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# SECTION 1 – NATURE OF SERVICE

1. Subject to the terms and conditions contained herein, Portland agrees to furnish and sell, and Purchaser agrees to purchase potable water on an annual basis for the life of this Agreement.
2. Water is to be delivered to the Purchaser at the place or places, at such pressure or pressures, and up to the maximum daily flow rate as set forth on Exhibit 1, provided that the Portland is not obligated to meet Purchaser’s demands for water during any period that Purchaser operates its system out of compliance with operational rules established pursuant to Section 4.D.1.
3. The Portland shall deliver water to the Purchaser from the same source or sources of water that Portland delivers to Portland inhabitants. The Portland shall meet all applicable drinking water regulatory requirements up to the purchaser’s point of delivery.
4. Purchaser’s supply of water shall be reduced or terminated only in accordance with the terms of this agreement.
5. Purchaser recognizes and agrees that no liability for damages shall attach to the Portland 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 Portland 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.
6. The parties agree and acknowledge that the Portland 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 the purchase of ownership rights to water or any portion of the water system owned and operated by the Portland, except as may be specified herein or may be established by a separate agreement. Nothing in this Agreement shall preclude the parties from entering separate agreements involving joint ownership or joint operation of system elements.

# SECTION 2 – WATER REGULATIONS

Purchaser hereby agrees to abide by and be bound by the terms and provisions of Chapter 21.28 of the Code of the Portland 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.

# SECTION 3 – DURATION OF AGREEMENT AND RENEWAL

1. Contract Term. This Agreement shall become effective on July 1 of 2026 or the date of execution by Portland and Purchaser, whichever is sooner and shall continue in effect thereafter under the terms of this section for 30 years, unless terminated or renewed as provided herein. Each “contract year” shall run from July 1 through June 30. Purchaser may optionally agree to a Contract Term of 20 years subject to a higher Rate of Return pursuant to Section 7 of this Agreement.
2. Early Terminations. At any time during the Contract Term, the Purchaser may give written notice of termination. If such notice is issued, the contract will terminate the next June 30 at least ten years but not more than eleven years from the date of the notice. Terminations prior to the end of the Contract Term are considered Early Terminations and will require the Purchaser to pay Portland an Early Termination Fee as described in this Section.
3. Early Termination Fees. Purchasers terminating the Agreement early are subject to early termination fees designed to mitigate the effects of stranded costs on Portland and the remaining wholesale customers served under the Agreement. The Fees shall be determined based on the formula set forth in Exhibit 5 and based on the Contract Term in effect at the time notice of termination is given.
4. Renewals. Portland, at its discretion, may renew the Agreement for subsequent 10-year terms. Portland must notify Purchaser no later than 5-years prior to the expiration of the Contract Term whether the Agreement will be renewed or will be allowed to expire.

# SECTION 4 – WATER MANAGERS ADVISORY BOARD

1. General. A Water Managers Advisory Board (WMAB) shall be established no later than thirty (30) days after five or more Purchasers have approved a Water Sales Agreement with Portland that includes this provision and will continue during the Contract Term. Purchaser is eligible for participation in the WMAB. The WMAB shall consist of two representatives from the Portland Water Bureau, to be named by the Administrator, and one representative of each participating entity that has signed a contract to purchase water from Portland containing a provision allowing its participation in the WMAB. Portland Water Bureau will provide staff support to the WMAB and will be responsible for keeping the official records.
2. Meetings and Bylaws. The WMAB shall meet regularly to communicate with and make recommendations to the Administrator regarding matters relating to Portland’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
3. 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 Exhibit 3 – Water Resource Conservation.
   2. Operations Coordination. Possible responsibilities for such a committee may include coordinating supply system routine and emergency operations among Portland and its wholesale Purchaser with the goal of providing efficient and cost-effective system operations; and
   3. Other committees, as identified by the WMAB
4. 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 recommended 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, security and emergency management, use of storage, and timing of deliveries of water. After consideration of the recommendations, the Administrator shall adopt interim operating practices that may or may not include the WMAB’s recommendations and shall provide them to the WMAB for review and further recommendations. The Administrator shall consider any further recommendations from the WMAB, but is not bound by them, and shall adopt final standard water system operating practices that they deem necessary. The Purchaser agrees to operate its system in a manner consistent with such final operating practices and in keeping with the responsible use of Portland’s water supply system.
   2. The WMAB shall recommend to the Administrator what information and data the Administrator 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 consider these recommended information requirements and shall adopt those that they deem necessary or advisable or may propose his or her own requirements instead. Such information may include, but is not necessarily limited to:
      1. System maps with mains, pump stations, tanks, and supply connections.
      2. Connections and usage from other supply sources.
      3. Total existing and new service connections by category.
      4. Key benchmarks to be identified by the Operations Group such as but not limited to standards for operational norms, notification deadlines, and protocols for communication.
      5. Water quality data.
      6. Purchaser facilities’ standards for operation to minimize peak and emergency events; and
      7. 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 Portland Water Bureau Administrator with findings and recommendations to assure ongoing compliance.
5. 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 Portland Council, Portland agrees that the following steps shall be taken annually.
   1. Capital Improvement Program. On an annual basis, Purchaser, through the WMAB, Portland shall share the 10-year CIP that is included in the next rate year.
   2. Operation & Maintenance Budget. On an annual basis, Purchaser, through the WMAB, Portland shall share the O&M budget that is included in the next rate year.
   3. The Administrator will share with WMAB the commencement of annual financial plan and budget preparation. Portland will advise Purchaser in writing of significant changes in the proposed budget after its submission to the Mayor.
   4. When Portland files its annual rate ordinance with the City Clerk, a copy of said ordinance will be forwarded to Purchaser, the dates on which the Portland Council is scheduled to consider rates.
   5. Purchaser, through the WMAB, may offer comments on the annual rate ordinance in writing or in personal testimony before the Portland Council.
6. 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.

# SECTION 5 – WATER PURCHASE QUANTITIES

1. General Purchase Quantities. Unless excused by some other provision of this Contract, Purchaser agrees to pay Portland each year a sum of money equal to the annual water rate applicable to Purchaser for that year times the actual quantity of water delivered to the Purchaser. The Purchaser’s annual water rate shall be determined pursuant to Section 7. Payments shall be made as provided in Section 15.
2. Purchase Quantities And Peaking Factors
   1. Purchase Quantity. For purposes of calculating annual rates and determining the Purchaser’s payment, Purchaser’s purchase quantity (expressed in annual average daily demand and in total monthly demands) shall be the average of the water delivered and metered at the Purchaser’s point of connection to Portland from the previous five (5) years. The average deliveries divided by the number of days in the year is the Purchaser’s average daily demand.
      1. Exclusions. The Purchaser's metered water deliveries shall be adjusted so as not to reflect: (i) emergency water delivered by Portland, (ii) mandatory water curtailments imposed by the Administrator pursuant to Section 12, (iii) water delivered to the Purchaser for the purposes of Wheeling to Portland retail customers pursuant to Section 10.
      2. New Customers and Customers Without a Five-Year Demand History. If a new customer enters into the Portland regional water system, the new customer’s first-year and second-year demand for each time frame will be an amount proposed by the new customer and agreed to be a reasonable estimate by the Water Bureau Administrator. The third-year demand assumed for ratemaking will be the actual Year 1 usage across each time frame. The fourth-year demand assumed for ratemaking will be the average of the actual usage in Year 1 and Year 2 for each time frame. The fifth-year demand assumed for ratemaking will be the average of actual usage in Years 1-3 for each time frame. The sixth-year demand assumed for ratemaking will be the average of actual usage in Year 1-4 for each time frame. The demand assumed for ratemaking from the seventh year forward will be the rolling five-year average for each time frame. The same methodology shall apply to any customer lacking a five-year purchase history from Portland.
   2. Seasonal Peaking Factor.
      1. Except as otherwise provided in this agreement, for purposes of calculating monthly demands and annual rates and determining Purchaser’s payment, Purchaser’s “seasonal peaking factor” shall be the average “actual seasonal peaking factor” from the previous five (5) years. “Seasonal peaking factor” is the ratio of the Purchaser’s average daily demand placed on the Portland system during the “peak season” to the Purchaser’s annual average daily demand. For this calculation “peak season” is the period of time from July 1 through September 30.
      2. For purposes of this section, the Purchaser’s “actual seasonal peaking factor” shall be the ratio of the Purchaser’s actual average daily demand placed on the Portland system during the peak season (as determined from Portland water supply data) to the Purchaser’s annual average daily demand.
   3. 3-Day Peaking Factor.
      1. Except as otherwise provided in this agreement, for purposes of calculating annual rates and determining Purchaser’s payment, Purchaser’s “3-day peaking factor” shall be the average “3-day peaking factor” from the previous five (5) years. “3-day peaking factor” is the ratio of the average of the Purchaser’s highest three consecutive days of purchases in a year to its average daily demand for the same year.
      2. For purposes of Section 5 of this agreement, the Purchaser’s “actual 3-day peaking factor” shall be the ratio of the average of the Purchaser’s actual highest three consecutive days of purchases (based on Portland data) to its average daily demand for the year.
   4. Interruptible Water Purchases Under Previous Water Sales Agreement. The calculation of Purchase Quantities and Peaking Factors in this Section shall exclude all purchases of interruptible water made under the previous Water Sales Agreement.
3. Purchase Reductions
   1. Normal Variation in Water Deliveries. The Purchaser will only be billed for actual water deliveries. Purchaser’s actual deliveries may vary from year to year based on normal events including but not limited to: weather, changes in customer usage patterns, conservation, and improvements in water efficiency. Such variations do not constitute a reduction in Purchase Quantity for the purposes of this Agreement.
   2. Reductions Resulting from Use of Independent Supplies. Reductions in Purchase Quantity from the Purchaser’s use of Independent Supplies will subject the Purchaser to payment of Early Termination Fees as determined in Exhibit 5.
      1. Purchasers must notify Portland at least five (5) years in advance of implementing any Independent Supplies to the extent such supplies will reduce the Purchaser’s Purchase Quantity. If the Independent Supplies will reduce the Purchase Quantity by 90 percent or more, then Purchaser is required to provide notice of termination pursuant to Section 3.
      2. Purchaser’s notification must include: (i) The expected date the new supplies will take effect; (ii) the expected annual deliveries from its new supply sources, (iii) if Purchaser is wheeling water to Portland’s retail customers or to any other entity, the notification must include the results of a blending study prepared by a registered professional engineer in the State of Oregon in addition to any regulatory approvals required by law. Portland reserves the right to terminate service to the Purchaser without notice if, at Portland’s sole determination, the blending of water supplies in the Purchaser’s water system poses a potential regulatory violation.
4. Increases to Purchase Quantity. Purchaser may increase its Purchase Quantity to meet increasing demands due to normal growth within its service area. If the Purchaser anticipates an increase in any year of 20% or more in the Purchase Quantity, then the Purchaser must notify Portland of the expected increase. Once the written notification is received, Portland will conduct an evaluation to determine whether the increased demand can be accommodated within Portland’s existing system capacity. Portland will notify the Purchaser of its decision within 90 days.

# SECTION 6 – OTHER SERVICES

# SECTION 7 – RATES AND CHARGES

1. Rate Making in General
   1. The rate structure for the Purchaser’s purchase of water shall consist of:
      1. 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
      2. A volume charge calculated using volumetric rates established as provided herein times the Purchaser’s actual water drawn from Portland.
   2. The fixed charge per meter shall be based on meter size, and it shall be equal the fixed charges paid by Portland retail customers for the same meter sizes.
   3. The volume charges shall be determined as set forth in this Section.
   4. The revenue requirement for wholesale volume rates shall be determined using the utility basis and cost of service allocation principles as described in *Manual of Water Supply Practices – M1. Principles of Water Rates, Fees and Charges* as 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.
   5. The parties understand that Portland may enter into similar wholesale water sale agreements with other water utilities during the term of this agreement under the same terms and conditions as described in this agreement.
2. O&M Cost Component of the Annual Revenue Requirement
   1. O&M Costs. 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 fiscal year for which the rate will be in effect, multiplied by the O&M Budget Execution Factor, and excluding that portion identified as Retail-only Costs.
   2. O&M Budget Execution Factor. A percentage determined as the actual O&M expenditures for a fiscal year divided by the total adopted O&M budget for the same fiscal year. The average of said factors for the previous five years for which data is available shall be the O&M Budget Execution Factor applied for the purposes of determining rates.
3. Capital Cost Component of the Annual Revenue Requirement. The sum of the Return on Rate Base and Depreciation Expense as defined hereinbelow.
   1. Return on Rate Base. The amount determined by multiplying the Rate of Return by the Rate Base.
      1. The Rate Base is the sum of the following items.
         1. Net Book Value. The original cost less accumulated depreciation of Portland’s capital assets identified as Wholesale-Only or Joint for the previous 12-month financial reporting period. Capital assets that are not used and useful in providing water service shall be excluded from the Rate Base. Capital assets shall exclude capitalized overhead costs.
         2. Allowance for Working Capital. An amount equal to 12.5% (approximately 45 days) of the O&M Costs.
         3. Construction Work in Progress. The amount reported in the previous 12-month financial reporting period. It is explicitly understood that Construction Work in Progress is to be included in the Rate Base and that its inclusion is a modification to the standard definition of the term “rate base” as described in the AWWA M1 Manual and elsewhere.
         4. Less Contributed Capital. The unamortized book value of cash or assets contributed to Portland by wholesale customers or other parties is to be deducted from the Rate Base. To the maximum extent possible, credits for Contributed Capital shall be awarded to the specific wholesale customers who made the contributions. Contributions made by non-parties to this agreement, including state and federal grants, shall be deducted from the total Rate Base for the benefit of all customers.
      2. Rate of Return. Portland’s cost of debt, defined as its True Interest Cost (TIC) as determined by Portland’s Municipal Advisor, times a multiplier of 1.35. Said multiplier may be adjusted subject to the five-year Cost Audit described in Exhibit 2.
   2. Depreciation Expense. All annual depreciation expenses reported for the previous 12-month financial reporting period matched only to the capital assets included in the Rate Base.
   3. Accounting Standards. For the purposes of this Section financial values shall be those reported for the 12-month financial reporting period immediately preceding the calculation of the water rates using generally accepted accounting practices required by the Government Accounting Standards Board or its successor.
4. Cost Allocations – General
   1. Costs shall be allocated to the Purchaser in accordance with generally accepted ratemaking practices and procedures. In general, unless specified otherwise in the agreement, costs shall be allocated proportionately as provided by the then-current AWWA Manual M1.
   2. Cost allocation for purposes of this contract shall be based on the “base-extra capacity” methodology, as defined in AWWA Manual M1.
   3. There are three types of costs referred to in this Section 7
      1. Retail-Only Costs – The cost of services and assets that benefit only Portland retail customers.
      2. Wholesale-Only Costs – The cost of services and assets that benefit only wholesale customers.
      3. Joint Costs – The cost of services and assets that benefit all retail and wholesale customers.
5. Steps Involved in Cost Allocation. The following general sequence shall be employed in allocating costs and developing the wholesale volume rate.
   1. Identify the total O&M costs, asset values, and depreciation expenses related to the entire water system.
   2. Allocate indirect capital and O&M overhead across the corresponding direct functional categories. After this step, the functional categories are considered “fully loaded”—that is, their O&M and asset values include a proportionate share of indirect costs.
   3. Subtract the fully loaded Retail-Only Costs from the total costs. Retail-only costs are assigned 100% to Portland.
   4. Allocate or assign the remaining costs by functional categories to the appropriate Cost Pools.
   5. Allocate the functional categories in each Cost Pool to the appropriate Cost Components.
   6. Distribute the fully loaded Wholesale-Only Costs in each Cost Pool to the Purchaser and the appropriate wholesale customers based on their relative demands in each Cost Component, excluding Portland’s retail demand and the Portland Reserve Capacity.
   7. Distribute the fully loaded Joint Costs in each Cost Pool to the Purchaser, all other wholesale customers, Portland, and Portland Reserve Capacity based on their relative demands in each Cost Component.
   8. Sum the Purchaser’s and each wholesale customer’s costs for all relevant Cost Pools.
   9. Divide the Purchaser’s and every wholesale customer’s total costs by their five-year average annual water usage and convert the result to the cost “per hundred cubic foot (ccf)”.
6. Cost Pools. Cost Pools are groups of asset and O&M costs, related by infrastructure functions, that may be shared jointly with all wholesale customers, or more specifically among a subset of customers. The Purchaser and other wholesale customers may be assigned to one or more Cost Pools depending on how they use Portland’s system. Cost Pools include the following:
   1. Source of Supply – Assets and O&M costs upstream of Portland’s treatment facilities. These costs benefit all customers, including those that only receive raw water.
   2. Treatment & Delivery – Assets and O&M costs at or downstream of Portland’s treatment facilities. These costs benefit only those customers who receive treated water.
   3. New Cost Pools. The Administrator may designate additional Cost Pools in the future as needed to ensure a fair and equitable allocation of system costs.
7. Cost Components. Portland’s water system is designed and operated to meet different rates of demand, defined by the following Cost Components:
   1. Base Costs – the costs Portland incurs to provide water up to its customers’ average daily needs.
   2. Peak Season Extra Capacity – the additional costs above Base costs that Portland incurs to meet peak season demands.
   3. Peak Day/Peak 3-Day Extra Capacity – the additional costs Portland incurs, above and beyond Peak Season, to meet maximum daily rates of flow.
   4. Peak Hour Capacity – the additional costs Portland incurs, above Peak Day, to meet maximum hourly rates of flow.
   5. Cost Components may be amended from time to time to reflect changes in AWWA M1 Manual methodologies. Other changes to the Cost Parameters may be made without modification to any other terms of this agreement by mutual consent of the WMAB and the Administrator.
8. Portland Reserve Capacity. The Portland Reserve Capacity is a one-time adjustment assigning Portland that portion of its system capacity left unused from the expiration of the previous Regional Water Sales Agreement and this agreement.
   1. Reductions. The Portland Reserve Capacity shall be decreased by the growth in aggregate demand of the wholesale customers until such time as the Portland Reserve Capacity reaches zero. The amount of reductions shall be reviewed every five years as part of the Cost Audit as described in Exhibit 2.
   2. No Increases. In no event shall the established Portland Reserve Capacity be increased.
   3. Cost Allocations. The Portland Reserve Capacity shall be allocated a proportionate share of the Joint Costs using the same methods and procedures described in this Section.
   4. Demand Characteristics. For the purposes of cost allocation, the Portland Reserve Capacity shall have the same peaking factors as the Portland Retail class.

# SECTION 8 – WATER SYSTEM PLANNING AND COOPERATION

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

1. Purchaser’s Projected Water Usage
   1. Each five years, at a minimum, starting on July 1 of Contract Year 5, Purchaser shall provide to the Portland estimates of the Purchaser’s water demand to be purchased from the Portland by year.
   2. In addition, in any other Contract Year in which unforeseen developments have significantly altered Purchaser’s five-year estimates, Purchaser shall provide Portland with its revised estimates of its preferred use of Portland water for a ten-year period.
   3. The estimates provided in this provision are for planning purposes only and do not commit the Portland or the Purchaser to either buy or supply any particular quantities of water.
   4. The Portland shall provide WMAB with a summary of Portland’s projected demands for all wholesale and retail demands by no later than May 1 of each year.
2. Portland Evaluation of Capacity of Portland Water System
   1. Whenever it receives revised demand and peaking factor estimates from the Purchaser, the Portland 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 Portland determines that the water system cannot meet the demands the Purchaser and others have proposed to place on it over the ten-year planning horizon, Portland 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 a reduction in demand or development of additional water system capacity.

# SECTION 9 – CONNECTIONS AND METERING

1. Meter Ownership and Responsibility
   1. Upon execution of this agreement, all existing water meters used to measure the water supplied by Portland to the Purchaser, and associated facilities such as vaults shall become the property of Portland. In addition, when a new meter or meters are required, the Portland shall install on Purchaser’s main, at a point near the connection with Portland’s main, a water meter or meters that will at all times measure the water supplied by Portland to Purchaser. Portland 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. Portland agrees to notify the Purchaser prior to repairing the meter.
   2. The primary source of the Purchaser’s water demand data used to administer the Agreement will be the registers physically located on the meters (i.e., register meter readings and not SCADA nor electronically transmitted data). Portland will use demand data from the register readings for calculating the total annual water delivered to the Purchasers unless the readings need to be adjusted because the meter readings are otherwise inaccurate.
   3. In addition, Portland will attempt to physically read the meters on key dates as defined in the agreement (i.e., May 31, June 30, July 31, Aug 31, and Sept 30). If accurate or reliable physical meter readings are not reasonably available for key dates needed for calculating annual demand, monthly demand, and/or peaking factors, then Portland’s SCADA data will be used to establish Purchaser’s water demand to the intended key dates. If SCADA data are not available or for some reason are not considered reliable in a particular case, Portland will use the best means that are reasonably available to estimate usage.
2. Meter Costs. The cost of replacing the meter or meters and their operations and maintenance shall be included by Portland in calculating Purchaser’s rates.
3. 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.

# SECTION 10 – PURCHASER-SUPPLIED WATER TO PORTLAND RESIDENTS

1. Water Supplies To Portland Residents. To the extent permitted by law, Purchaser agrees, when requested by the Administrator, to provide water supply to Portland 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 Portland and its residents’ individual services.
2. Master Metering
   1. Portland and Purchaser shall review each situation where such arrangements exist and attempt to reach an agreement on the need and feasibility of installing a master meter or master meters to register the volume of water delivered to Portland residents.
   2. The Purchaser agrees the water delivered to Portland 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.
   3. The Purchaser may request that Portland 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 daily demand of the Portland residents served by the system or by mutual agreement of the parties. Improvements to the local distribution system shall be made by mutual agreement of the parties.
3. Charges For Water
   1. The Purchaser may charge the Portland up to one hundred twenty-five percent (125%) of the wholesale water rate Portland charges the Purchaser. Portland will credit this amount to Purchaser’s monthly bills. Such water will not be included in the calculation of the Purchaser’s Purchase Quantity.
   2. Notwithstanding the foregoing, the Purchaser may conduct a cost-of-service study to determine the cost of serving Portland residents. If the cost-of-service exceeds 125% of the wholesale water rate, the Purchaser may adjust the charge to Portland accordingly, but not above the actual cost of service.

# SECTION 11 – WATER RESOURCE CONSERVATION

1. General.
   1. The obligations in this Section will apply to both the Portland and Purchaser. Both parties to this agreement intend that water to which the Portland holds water rights, which is shared through the Water Sales Agreement 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 a separate agreement between the interested parties.
2. 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 the staff of participating purchasers’ subject in all cases to WMAB review and approval.
3. Water Conservation Obligations and Submission of a Water Conservation Plan. Unless Purchaser serves a population of 1,000 or less, Purchaser shall submit a conservation plan to demonstrate the responsible and efficient use of water sold under the Water Sales Agreement. Purchasers have two pathways for compliance:
   1. Purchaser may develop a conservation plan which incorporates the required conservation benchmarks outlined in the State’s requirements for Water Management and Conservation plan as outlined in OAR 690-086-0150. While this conservation plan will not be required to be submitted to the state, it should mirror the WMCP requirements outlined in OAR 690-086-0150. 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.
   2. Purchaser may develop a conservation plan which incorporates the required conservation benchmarks outlined in the State’s requirements for Water Management and Conservation plan as outlined in OAR 690-086-0150. While this conservation plan will not be required to be submitted to the state, it should mirror the WMCP requirements outlined in OAR 690-086-0150. 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. Review of Conservation Plan. Upon receipt of a Purchaser draft WMCP or Conservation Plan, the WMAB will review the plan pursuant to the standards in the exhibit. If the WMAB disapproves of the Purchaser’s draft WMCP or Water Conservation Plan, it shall notify the Purchaser and provide the Purchaser with comments on the Plan’s deficiencies. Within 60 days thereafter, the Purchaser shall submit a revised plan for review by the WMAB.

# SECTION 12 – WATER CURTAILMENT AND PROTECTION OF THE WATER SYSTEM

1. General
   1. During times when water supplies are not adequate to meet the aggregate of all demands placed upon the Portland water system, Portland may be required to implement its Curtailment Plan, developed for the water system in accordance with OAR 690-086-0160(2) and OAR 690-086-0160(3. This plan is filed as part of PWB’s Water Management and Conservation Plan and would be in effect for all water users – retail and wholesale
   2. By signing this agreement, Purchaser and Portland acknowledge that unforeseen or unavoidable circumstances may limit the amount of water available to Portland for sale and distribution, whether temporarily or permanently. Should the available supply fall below the aggregate of all demands placed on the Portland system, or should it be reasonably predicted that supply will fall below demands before other supplies are available, the Administrator of the Portland Water Bureau may declare that a water shortage is in effect.
   3. If the Administrator declares a water shortage, the Purchaser shall implement measures sufficient to meet the requirements in accordance with PWB’s WMCP. Purchaser may do this through the 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 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.
   4. Portland shall monitor compliance with the Curtailment Plan on a schedule established in the Plan or at least every two weeks throughout the duration of the declared water shortage.
   5. If, after the Administrator declares a water shortage, the Purchaser is unable individually, or in cooperation with other purchasers as contemplated 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.
2. Stages of Curtailment. See Exhibit 4
3. Curtailment Obligations and Submission of a Curtailment Compliance Plan.
   1. Purchasers need to have a plan in place to reduce or curtail demands to the required target so that fire, life, safety, and other high-priority needs are met. 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.
   2. It is to the benefit of all 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.
   3. Purchasers shall develop and submit a Curtailment Compliance Plan to demonstrate how they will reduce water use to the targets for each stage of curtailment described in the exhibit. These plans will be submitted to the WMAB to be reviewed for consistency.
4. Exceptions. If a Purchaser can switch water sources to relieve pressure entirely from the Portland system, they would not be required to curtail water use.
5. Curtailment Compliance Enforcement
   1. Whenever the Administrator has declared a water shortage, the Purchaser’s adopted Curtailment Compliance Plan shall be in effect.
   2. If there is no adopted Curtailment Compliance plan, the Administrator shall require implementation of measures in accordance with PWB’s WMCP to reduce all demands, retail and wholesale, proportionally based on annual retail usage for the previous contract year furnished under this agreement for the previous contract year.

# SECTION 13 – BILLING AND PAYMENT

1. Charges for Water Deliveries
   1. Monthly Charges. Portland shall bill the Purchaser monthly for the actual volume of water delivered. The monthly volumetric charge shall be the product of the Purchaser’s monthly deliveries, as determined in Sections 15.A.2 below, times the Purchaser’s rate for that year’s water deliveries as determined in Section 7.
   2. Monthly Water Deliveries. Portland shall read the Purchaser’s water meters on a recurring cycle of approximately 30 days to determine the Purchaser’s total deliveries for each month. The water deliveries used to determine the charges for the current month shall be the difference in units between the most recent meter reading and the one immediately before it.
2. 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.
3. Charges In Case of Meter Failure
   1. Should any meter fail to measure accurately the water passing through the said meter, the charge for water used during the time the meter is out of service shall be based on Portland’s estimates of the volume of water supplied based on usage patterns and statistics for prior periods.
   2. “Out of Service” in the contract is interpreted to include “out of calibration” or circumstances in which a meter is not reporting the Purchaser’s water demand accurately.
   3. Portland plans to test wholesale meters approximately every six months. If, because of periodic meter testing, Portland identifies that a Purchaser’s meter is out of calibration, Portland will provide the Purchaser with an initial notice of a meter error and an interim correction factor to estimate usage. Portland and the Purchaser will then work together to verify the meter error and confirm and/or refine any calibration test results. Based on additional calibration test results, Portland and the Purchaser will work together to identify a final correction factor to be applied. The final correction factor will be applied retroactively to the Purchaser’s meter readings only after the date of Portland’s initial notice of a meter error.
   4. Peak-season and peak-day peaking factors will be recalculated to reflect the Purchaser’s corrected water demands only for dates after the date of Portland’s initial notice of a meter error. To allow “closing the books” for the previous fiscal year, if a final correction factor has not been established by September 1, the interim correction factor identified in Portland’s initial notice of a meter error will be applied retroactively beginning on the date of Portland’s initial notice of a meter error and continuing through June 30. In this case, a final correction factor established after September 1 will be applied retroactively only to the Purchaser’s demands from July 1 and after only for the purpose of calculating actual total annual demand.
4. Disputes. In the case of disputes over billings for water, the 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 Portland’s internal investment pool managed by the City Treasurer on any disputed amounts found through dispute resolution or litigation to be due to Portland.

# SECTION 14 – SPECIAL FUNDING OF CAPTIAL IMPROVEMENTS

1. Project Funding in General. Portland plans, designs, constructs, owns, and operates all fixed assets used to deliver water under this Agreement up to the Purchaser’s wholesale water meter(s). All such assets are eligible additions to the rate base as described in Section 7. Unless specified by a separate agreement, direct capital contributions by the Purchaser for all or any portion of the cost of any given project do not convey an ownership interest in the project(s) nor any interest in Portland’s water system whatsoever.
2. Special Project Funding
   1. Portland Financing of Purchaser-Specific Project. Portland, at its sole determination, may agree to pay for a capital project that has exclusive benefit to the Purchaser. In such cases, the fixed assets related to the project shall be excluded from the rate base and the Purchaser will be subject to a Repayment Agreement, the terms and conditions of which shall be negotiated separately and agreed to by the Portland and the Purchaser. Portland shall include on the Purchaser’s monthly bill for water deliveries the sum of any payments due from the Purchaser’s outstanding Repayment Agreements. Charges related to Repayment Agreements shall be in addition to the rates and charges determined pursuant to Section 7.
   2. Joint Funding of Portland Projects by Purchaser or Group of Purchasers. Portland, at its sole determination, may accept contributions in aid of construction from one or more Purchasers to fund capital projects eligible for inclusion in the rate base. In such cases, the total cost of the assets shall be included in the rate base and the parties making the contributions shall receive credit on their monthly bill for water services equal to the sum of:
      1. One month’s amortization of the Purchaser’s contribution where the schedule of amortization is equal to the useful life of the asset expressed in months (e.g., a 10-year life is equal to a 120-month amortization and each month’s amortization is 1/120th of the total).
      2. The unamortized portion of the contribution times 1/12th of the then-current Rate of Return.

# SECTION 15 – 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.

1. Notice of Dispute. Prior to the commencement of litigation of a dispute, either party must first provide the other with a written notice describing the dispute and submit the dispute to resolution under this Section. Such notice shall commence the dispute resolution process.
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.
3. Mediation
   1. 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.
   2. 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.
4. Arbitration. If the dispute has not been resolved through negotiation or mediation within 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 such an agreement, the dispute resolution process under this agreement shall be deemed ended and the parties shall be free to pursue other remedies.
5. Litigation. 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.

# SECTION 16 – WASHINGTON COUNTY SUPPLY LINE

The Portland 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.

# EXHIBITS

**EXHIBIT 1**

**Purchase Quantities and Peak Rates of Flow**

**EXHIBIT 2**

**Five-Year Cost Audit**

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 revenue requirements and the cost allocations consistent with the terms of this contract and the AWWA M-1 manual. 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.

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.

**EXHIBIT 3**

**Water Conservation Plan**

In reviewing a Conservation Plan, the WMAB shall consider, at a minimum, the following factors:

* 1. Whether the program contains the following mandatory programs
  2. 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)
  3. Education and outreach programs required under OAR 690-86-150(4)(f).
  4. Rate structures based on the quantity of water metered at the service connection as required by OAR 690-86-150(4)(d).
  5. A meter testing and maintenance program as required by OAR 690-86-150(4)(c).
  6. An annual water audit as required by OAR 690-86-150(4)(a).
  7. 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.
  8. Technical and financial assistance programs to encourage and aid residential, commercial and industrial customers.
  9. 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.
  10. Adoption of rate structures, billing schedules, and other associated programs that support and encourage water conservation.
  11. Water reuse, recycling, and non-potable water opportunities.
  12. Other measures identified by the water supplier that would improve water use efficiency.
  13. Operation measures to reduce peak event impacts on the Portland system.
  14. Within 60 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.

**EXHIBIT 4**

**Stages of Water Curtailment**

The Curtailment Plan for the Portland Water System was developed with these values in mind:

**• The plan should be flexible.** Each water shortage situation has enough unique characteristics that a plan cannot specifically define all the scenarios and specific supply and demand management actions. The triggers outlined in this document are guideposts to contribute to decision-making, but the bureau will use the SWSACP process to make decisions each year.

**• Shortage should be shared.** A key assumption of this plan is that shortage and risk must be shared among all beneficiaries of the water resource. All wholesale customers obtaining water from the bureau’s system will participate in management of the shortage as outlined in their water sales agreements. Similarly, all retail customer sectors are expected to participate.

• **Curtailment is different from conservation.** Given the bureau’s highly effective longterm conservation program, it is important to distinguish between the short-term curtailment actions necessitated by a water shortage event and the conservation actions the bureau regularly promotes. Conservation focuses on long-term efficiencies, which do not adversely affect users’ accustomed use of water, whereas curtailment actions involve short-term water use reductions or restrictions that can create hardships.

• **The bureau prefers voluntary curtailment to mandatory curtailment.** Water users prefer the opportunity to meet targeted demand reduction levels through voluntary compliance actions. The decision to move to mandatory restrictions is more acceptable if the voluntary approach has been tried first but has not resulted in sufficient demand reduction.

• **The plan must safeguard water quality.** It is essential to closely monitor water quality during water shortages, particularly during warm weather drought. This applies to water quality in rivers as well as to drinking water. Water quality issues must be considered for drinking water and instream uses when supply management decisions are made.

Within that framework below are the stages of curtailment with the associated wate ruse reduction targets for each stage.

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**EXHIBIT 5**

**Early Termination Fees**

Early termination fees consist of the capital portion of the wholesale rate multiplied by the Purchaser’s eliminated or reduced demand at the time Purchaser gives notice of termination or reduction.

The formula for determining the Early Termination Fee is as follows:

**Fee = C x D x P x N / (1+RoR)N**

Where:

C = Capital portion of the wholesale rate applicable in the year preceding the notification expressed in $/gallon.

D = The Purchaser’s average total water deliveries from Portland for the five-year period preceding the notification expressed in gallons.

P = The percentage of the Purchaser’ demand (D) to be reduced either from termination of the Agreement or by reduction due to changing supply sources. For terminations, P=100%. For reductions, P < 100% determined as the amount of continuing water purchases from Portland as a percentage of D.

N = The number of remaining years in the term of the Agreement.

RoR = The Rate of Return pursuant to Section 7 of the Agreement.

**EXHIBIT 6**

**Augmented Storage Charges**