education and outreach programs required under OAR 690-86-150(4)(f).
    - iii. Rate structures based on the quantity of water metered at the service connection as required by OAR 690-86-150(4)(d).
    - iv. A meter testing and maintenance program as required by OAR 690-86-150(4)(c).
    - v. An annual water audit as required by OAR 690-86-150(4)(a).
  - (b) Whether the Plan includes the following discretionary programs or a showing that a particular discretionary program is neither feasible nor appropriate to the Purchaser's service area.
    - i. Technical and financial assistance programs to encourage and aid residential, commercial and industrial customers.
    - ii. Supplier financed retrofitting or replacement of existing inefficient water using fixtures, including distribution of residential conservation kits and rebates for customer investments in water conservation.
    - iii. Adoption of rate structures, billing schedules, and other associated programs that support and encourage water conservation.
    - iv. Water reuse, recycling, and non-potable water opportunities.
    - v. Other measures identified by the water supplier that would improve water use efficiency.
    - vi. Operation measures to reduce peak event impacts on the Portland system.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 38

## SECTION 13 – (Continued)

3. Within 180 days of receipt of the Purchaser's Conservation Plan, the WMAB shall approve or disapprove the Plan and advise the Purchaser in writing of its decision.
  - (a) A Water Management and Conservation Plan approved by and updated as required by the State of Oregon pursuant to the Department of Water Resources Water Management and Conservation Plan Rules will in all cases be deemed sufficient to meet the requirements for a Conservation Plan under this agreement.
  - (b) If the WMAB disapproves the Purchaser's Water Conservation Plan, it shall notify the Purchaser and provide the Purchaser with comments on the Plan's deficiencies. Within 180 days thereafter, Purchaser shall submit a revised Plan for review by the WMAB.

### E. Periodic Conservation Plan Reporting

1. Purchaser shall report annually to the WMAB regarding the implementation of its Conservation Plan.
2. Each five years after approval of its Conservation Plan, Purchaser shall report to the WMAB the estimated actual water savings from its Conservation Plan.

## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 39

### SECTION 14 – WATER CURTAILMENT AND PROTECTION OF THE WATER SYSTEM

- A. During times when water supplies are not adequate to meet the aggregate of all demands placed upon the Portland water system, the City and participating Purchasers need to have a plan in place to reduce or curtail demands so that fire, life, safety and other high priority needs are met. It is to the benefit of all of the users of the Portland water system that plans for curtailment be agreed upon in advance and that plans for curtailments be coordinated among water providers.
- B. By signing this agreement, Purchaser and City acknowledge that unforeseen or unavoidable circumstances may limit the amount of water available to City for sale and distribution, whether temporarily or permanently. Should the available supply fall below the aggregate of all demands placed on the City system, or should it be reasonably predicted that supply will fall below demands before other supplies are available, the Administrator of the Bureau of Water Works may declare that a water shortage is in effect.
- C. WMAB shall develop and recommend to the Administrator a Curtailment Plan. The Administrator shall adopt the recommended Curtailment Plan with such alterations as he or she deems necessary or advisable. The Curtailment Plan shall be designed to accomplish reductions in demand necessary, in the event of a water shortage, to protect the system's capacity to supply water for fire, life, safety, and other high priority needs. The curtailment plan shall establish procedures, as well, whereby two or more participating Purchasers may coordinate their demand reductions to accomplish, jointly, total necessary system demand reductions imposed on them, even if one or more Purchasers individually do not meet the reductions required of its separate system.
- D. Whenever the Administrator has declared a water shortage, any adopted Curtailment Plan shall be in effect. If there is no adopted Curtailment plan, the Administrator shall require implementation of measures he or she deems necessary or advisable to reduce all demands, retail and wholesale, proportionally based on annual retail usage for the previous contract year and on annual guaranteed purchase quantities (excluding interruptible water) furnished under this agreement for the previous contract year.
- E. If the Administrator declares a water shortage, Purchaser shall implement measures sufficient to meet the requirements of the Curtailment Plan (or other requirements of the Administrator for proportional reduction in demand if no Curtailment Plan has been adopted). Purchaser may do this through implementation of measures contained in the Curtailment Plan, similarly effective measures found in Purchaser's own plan adopted under OAR Division 86 or required as part of a State declared drought under ORS 536.720-740, or through agreements with other Purchasers of water under similar wholesale water agreements that result, jointly among the agreeing Purchasers, in a total

## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 40

### SECTION 14 – (Continued)

reduction in system demand equivalent to that required in the Curtailment Plan or, if there is no Plan, the Administrator's order for proportional reductions.

- F. The City shall monitor compliance with Curtailment Plan on a schedule established in the Plan or at least every two weeks throughout the duration of the declared water shortage.
- G. If, after the Administrator declares a water shortage, Purchaser is unable individually, or in cooperation with other purchasers as contemplated by Subsection E. above, to achieve the required reductions in the use of water supplied under this contract, the Administrator may act to reduce the amount of water supplied to the purchaser so that it does not exceed that amount specified under curtailment measures.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 41

## SECTION 15 – BILLING AND PAYMENT

### A. Guaranteed Purchase Payment

#### 1. Monthly Billing

The City shall bill Purchaser its fixed monthly service charge plus a portion of its annual guaranteed purchase volumetric payment obligation each month. The monthly volumetric charge shall be the product of the monthly usage estimates, as determined in Sections 15.A.2(a) or (b) below, times that year's rate per unit of water.

#### 2. Monthly Usage Estimates

(a) No later than March 15 of each year, Purchaser shall submit to the City a projection of its demands for the next year, by month, which demands must total to the Purchaser's guaranteed purchase quantity and must be consistent with the Purchaser's seasonal peaking factor. It is recognized these demand projections will be estimates and actual demands may vary from projected demands but such departures from estimates do not relieve the Purchaser from obligations such as guaranteed purchase quantity and adherence to seasonal peaking factor, as specified elsewhere in this agreement.

(b) If the Purchaser has not by March 15 of each year submitted its projected demands for the next year or if a timely submission is inconsistent with the Purchaser's then current contractual guaranteed purchase quantity and seasonal peaking factor, the Administrator shall consult with Purchaser to obtain new or revised projected demands. If thereafter the Purchaser does not submit projected demands that are consistent with its then current contractual guaranteed purchase quantity and seasonal peaking factors, the Administrator may use the previous year's demand projections or other projections that are consistent with Purchaser's contractual guaranteed purchase quantity and seasonal peaking factors, to make rates and to operate the system.

### B. Summer Interruptible Water

If the Purchaser and City have agreed to the sale of summer interruptible water, the City shall bill the Purchaser for the total confirmed interruptible water payment in four equal amounts for the months of June, July, August, and September. Provided, that if the City fails to deliver interruptible water requested by the Purchaser, the Purchaser shall be excused from paying the portion of its confirmed interruptible water payment equal to the quantity of water not delivered times the price of interruptible water.

## Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 42

### SECTION 15 – (Continued)

#### C. Billing for Water Purchases Above Guaranteed Purchase Amounts and Above Confirmed Peak Season Interruptible Water Quantities

Within 62 days of the end of each contract year (that is, by September 1), the City shall review the Purchaser's meter records for the previous contract year under this agreement. If the Purchaser has taken water above either its guaranteed purchase amount or its confirmed peak season interruptible water quantities, the City shall bill Purchaser for those water deliveries no later than September 30. Charges shall be calculated as follows:

If the Purchaser has taken at least its annual guaranteed purchase quantity over the full contract year, then water supplied to Purchaser from October 1 to May 31 in excess of its estimated monthly guaranteed purchase quantity for those same months shall be charged the appropriate rate for winter interruptible water times the quantity of excess water taken.

If the Purchaser has taken at least its annual guaranteed purchase quantity over the full contract year, then water supplied to Purchaser from July 1 through September 30 and from the subsequent June 1 through June 30 in excess of the total of its estimated monthly guaranteed purchase quantity for those same months and its confirmed summer interruptible water quantities (if any) for those same months shall be charged the appropriate standard rate applicable to its guaranteed purchase quantity times the quantity of excess water taken.

#### D. Payment Schedule

Bills are due upon receipt, and subject to a collection fee if not paid on or before the thirtieth day following the billing date. Collection fees shall be established each year in the annual City ordinance establishing rates.

#### E. Charges In Case of Meter Failure

Should any meter fail to measure accurately the water passing through said meter, the charge for water used during the time the meter is out of service shall be based on the City's estimates of the volume of water supplied based on usage patterns and statistics for prior periods.

#### F. Disputes

In the case of disputes over billings for water, Purchaser shall pay the undisputed amount when due and the disputed amount shall be resolved through Dispute Resolution. The Purchaser shall pay interest at a rate equivalent to the rate earned on the City's internal investment pool managed by the City Treasurer on any disputed amounts found through dispute resolution or litigation to be due the City.

## **Regional Water Sales Agreement (10 Year)**

April 3, 2006

Page 43

### **SECTION 16 –JOINT FUNDING OF CAPITAL IMPROVEMENTS**

The City and Purchaser or group of Purchasers may enter into separate agreements for the purpose of mutually funding capital improvements where such improvements are determined to be in their mutual interest. The City and Purchasers or others involved in mutually funding capital improvements may also enter into separate agreements for the conditions and pricing of sale for water supplies derived from such mutually funded improvements. Such separate agreements may include provisions for acquisition of ownership of assets and/or capacity by Purchaser. If provided in the joint funding agreement, Purchaser may include its proportionate ownership share of such assets in its calculation of system develop charges and rates.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

Page 44

## SECTION 17 – DISPUTE RESOLUTION

In case of disputes arising out of this agreement, including disputes regarding the interpretation of any provision of the agreement, subject to the terms of this Section, either party may seek all remedies available at law or in equity. The parties agree, however, prior to commencement of any suit, they shall first engage in dispute resolution as provided in the Section.

### Step 1. Notice of Dispute

Prior to commencement of litigation of a dispute, either party must first provide the other with a written notice describing the dispute and submitting the dispute to resolution under this Section. Such notice shall commence the dispute resolution process.

### Step 2. Negotiation

Each party shall designate a person or persons to negotiate the dispute on its behalf, shall make a good faith effort to exchange information and data related to the dispute, and shall meet to negotiate a dispute resolution. If the dispute is resolved at this step, the parties will memorialize the agreement by a written determination of such resolution, signed by the designated representatives of the parties.

### Step 3. Mediation

If the dispute has not been resolved within 45 days of the date of the notice of dispute, or such longer time as is mutually agreed by the parties, the parties shall submit the matter to mediation. The parties shall attempt in good faith to agree on a mediator. If they cannot agree, they shall request a list of five mediators from an entity or firm providing mediation services. The parties shall attempt in good faith mutually to agree on a mediator from the list provided, but if they cannot agree, each party shall select one name. The two selected shall select a third person and the dispute shall be heard by a panel of three mediators.

Any common costs of mediation, including the cost of mediation, shall be borne equally by the parties. Each party shall bear its own individual costs therefore. Mediation shall not continue more than 105 days past the initial notice of dispute unless mutually agreed by the parties. If the dispute is resolved at this step, a written determination of such resolution shall be signed by the designated representatives of the parties.

### Step 4. Arbitration

If the dispute has not been resolved through negotiation or mediation with the time set by this agreement, within 15 days of the end of mediation, or such other time as is mutually agreed, the parties may submit the dispute to arbitration under mutually agreeable terms. In the absence of

**Regional Water Sales Agreement (10 Year)**

April 3 2006

Page 45

**SECTION 17 – (Continued)**

such an agreement, the dispute resolution process under this agreement shall be deemed ended and the parties shall be free to pursue other remedies.

Any litigation between the parties arising under or regarding this agreement shall be conducted in the Multnomah County Circuit Court of Oregon. In any litigation, each party shall bear its own costs and attorney's fees.

**Regional Water Sales Agreement (10 Year)**

April 3, 2006

IN WITNESS WHEREOF, Purchaser has, pursuant to official action of its governing body on the 8th day of May, 2006, duly authorizing the same, caused its proper officers to execute this instrument on its behalf and its corporate seal to be affixed hereto, and City has caused this instrument to be signed by its Mayor and Commissioner-in-Charge of the Bureau of Water Works, all of which is in triplicate.

PURCHASER: CITY OF TUALATIN, OREGON

By [Signature] 01/17/06  
Mayor Pro-Tem

Approved as to form:

[Signature]  
City Attorney

ATTEST

By [Signature]  
City Recorder

CITY OF PORTLAND

By [Signature]  
Mayor

Approved as to form:

[Signature]  
City Attorney

By [Signature]  
Commissioner-in-Charge

**Regional Water Sales Agreement (10 Year)**

April 3, 2006

Page 46

**SECTION 18 – WASHINGTON COUNTY SUPPLY LINE**

The City and Purchaser own portions of a transmission main known as the Washington County Supply Line. Provision for ownership and use of the Washington County Supply Line shall be made by separate agreement of the affected parties.

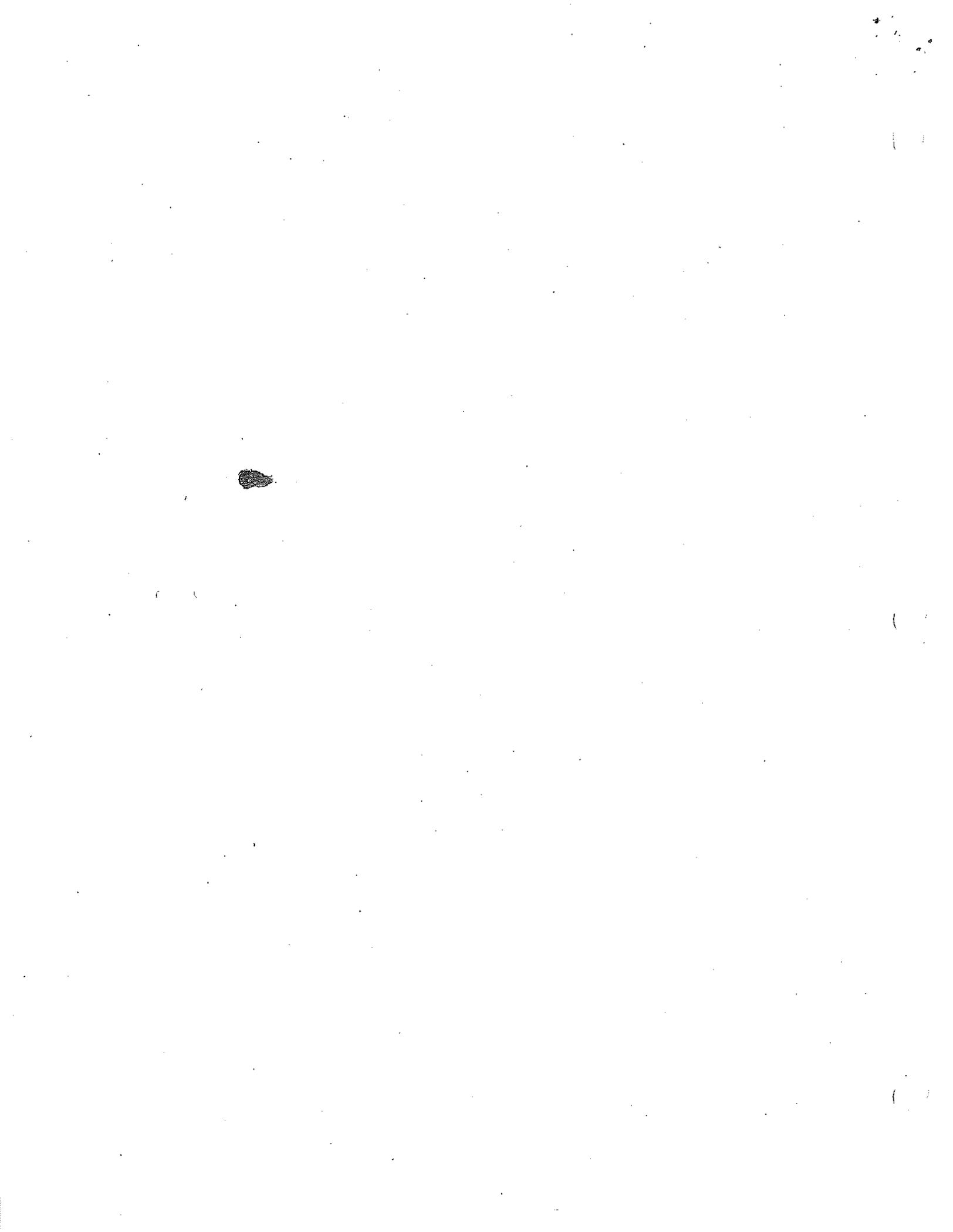


Exhibit 1

Water District Usage Characteristics

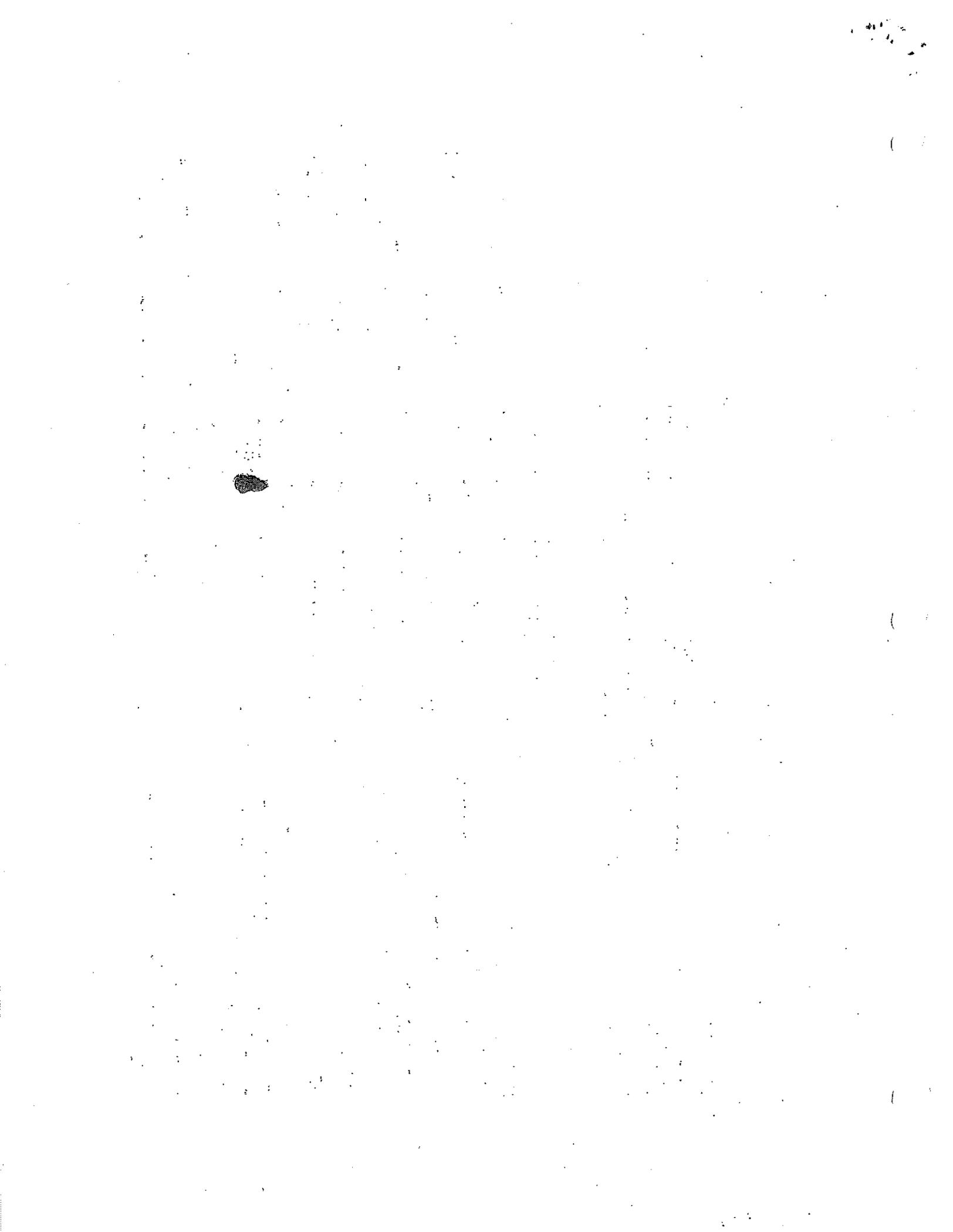
City of Tualatin	
Guaranteed Purchase Quantity	4.4 MGD
Seasonal Peaking Factor	1.67
Daily Peaking Factor	2.03

Purchase Quantities by Month by Fiscal Year  
Estimated Monthly demand data - Updated annually by March 15

City of Tualatin					
Month	Daily Average - MGD	Month Total - MG	Month	Daily Average - MGD	Month Total - MG
July	7.88	244.3	January	3.26	101.1
August	8.13	252.0	February	3.16	88.5
September	5.98	179.4	March	4.21	130.5
October	4.13	128.0	April	2.79	83.7
November	3.11	93.3	May	3.42	106.0
December	3.39	105.1	June	3.26	97.8

Peak Season Purchase	7.35 MGD
Highest Three Consecutive Days	8.9 MGD

Existing Meter Connections		
Location	Meter #	Size
80TH & FLORENCE-WEST	6500E919000	16
		146
		Pressure Range
		116



# Regional Water Sales Agreement (10 Year)

April 3, 2006

## Exhibit 2.

### Definitions of allocation factors

#### Allocation to Water Service Parameters

The functionalized items shall be allocated to the water service parameters listed below by the retail customer, wholesale customer and specific groups following the Commodity-Demand method described in the AWWA's Manual M1.

#### Commodity Items

Commodity items shall be identified as described in the AWWA Manual M1. These are items whose cost varies almost entirely directly with the amount of water supplied.

#### Peak-Season Demand

Items that are designed to meet the peak-season needs of the system shall be allocated as Peak Season Demand.

#### Peak Day or Peak Three-Day Demand

Items that are designed to meet the peak day or peak three-day needs of the system shall be allocated as Peak Day or Peak Three-Day Demand.

#### Customer

Items allocated to customer shall be allocated based on the number of accounts for each customer class.

#### Equivalent Meter

Items allocated to equivalent meter shall be allocated based on the number of equivalent meters. The equivalent meter ratios used to relate meters by size to the number of equivalent meters shall relate to the City's estimated costs of owning and maintaining the meters. Whenever possible, the values listed in the AWWA Manual M1 shall be used.

#### Fire

Any cost related to fire (either direct fire or indirect fire) shall be allocated to the parameter of fire. Since fire-related costs are incurred solely for the City, no fire related costs, except for the cost of water passing through the purchaser's meter, shall be included in the cost of water for the purchaser.

# Regional Water Sales Agreement (10 Year)

April 3, 2006

## Exhibit 3

Fixed Assets as of June 30, 2005

Fixed Asset Cost Pools	Rate Base Value	Annual Depreciation
Arlington Heights	329,363	22,258
Arnold	1,510,800	52,514
Burlingame 643	1,081,402	72,778
Burlingame Regulated	117,331	9,180
Calvary	278,239	9,125
Council Crest	240,711	16,391
Indirect	7,633,800	1,039,261
Joint	117,679,576	5,555,781
Mt. Tabor 411	3,229,474	229,372
Parkrose 261	912,239	32,239
Pipe	176,262,331	4,893,188
Portland Heights	195,271	10,503
Portland Retail	103,610,826	4,277,385
Sam Jackson PS	107,265	6,679
Washington Park 229	763,432	31,804
Washington Park 299	1,911,795	98,048
Washington Park Common	2,229,103	192,106
Washington Park PS	585,406	57,830
Totals	418,678,362	16,606,439

# Regional Water Sales Agreement (10 Year)

April 3, 2006

## Exhibit 4

Functional asset groups include the following general categories (see also Cost Pool Table below):

- Source of Supply
- Terminal Storage and Conduits
- Treatment
- Treatment Chemicals and Power
- Burlingame 643 Pumping and Storage / Power
- Arnold Pumping and Storage / Power
- Arlington Heights Pumping and Storage / Power
- 411 Storage
- Parkrose 261 Storage
- Portland Heights Pumping and Storage / Power
- Washington Park 229 Storage, Pumping, and Treatment / Power & Chemicals
- Council Crest Pumping and Storage / Power
- Calvary Pumping and Storage / Power
- Burlingame Regulated Pumping and Storage / Power
- Washington Park 299 Pumping and Storage / Power
- Joint Equivalent Meters
- Washington County Supply Line – Portland Only
- Retail Direct and Indirect
- Indirect Storage / Pipe
- Indirect

# Regional Water Sales Agreement (10 Year)

April 3, 2006

## City of Portland - Wholesale Rate Model

### CustChar 7 - Percentage of Customer's Demand Through Cost Pools

Customer	Arlington Heights	Arnold	Burlingame 643	Burlingame Regulated	Calvary	Council Crest	Joint	Mt. Tabor 411
Service Area 1 Water Cos.							100%	
City of Gresham							100%	
Lusted Water District							100%	
Pleasant Home Water District							100%	
Rockwood Water PUD							100%	3%
Palatine Hill Water District							100%	100%
Burlington Water District							100%	100%
Lake Grove Water District		100%	100%				100%	100%
City of Tigard			100%				100%	100%
Valley View	22%				22%	78%	100%	100%
West Slope Water District	100%						100%	100%
TVWD			6%				100%	6%
Raleigh Water District			2%				100%	2%
City of Tualatin			2%				100%	2%
City of Portland	3.80%	1%	8%	2%	3%	0%	100%	95%

Customer	Parkrose 261	Portland Heights	Portland Retail	Sam Jackson PS	Washington Park 229	Washington Park 299	Washington Park PS	WCSL
Service Area 1 Water Cos.								
City of Gresham	3%							
Lusted Water District								
Pleasant Home Water District								
Rockwood Water PUD								
Palatine Hill Water District					100%	100%		
Burlington Water District					100%	100%		
Lake Grove Water District						2%		
City of Tigard						2%		
Valley View		78%		70%		100%	30%	
West Slope Water District						100%	100%	
TVWD								96%
Raleigh Water District								100%
City of Tualatin								100%
City of Portland	3%	1%	49%	4%	10%	21%	5%	1%

ORDINANCE No. 180020

\*Authorize the Water Bureau to offer a new water sales agreement to its wholesale customers for approval. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Pursuant to City Code Section 21.28.030 "Water Supply to Distributors by Contract" when an outside distributor desires to purchase water from the Bureau, the Mayor and the Commissioner-In-Charge of the Bureau may enter into and execute contracts to supply water in accordance with the rates established by the Council and subject to all the provisions of the Charter and ordinances, and may include special terms and provisions found by the Commissioner-In-Charge to be reasonable and appropriate in the particular circumstances.
2. Portland has provided drinking water to neighboring cities and water districts for 100 years. The revenues the City receives from these water sales reduce the rates of in-City retail customers and help pay for the supply infrastructure of the Portland water system.
3. Most of the current water sales agreements between Portland and the wholesale customers were negotiated in the 1970s and will expire on June 30, 2007.
4. City officials have negotiated two proposed new wholesale water sales agreements with officials of the City's wholesale customers the City's to replace the existing expiring contracts.
5. The two new agreements are substantially similar in their basic terms, but one carries an initial term of 10 years and the other carries an initial term of 20 years. Under the 20-year agreement, the rate of return earned by the City is also lower than the rate of return earned under the 10-year agreement. In addition, each contract contains a unique "guaranteed purchase water quantity" for each potential customer.
6. By the terms of the proposed agreements, each wholesale customer will be charged based on "cost of service" pricing, which is a standard utility pricing approach. Wholesale customers purchase different amounts of water from Portland and require different amounts of infrastructure to receive water. The wholesale customers also pay, proportionate to their use of the system, a share of the maintenance and replacement costs for the infrastructure required to serve them.



7. Portland has developed a rate model to incorporate the terms of the proposed agreements and the details of how much infrastructure and maintenance costs each wholesale customer requires to receive drinking water. The rate model produces specific rates for each wholesale customer based on the proposed agreements.
8. The proposed new contracts were developed on the assumption that all or most of the City's existing wholesale customers would execute one or the other of the new contracts so that all customers and the City could benefit from its new provisions.

NOW, THEREFORE, The Council directs:

- a. That the Commissioner in Charge of the Water Bureau is hereby authorized to transmit to the City's existing wholesale customers a letter extending an offer to enter into one or the other of two water sales agreements substantially similar to the attached agreements, Exhibits A and B. For each individual customer, the offer shall include the guaranteed purchase quantity, seasonal peaking factor, daily peaking factor, and pressures shown in Exhibit C to this Ordinance.
- b. The letter from the Commissioner in Charge shall state that the offer is contingent upon his determination that a sufficient number of customers have accepted the contracts, by no later than May 22, 2006, to allow the agreements' projected benefits to flow to the City and the accepting wholesale customers.
- c. Upon a determination by the Commissioner in Charge that a sufficient number of customers have accepted the contracts in a timely fashion, then the Commissioner in Charge and the Mayor are further authorized to execute all accepted contracts on behalf of the City.

Section 2. The Council declares that an emergency exists because the contracts must be signed soon in order for them to be implemented starting with the new fiscal year, July 1, 2006. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: MAR 22 2006  
Commissioner Leonard  
Prepared by: Terence L. Thatcher:lgm  
March 16, 2006

GARY BLACKMER  
Auditor of the City of Portland

By *Susan Parsons*  
Deputy

