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Clark County, WA 12/18/2015 11:39



RETURN ADDRESS

City of Washougal
1701 C Street
Washougal WA 98671

Please print neatly or type information

Document Title(s)

Utilities Cooperation Agreement

Reference Number(s) of related documents:

5236943 Additional Reference #'s on page ____

Grantor(s) (Last name, First name and Middle Initial)

City of Washougal Additional grantors on page ____

Grantee(s) (Last name, First name and Middle Initial)

City of Camas Additional grantees on page ____

Legal Description: (abbreviated form: i.e. lot, block, plat or section township, range, quarter/quarter)

#5 Section 21 T2N R4E W4M 19.65A Additional legal is on page ____

Assessor's Property Tax Parcel/Account Number

1351307-000 Additional parcel #'s on page ____

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording process may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

AFTER RECORDING RETURN TO:

City of Washougal
1701 "C" Street
Washougal, WA 98671

CITIES OF CAMAS AND WASHOUGAL, WASHINGTON

**UTILITIES COOPERATION AGREEMENT
FOR WATER SYSTEM DEVELOPMENT –
PHASE 2**

2015

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**CITIES OF CAMAS AND WASHOUGAL, WASHINGTON
UTILITIES COOPERATION AGREEMENT
FOR WATER SYSTEM DEVELOPMENT
PHASE 2**

1. AGREEMENT

This Utilities Cooperation Agreement for Water System Development (“Agreement”) is made by and between the CITY OF CAMAS, a Washington municipal corporation (“Camas”), and the CITY OF WASHOUGAL, a Washington municipal corporation (“Washougal”). Camas and Washougal are each a “Party” and collectively the “Parties” (or “Cities”) to this Agreement. The Parties agree as follows.

2. RECITALS

2.1 This Agreement is entered by the Parties under their authority to contract, including but not limited to RCW 35A.11.010 and RCW 35.21.210.

2.2 For a number of years, Camas and Washougal have been jointly addressing the Parties’ ongoing water supply needs. The Cities participated in Water Resource Inventory Area (WRIA) planning in the Salmon-Washougal (WRIA 28) and Lewis (WRIA 27) watersheds. Clark, Cowlitz and Skamania Counties adopted the Salmon-Washougal & Lewis Watershed Management Plan on July 21, 2006. The Salmon-Washougal & Lewis Watershed Management Plan guides future water rights development in the community, and identifies the Steigerwald area in Clark County as a regional water source.

2.3 Washougal identifies current average daily water demand of approximately 2.0 million gallons per day, with an estimated 50-year need of 10 million gallons per day. Camas identifies current average daily water demand of approximately 3.7 million gallons per day, with an estimated 50-year need of 15 million gallons per day. To meet these needs, the Parties initiated efforts to develop and operate water system wells and well fields near the Steigerwald Wildlife Refuge to be supplied by the Pleistocene Alluvial Aquifer (the “Project”).

2.4 The Parties began Project development efforts at Phase 1, in part, by entering into an Option to Purchase Exclusive Easement for Well Site with the Port of Camas-Washougal (“Port,” July 17, 2006 (now expired)), and Inter-Local Cooperation Agreement (July 17, 2006) between the Parties to provide for drilling, testing, and evaluation of drinking water wells in the Steigerwald Lake area. The testing revealed sufficient water supplies for the Project. The 2011 Clark County Coordinated Water System Plan Update identifies the Steigerwald well field as a regional water source and further identifies it as a capital project (SR-11).

2.5 As components of the Project, the Parties now are (i) jointly seeking new water rights sufficient for the Project under an Application for Water Right Permit (Washington Ecology No. G2-30528, August 2009); (ii) acquiring from Port the property rights necessary for the Project; (iii) updating their comprehensive water plans; and, (iv) planning to acquire, develop

and operate necessary water system facilities and improvements. Collectively, these efforts and this Agreement are Phase 2 of the Project.

2.6 The Camas 2010 Water System Plan identifies the Steigerwald well field as a regional water source and further identifies it as a capital project (SR-11). The Washougal Water System Plan identifies the Steigerwald well field as a regional water source and further identifies it as a capital project. Camas intends to update its Water System Plan by 2016. Washougal intends to update its Water System Plan, beginning in 2017.

2.7 The Steigerwald well field site is to be acquired and developed by the Parties, with Washougal acting as lead agency and title holder. The general allocation of rights and responsibility for the Project is 60% to Camas and 40% to Washougal.

2.8 In accordance with their history of cooperation and consistent with the 2006 Inter-Local Agreement for good faith negotiations toward a revised agreement to allocate the costs and distribution of Project water resources, the Parties enter into this Agreement to terminate the 2006 Inter-Local Agreement, except as it relates to unreimbursed costs otherwise allocated thereto which shall be subject to further negotiations, and to set forth the rights and obligations of the Parties for the next phase of the Project. This is another in a series of agreements, and the Parties will consider in the future Phase 3 and other forms of management and/or governance of water systems, including the potential of forming a joint municipal services authority under Chapter 39.106 RCW. This Agreement also provides a protocol in the event future agreements are not reached.

3. DEFINITIONS

3.1 “Capacity Allocation” means the percentage of the Steigerwald Water System’s design capacity that a Party is authorized by this Agreement to use. A Capacity Allocation does not convey ownership interest in any of the Steigerwald Water System.

3.2 “Steigerwald Water System” or “Project” means the Real Property and System Facilities subject to this Agreement.

3.3 “Real Property” means that certain real property located in Clark County, Washington, identified as Clark County Tax parcel No. 135307000, consisting of approximately 19.65 acres of land, which is legally described and generally depicted in Exhibit A.

3.4 “System Facilities” means all water system facilities and improvements located on the Real Property and, to the extent agreed upon by the Parties in the future, any other facilities that Camas or Washougal may construct for joint use by the Parties, including without limitation facilities not located on the Real Property.

4. OWNERSHIP OF THE STEIGERWALD WATER SYSTEM

4.1 Capacity Interest and Allocation. Each Party owns a capacity interest in the Steigerwald Water System. The Camas capacity interest and Capacity Allocation is 60% and the Washougal capacity interest and Capacity Allocation is 40%.

4.2 Title to Property. Title to the Real Property shall be held in the name of the City of Washougal. Each Party's interest in the Real Property is defined in this Agreement by its Capacity Allocation.

4.3 Sale of Property. The Real Property, the Steigerwald Water System or any part of either the Property or System may be sold or transferred upon the written approval of both Parties, subject to any rights held by the Port of Camas-Washougal, if then applicable.

5. ALLOCATION OF COSTS, SYSTEM CAPACITY, AND WATER RIGHTS

5.1 Purchase Price. Each Party is obligated to pay its portion of the total purchase price for the Real Property (estimated to be \$667,619.90 plus costs), divided as follows: Camas – 60% / Washougal – 40%. The allocable share of the Purchase Price shall be included in each Party's capital contributions if the Real Property is purchased over a term of years. Camas shall pay its share to Washougal under Agreement Section 7. Camas' payments for the real property are an obligation of Camas' water system and shall be considered as junior debt for the water utility.

5.2 Capacity Allocation. Subject to modification in future agreement, each Party's Capacity Allocation is divided as follows: Camas – 60% / Washougal – 40%.

5.3 Water Rights. Subject to modification in future agreement, each Party's interest in the water rights associated with the Steigerwald Water System is divided as follows: Camas – 60% / Washougal – 40%.

6. ADMINISTRATION

6.1 Administration.

6.1.1 Lead Agency. No new or separate legal or administrative entity is created by this Agreement. Washougal serves as lead agency for Project. As lead agency, Washougal shall be responsible for continued process for the Application for Water Right Permit, Real Property acquisition, Project design and Development and other Project related actions, all upon consultation with Camas.

6.1.2 Meetings/System Planning. The Public Works Director of each City shall meet regularly, generally monthly, regarding the Project. Additionally, the Parties shall hold regular meetings, to direct planning related to the Steigerwald Water System and to develop and review future actions, including relevant comprehensive plans, other planning documents and budgets. Each Party shall cooperate with the other Party's water comprehensive planning.

6.1.3 Phase 3. Following the adoption by each Party of the Party's updated water comprehensive plan, or earlier as the Parties determine, the Parties shall begin negotiations for development of a Phase 3 agreement. A Phase 3 agreement is to address the next phase of the water resource development and System Facilities, and System management. A Phase 3 agreement is expected to address such issues as organization and governance; budget and finance; water interties and wheeling; System Facilities planning and development; management and operation; repair and replacement of System Facilities; termination of this

Agreement; and related matters. The Parties intend to enter a Phase 3 Agreement no later than eighteen (18) months following the commencement of negotiations. Each Party commits to good faith and diligent effort to reach a Phase 3 agreement.

6.2 Other Uses. The Real Property is acquired by the Parties for development and operation of well fields and other utility purposes. The Parties may, however, agree to make the Real Property available for either or both Parties' general municipal purposes.

6.3 Water Rights Approval Process. In the event the Parties determine to request accelerated review of their Application for Water Right Permit, all costs of such process shall be allocated between the Parties based on Capacity Allocation.

7. BUDGETING AND INVOICING

7.1 Invoicing and Payment. Monthly, as expenses are incurred, Washougal will invoice Camas for its pro rata share of costs for the Project in accordance with Washougal's standard invoicing procedures for public works projects. Camas must remit payment in full for each invoice no later than thirty (30) days after the receipt of the invoice from Washougal.

7.2 Reimbursement. It is the intent of the Parties that Washougal be reimbursed for (and Camas pay for) only Camas' pro rata share of costs reasonably incurred by Washougal in performing its duties under this Agreement.

7.3 Taxes. Washougal shall not assess its utility tax on revenues from any service to Camas under this Agreement. Other taxes such as state, county and those imposed by other third parties related to the Project shall apply. Each Party retains all rights and authority to levy and collect utility taxes associated with retail or contract water service.

8. DISPUTE RESOLUTION

8.1 Negotiations. The Parties agree to make all reasonable efforts to resolve through informal, good faith negotiations any disputes concerning the terms and conditions or performance of this Agreement. In the event of a dispute, including a claimed breach of this Agreement, notice of the dispute shall be provided in writing and shall be delivered in the manner set forth in Section 12.4. The notice shall set forth with reasonable specificity the factual basis for the claimed dispute. Both Parties shall jointly cooperate to informally resolve any disputes as quickly and efficiently as possible, but in any event not more than sixty (60) days from the date of the notice unless extended by mutual agreement of the Parties.

8.2 Voluntary Mediation. If a dispute cannot be resolved through direct discussions, mediation may, by mutual consent, be initiated. In the event the Parties determine to initiate mediation, a mutually acceptable mediator shall be selected by the Parties for the purpose of facilitating the mediation process. The mediator shall be selected based on his or her expertise with the nature of the matter in dispute and their ability to facilitate a settlement. The Parties agree to provide all documentation and information requested by the mediator and in all other regards to cooperate fully with the mediator. The costs of mediation shall be shared equally between the Parties.

8.3 Other Relief. In the event the dispute is not resolved in mediation, or the Parties do not agree to mediation, the Parties may pursue any other form of relief provided by this Agreement.

8.4 Specific Performance. If a Party continues in default in the performance of any material and substantial covenant or agreement herein contained for a period of thirty (30) days after written notice specifying such default, and following such reasonable time under Agreement Sections 8.1 and 8.2; or as is necessary to cure such default or a Party's failure to commence a cure within sixty (60) days of notice, a Party may, at its option, immediately commence an action for specific performance to compel performance or take any other action available at law or in equity, including an action for damages. The Parties agree that the continued delivery of water from the Steigerwald Water System cannot be terminated without jeopardizing the public health and safety. As a result, termination of the Agreement is not an adequate remedy; and an action for specific performance, in addition to other remedies, is authorized to compel performance under this Agreement.

8.5 Compliance with Order. The Parties shall be bound by the outcome of litigation (or other process) under Agreement Section 8, including all appeals, at the conclusion of the litigation (the "Order"). The first remedy available to a Party under an Order shall be specific performance. If a Party does not comply with the Order within the time specified for compliance in the Order, the prevailing Party may elect to terminate the Agreement without further process under this Agreement. If a Party chooses to not terminate the Agreement, the Party may pursue such other remedies as are available under law or this Agreement.

8.6 Force Majeure. No period of performance required by this Agreement shall run during periods of force majeure.

8.7 No Waiver; Prevailing Party Costs. If a Party incurs attorney fees, costs, or other legal expenses to enforce the provisions of this Agreement against another Party, all fees, costs, and expenses are recoverable by the prevailing Party as against the offending Party. The failure of a Party to exercise any right or enforce any provision of this Agreement is not a waiver of that right or enforcement remedy.

8.8 Jurisdiction and Venue. This Agreement must be interpreted in accordance with the laws of the state of Washington. As against the other Party, Camas and Washougal may file suit to enforce this Agreement only in the Superior Court for Clark County, Washington.

9. ASSETS

9.1 Existing Assets. Subject to Agreement Section 4, this Agreement does not transfer any existing assets between the Parties. The Parties retain all rights, title, and interest in their separate municipal water systems, including without limitation all real and personal property, investments, cash accounts and reserves, and contract and intangible rights.

9.2 Steigerwald Water System Assets. The Parties each have an ownership interest in the assets of the Steigerwald Water System based on Capacity Allocation. Upon termination or dissolution of this Agreement, the Parties will work in good faith toward an asset allocation plan for the Steigerwald Water System and to administer the approved plan. In the event the Parties

cannot reach agreement, then Washougal shall pay to Camas the full amount of prior Camas payments to Washougal for the Real Property and any System Facilities constructed prior to Agreement termination. After payment by Washougal, Camas shall have no interest in the Steigerwald Water System.

10. INSURANCE

10.1 Property Insurance. Washougal must insure, at replacement cost value, any Steigerwald Water System Facilities.

10.2 Liability Insurance. Each Party shall obtain and keep in full force and effect liability insurance protecting itself and its employees, officers and agents, and the party, its employees, officers and agents, for claims of any persons for injuries to life, person or property by reason of anything done or permitted to be done or suffered or admitted to be done by the parties in the administration of the project. If either party withdraws from the Washington Cities Insurance Authority, that party shall deliver a certificate of insurance showing compliance with this section.

10.3 Cost. Any additional cost for liability, property or other insurance required for the System will be included as an operating cost and payable by each Party under Capacity Allocation.

11. UTILITY TAXES

The Parties recognize that the Steigerwald Water System is being developed to provide wholesale water supplies to the Parties. Accordingly, revenues generated by the Steigerwald Water System, if characterized as such, are exempt from certain taxes. Each Party will therefore pay its own share of utility taxes, when owed, for revenue generated by their separate municipal water utilities.

12. GENERAL

12.1 Execution of Documents. The Parties will cooperate fully in executing documents that are necessary to develop and implement the Steigerwald Water System.

12.2 Filing. Prior to or on the Effective Date, the City Clerks of Camas and Washougal must list this Agreement by subject on that city's website or other electronically retrievable public sources. Washougal shall record this Agreement with the deed or other documents transferring title to the Real Property.

12.3 Records.

12.3.1 Washougal must maintain accounts and records that sufficiently and properly document its services and costs under this Agreement.

12.3.2 Upon reasonable notice, each Party may inspect and copy, without charge, all non-privileged records held by any other Party relating to this Agreement.

12.4 Notices. All notices required by this Agreement must be in writing by hand delivery, email, regular U.S. mail, or certified mail, return receipt requested.

If to Camas, notice must be sent to:

City Administrator
City of Camas
616 N.E. 4th Avenue
Camas, WA 98607

If to Washougal, notice must be sent to:

City Administrator
City of Washougal
1701 "C" Street
Washougal, WA 98671

Notice is considered given upon delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.

12.5 Indemnification. To the maximum extent permitted by law, Camas and Washougal indemnify and hold harmless the other Party and all of its officers, officials, employees, and volunteers from any and all claims, demands, injuries, losses, suits, actions, fines, penalties, and liability of any kind, including attorney fees, to the extent they arise out of or are related to the performance of this Agreement by the indemnifying Party or its officers, officials, employees, volunteers, agents, representatives, consultants, contractors, or subcontractors. This indemnity is not limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the indemnifying Party under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnity is specifically and expressly intended to constitute a waiver of the indemnifying Party's immunity under Washington Industrial Insurance (Title 51 RCW) with respect to only the other Party, and only to the extent allowable by law and necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnifying Party's employees. This waiver has been mutually negotiated. The provisions of this Subsection 12.5 survive the expiration or termination of this Agreement.

12.6 Non-Waiver. The failure on the part of any Party to enforce its right as to any provision of the Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

12.7 Force Majeure. If a Party is rendered unable by Force Majeure, to carry out, in whole or part, its obligations under this Agreement and such Party gives notice and full details of the event to the other Party as soon as practicable after such occurrence, the obligations of the Party affected by the event (other than the obligation to make payments due for performance prior to the event) shall be suspended to the extent required. Under this Agreement, "force majeure" shall mean acts of God, wars, strikes, lockouts, labor disputes, civil disorder, acts of terrorism, fires, floods, volcanic eruptions, earthquakes or other causes beyond the reasonable control of the affected Party.

terrorism, fires, floods, volcanic eruptions, earthquakes or other causes beyond the reasonable control of the affected Party.

12.8 Entire Agreement; Amendment. This Agreement contains the entire written agreement among the Parties and supersedes all prior discussions and agreements. This Agreement may be amended only in writing, signed by all Parties.

12.9 Termination of Existing Agreement. On the Effective Date, that 2006 Inter-Local Cooperation Agreement between the City of Camas and the City of Washougal (July 17, 2006) terminates. All cost and responsibility allocations with respect to the Steigerwald Water System are governed by this Agreement.

12.10 Authorship. This Agreement reflects the Parties' joint drafting efforts. In the event any dispute, disagreement, or controversy arises regarding this Agreement, the Parties will consider each other as joint authors and no provision may be interpreted against any Party because of authorship.

12.11 Successors and Assigns. All of the provisions contained in this Agreement are binding upon the successors and assigns of the Parties.

12.12 No Third Party Rights. This Agreement is solely for the benefit of the Parties and does not confer rights to any other individual or person.

12.13 No Joint Venture. This Agreement does not form any joint venture, partnership, administrative entity, or separate municipal corporation between the Parties. Washougal's officers, officials, employees, volunteers, agents, representatives, consultants, contractors, and subcontractors will not be deemed, and may not represent themselves as, employees of Camas.

12.14 Severability. If any section or part of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that action will not affect the validity or enforceability of any other section or part of this Agreement.

13. TERM AND TERMINATION

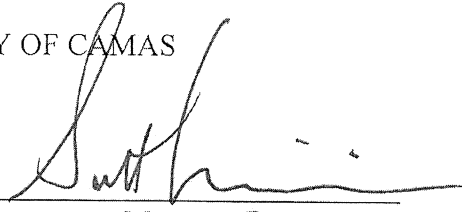
13.1 Effective Date. This agreement shall be effective upon last signature by the respective Parties hereto.

13.2 Term. The term of this Agreement is ten (10) years plus the remainder of the calendar year in which it becomes effective, ending on December 31, 2025. The term will automatically extend for two (2) consecutive terms of ten (10) years unless at least one Party gives the other Party notice of intent to terminate the Agreement on or before December 31 of the year prior to the year in which the Agreement will expire. Upon expiration of the second extension of ten (10) years, this Agreement will automatically extend for additional calendar-year terms until at least one Party gives the other Party notice of intent to terminate the Agreement on or before December 31 of the year prior to the year in which the Agreement will expire.

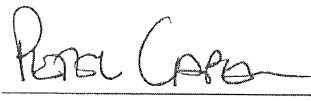
13.3 Termination. Either Party may terminate this Agreement for a default by the other Party if the defaulting Party has not cured the default or complied with the Order as provided in Agreement Section 8. Prior to termination, the Public Works Directors of the Parties will propose for approval by the governing bodies of each Party a plan to wind up the Project affairs, allocate assets of the Steigerwald Water System and administer the approved plan. Failure to agree on a plan is governed by Agreement Section 9.2. All applicable costs generated up to and including the date of termination shall be and remain the responsibility of the terminated Party to pay.

13.4 Withdrawal. Either Party may elect to withdraw from this Agreement as follows. The withdrawing Party shall provide at least five (5) years' advance written notice of its intent to withdraw. Such notice shall be delivered consistent with Section 14.4. The effective date of withdrawal shall be 11:59 PM on December 31 of the year following the five (5) years' notice is issued. Withdrawal has the same effect as termination and shall be governed by Agreement Sections and 9.2 and 13.3.

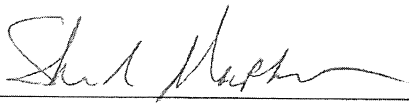
CITY OF CAMAS

By: 
Mayor Scott Higgins

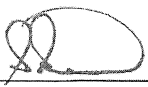
Date: 9-8-15

Attest: 
Clerk Pete Capri

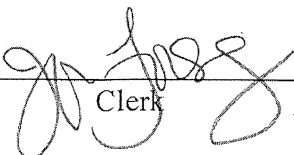
Approved as to form:


City Attorney Shawn McPherson

CITY OF WASHOUGAL

By: 
Mayor Sean Guand

Date: 8-24-15

Attest: 
Clerk Jennifer Forsberg

Approved as to form:

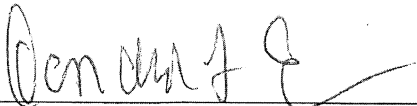

City Attorney Donald English

EXHIBIT A:
REAL PROPERTY

A tract of land together with an easement for access and transmission main located in portions of Sections 17, 20 and 21, Township 1 North, Range 4 East, Willamette Meridian, Clark County, Washington; said tract is a portion of that particular parcel shown on the official record of survey recorded in Book 43 at Page 9, Records of Clark County, Washington, being more particularly described as follows:

Beginning at the Northwest corner of said Section 21 per said record of survey in Book 43 at Page 9; Thence South $62^{\circ}02'18''$ East a distance of 3,104 . 73 feet to the northerly right of way line of the dike road as shown in said survey and the point of beginning of this description;

Thence along the following described courses:

North $10^{\circ}34'45''$ East a distance of 461 . 58 feet;

South $88^{\circ}36'01''$ East a distance of 347 . 39 feet;

South $68^{\circ}07'52''$ East a distance of 343.29 feet;

South $73^{\circ}19'26''$ East a distance of 198.86 feet;

South $73^{\circ}26'56''$ East a distance of 160.51 feet;

North $17^{\circ}28'45''$ East a distance of 102.65 feet;

South $67^{\circ}16'49''$ East a distance of 31. 65 feet;

South $65^{\circ}33'04''$ East a distance of 376.31 feet;

North $63^{\circ}42'19''$ East a distance of 112.43 feet;

South $01^{\circ}23'59''$ West a distance of 292.78 feet to a point

here and after referred to as Point "A" said point also being located on the northerly dike road right of way line; Thence following along said northerly line the following described courses:

North $88^{\circ}35'14''$ West a distance of 850.42 feet to the beginning of a curve concave to the north having a radius of 2,782.47 feet;

Thence northwesterly 113.96 feet along said curve through a central angle of $2^{\circ}20'10''$;

Thence North $86^{\circ}15'03''$ West a distance of 141.48 feet;

Thence North $03^{\circ}44'56''$ East a distance of 30.00 feet;

Thence North $86^{\circ}15'03''$ West a distance of 516.09 feet to the TRUE POINT OF BEGINNING.

Together with an easement beginning at said Point "A"; Thence South a distance of 35.00 feet to the centerline of said dike road and the beginning of this easement description; being 20 feet in width and lying 10 feet on each side of the following described centerline: Following westerly and northwesterly on and along the centerline of said dike road to a point due South of said Northwest corner of Section 21; Thence North $38^{\circ}03'10''$ West leaving said dike road centerline a distance of 432 . 82 feet to a concrete monument with brass cap located in the centerline of Index Street as shown on Record of Survey recorded in Book 14 at Page 50, Records of Clark County, Washington, and the terminus of this easement description.